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1.1.1 CSA Staff Notice 31-336 – Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitablility Obligations

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CSA Staff Notice 31-336
Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations

January 9, 2014

Purpose of this Notice

The know-your-client **(KYC)**, know-your-product **(KYP)** and suitability obligations are among the most fundamental obligations owed by registrants to their clients and are cornerstones of our investor protection regime. Staff from the Canadian Securities Administrators (**CSA staff** or **we**) assess registrants' compliance with these important regulatory requirements as part of our compliance oversight reviews. For example, in 2012, staff of the Ontario Securities Commission conducted a targeted review (**Sweep**) of 87 portfolio managers (**PMs**) and exempt market dealers (**EMDs**) to assess their compliance with the KYC, KYP and suitability obligations. The findings of the Sweep are summarized in OSC Staff Notice 33-740 *Report on the results of the 2012 targeted review of portfolio managers and exempt market dealers to assess compliance with the know-your-client, know-your-product and suitability obligations*.

As a result of our compliance oversight reviews, CSA staff have concluded that additional guidance (including CSA staff's views as to practices that may be considered to be "best practices" and practices that we consider to be "unacceptable practices") in the areas of KYC, KYP, and suitability obligations is required to assist registrants, such as PMs, EMDs, and other registrants who are not members of a self-regulatory organization (**SRO**) in meeting their regulatory obligations.

We strongly encourage registrants to use this Notice to improve their understanding of, and compliance with, the very important KYC, KYP, and suitability obligations. We also suggest that registrants use this report as a self-assessment tool to strengthen their compliance with securities laws. Going forward, CSA staff will continue to closely monitor registrants' compliance in these areas and will take appropriate regulatory action to ensure compliance with securities laws.

Top line highlights of the Notice

- **KYC, KYP and suitability obligations are among the most fundamental obligations owed by registrants to their clients, and are cornerstones of our investor protection regime.** The CSA has repeatedly recognised that these requirements are basic obligations of a registrant, and a course of conduct by a registrant involving a failure to comply with them is an extremely serious matter.

- **We expect registrants to comply not only with the letter of the securities law requirements themselves, but also with the spirit of the requirements.** We expect market participants to conduct themselves in a manner that is consistent with the principles of securities regulation. This requires market participants to respect not just the letter of the law, but also the spirit of the law.

- **KYC, KYP and suitability obligations are extensions of each registrant's general duty to deal fairly, honestly and in good faith with its clients.** In Quebec, this duty is framed as the registrant's duty to deal fairly, honestly, loyally and in good faith with its clients.

- **A meaningful suitability assessment is required.** Assessing suitability is more than a mechanical fact-finding or "tick the box" exercise. It requires meaningful dialogue with the client to obtain a solid understanding of the client's investment needs and objectives, and to explain how a proposed investment strategy is suitable for the client in light of the client's investment needs and objectives.

- **Failure to adequately know your client may lead to a distribution of securities by an issuer or dealer in breach of a prospectus exemption which is a serious breach of securities law.** An illegal distribution may also provide an investor with a continuing right of action for rescission or damages against the issuer or dealer for non-delivery of a prospectus.

- **Adequate documentation of the suitability process (including KYC) is critical to ensuring that a registrant is meeting its securities law obligations.**

What's in the Notice?

In addition to providing guidance, this Notice briefly summarises the applicable securities law requirements relating to KYC, KYP, and suitability for registrants. It also sets out selected requirements and guidance for KYC, KYP, and suitability requirements for dealer members of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**). Although these requirements are not applicable to registrants who are not members of an SRO, they may provide helpful guidance to registrants in their determination of how to meet their KYC, KYP, and suitability obligations under securities law.

In this Notice, we will generally refer to registrants who are under the direct oversight of the CSA as registrants. Unless the context otherwise requires, a reference to registrants includes both registered firms and their registered individuals.

The guidance provided represents our expectations of registrants. While the best practices set out in this report are intended to present acceptable methods registrants can use to meet their KYC, KYP, and suitability obligations, they are not the only acceptable methods. Registrants may use alternative methods, provided those methods adequately demonstrate that registrants have met their KYC, KYP and suitability obligations.

Outline of this Notice

The following is an outline of this Notice:

- Purpose of this Notice
- Importance of the KYC, KYP, and suitability obligations
- The KYC obligation
    - What is the basic KYC obligation?
    - What KYC information is required?
    - When does the KYC obligation apply?
- KYC guidance
    - How often should registrants update KYC information?
    - Signing and dating of KYC information by clients and registrants
    - What processes should registrants use to determine whether investors are Accredited Investors (**AIs**)?
    - How should registrants collect and document KYC information?
- What is the basic KYP obligation?

- KYP guidance
    - What are the key areas to consider in assessing KYP?
    - Additional areas to consider when dealing with prospectus-exempt securities
    - Reliance on third-party analysis and reports
    - CSA Staff Notice 33-315 *Suitability Obligations and Know-Your-Product*
- What is the basic suitability obligation?
- Suitability guidance
    - Why is the suitability analysis so important?
    - How should a registrant demonstrate compliance with the suitability assessment?
    - How is the client-directed trade instruction appropriately used?

Importance of the KYC, KYP, and suitability obligations

Securities laws impose a general duty on registrants to deal fairly, honestly and in good faith with clients. Part 13 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) sets out the principal KYC, KYP, and suitability obligations for registrants. These obligations work together. The KYC, KYP and suitability obligations are an extension of the duty to deal fairly. In turn, the suitability obligation requires a registrant to *know* the client, *know* the product that is the subject of the proposed recommendation or client order, and to form an opinion as to whether the product is suitable in light of the client's investment needs and objectives.

Certain KYC and suitability obligations in NI 31-103 do not apply to firms that are members of a SRO and their representatives if they comply with corresponding SRO requirements. However, a failure to comply with SRO requirements by SRO dealer members may also be a breach of securities law.

CSA staff is committed to taking appropriate regulatory action where we identify significant compliance issues in these areas and the following are examples of some recent decisions which highlight the importance of a registrant's KYC, KYP and suitability obligations:

- Recent Court decisions (including *Sawh v. Ontario Securities Commission*, 2013 ONSC 4018 and *Ridel v. Cassin*, 2013 ONSC 2279),
- Recent decisions of the Ontario Securities Commission (including *Re Trapeze Asset Management Inc.* (2012) 35 O.S.C.B. 4322, and *Re Sawh and Trkulja* 34 O.S.C.B. 1059 (Director), 35 O.S.C.B. 7431 at 164 (Commission)),
- Recent decision of the Bureau de décision et de révision (Autorité des marchés financiers c. Solutions monétaires Monarc inc. et Karina Stevens et Paul Hauck, 2012-046-001), and the withdrawal of their rights (news release of l'Autorité des marchés financiers on October 17, 2013),
- Recent decisions of, and reviews by, IIROC and the MFDA focusing on their members' compliance with KYC, KYP, and suitability obligations,

As a result of the importance of these obligations, we will continue to focus compliance reviews on issues relating to KYC, KYP, and suitability.

The KYC obligation

What is the basic KYC obligation?

NI 31-103

Section 13.2 of NI 31-103, among other things, requires registrants (including dealer members of IIROC and the MFDA) to take reasonable steps to establish the identity of a client, and to ensure that they have sufficient information to meet their suitability obligation.

Section 13.2 of the Companion Policy to NI 31-103 (**CP 31-103**) explains why securities law imposes a KYC obligation on registrants:

> Registrants act as gatekeepers of the integrity of the capital markets. They should not, by act or omission, facilitate conduct that brings the market into disrepute. As part of their gatekeeper role, registrants are required to establish the identity of, and conduct due diligence on, their clients under the [KYC] obligation… KYC information forms the basis for determining whether trades in securities are suitable for investors. This helps protect the client, the registrant and the integrity of the capital markets. The KYC obligation requires registrants to take reasonable steps to obtain and periodically update information about their clients.

SRO rules

The KYC requirements in NI 31-103 also apply to SRO dealer members. Supplemental KYC requirements for SRO dealer members are set out in:

- IIROC Rule 1300 *Supervision of Accounts* (**IIROC Rule 1300**),
- IIROC Rules Notice Guidance Note 12-0109 *Know your client and suitability – Guidance* dated March 26, 2012 (**IIROC Notice 12-0109**),
- Section 2.2.1 of MFDA Rules,
- MFDA Policy No. 2 *Minimum Standards for Account Supervision* **(MFDA Policy No. 2)**, and
- MFDA Staff Notice 0069 *Suitability* (**MFDA Notice 0069**).

IIROC Notice 12-0109 says the following about the suitability requirements:

> Dealer Members and Registered Representatives are reminded that compliance with the suitability requirements is fundamental to compliance with general business conduct standards and is essential to good business practice. The suitability requirement is also complementary to the fundamental obligation under securities legislation for all Dealer Members and their representatives to deal fairly, honestly and in good faith with clients.

What KYC information is required?

NI 31-103

To meet their suitability obligation, registrants (including dealer members of IIROC and the MFDA) must take reasonable steps to ensure that they have sufficient information about their client's:

- investment needs and objectives (including the client's time horizon for their investments),
- financial circumstances (including net worth, income, current investment holdings, and employment status), and
- risk tolerance for various types of securities and investment portfolios (taking into account the client's investment knowledge) (collectively, **investment needs and objectives**).

The extent of KYC information a registrant needs to determine suitability of a trade will depend on the:

- client's circumstances,
- type of security,
- client's relationship to the registrant, and
- registrant's business model.

Accredited Investors and Permitted Clients

If a registrant proposes to make a trade in reliance on the prospectus exemption for AIs in National Instrument 45-106 *Prospectus and Registration Requirements* (**NI 45-106**), the registrant must determine whether the client is an AI. For additional guidance in this area, see the Companion Policy to NI 45-106.

A person distributing or trading securities in reliance on a prospectus exemption is responsible for determining whether the exemption is available. A person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe the representations are false. A registrant's obligation to determine that a prospectus exemption is available is supplemented and informed by the registrant's obligation to "know" the client. Accordingly, the obligation to determine whether (and how) a client satisfies the AI definition will generally be higher on registrants than an issuer or other sellers that are not in the business of trading securities. Factual representations, such as a representation in a subscription agreement that the client is an AI, will generally not, by themselves, in CSA staff's view, be sufficient for a registrant to satisfy its KYC obligation. Similarly, if a registrant is relying on subsections 13.2(6) and 13.3(4) of NI 31-103 which allow a permitted client to waive certain KYC and suitability requirements, the registrant must collect adequate information to determine that the client is a permitted client. It is not sufficient to simply rely on the client's initialling or checking off the box in the permitted client certificate/attestation form.

SRO rules

IIROC recently amended its suitability requirements to require each Dealer Member, when making a recommendation to a client or accepting an order from a client (and also where certain other triggering events occur) to use due diligence to ensure that the suitability assessment is made considering the overall account portfolio. See IIROC Rule 1300 and MFDA Policy No. 2 (which is similar).

Although the SRO rules in some cases use additional terms, such as "time horizon" or "portfolio composition" that are not explicitly used in NI 31-103, we take the view that these factors are subsumed within the broader terms used in subsection 13.2 of NI 31-103. For example, a registrant cannot meaningfully determine a client's investment needs and objectives, financial circumstances, or risk tolerance without understanding the client's time horizon or current investment portfolio composition.

IIROC Notice 12-0109 set out a useful discussion on a registrant's assessment of a client's investment objectives versus a client's risk tolerance. The notice states:

> … the client's investment objectives and risk tolerance are two separate but related factors; each factor must be assessed based on the clients' financial and personal circumstances and must be reasonable in light of those circumstances … For example, designating an 80% high risk tolerance for an elderly client may be unreasonable if the client has a modest net worth and has opened the account to invest a substantial portion of her net worth. On the other hand, the 80% high risk tolerance may not be unreasonable if the elderly client has a substantial net worth and opens an account to invest a small fraction of her net worth.

MFDA Notice 0069 provides guidance to its dealer members on how to establish a suitability framework to ensure compliance with their obligations. The notice also provides guidance on KYC information and how to maintain accurate and complete KYC information.

When does the KYC obligation apply?

NI 31-103

A registrant must have current KYC information whenever a suitability determination is required. A registrant (other than a dealer member of IIROC or the MFDA, which is subject to the requirements set out in the next section) is required in section 13.3 of NI 31-103 to make a suitability determination before a registrant

- makes a recommendation to or accepts an instruction from a client to buy or sell a security, or
- purchases or sells a security for a client's managed account.

In addition, registrants are required in subsection 13.2(4) to make reasonable efforts to keep their clients' KYC information current. We consider information to be current if it is sufficiently up-to-date to support a suitability determination.

SRO rules

Under SRO rules, a suitability determination is generally required when:

- accepting an order from a client,
- recommending to the client the purchase, sale, exchange, or holding of a security,
- securities are received into the client's account by way of deposit or transfer,

- there is a change in the registered representative or portfolio manager responsible for the account, or
- there is a material change in the client's life circumstances or objectives that has resulted in revisions to the client's KYC information as maintained by the dealer member.

KYC guidance

1. How often should registrants update KYC information?

A registrant is required to obtain current KYC information about a client's investment needs and objectives whenever a suitability determination is required. Some registrants ask their clients to advise them when their KYC information changes. However, we expect registrants to be proactive in ensuring that KYC information is kept up-to-date. We expect PMs (and EMDs that have an ongoing relationship with their clients – see below for further information) to update KYC information at least annually and more often if there is a material change in a client's circumstances (for example, marriage, divorce, birth of a child, loss or change in employment), or investment needs or objectives. Without adequate and timely KYC information, registrants cannot meet their suitability obligation to clients.

EMDs

An EMD may have a transactional relationship or an ongoing relationship with a client depending on the particular facts and circumstances. An example of a transactional relationship is a situation where the EMD's relationship with the client is limited to a specific private placement transaction, neither the EMD nor a related issuer of the EMD holds (directly or indirectly) client assets or securities, the EMD is not paid a trailer fee or similar ongoing compensation in relation to the client's ownership of a security, and there is no expectation on the part of the client that the EMD will continue to provide services to the client after the completion of the transaction. In contrast, if any of these factors are present, or if the EMD is also registered in another category of registration such as PM, the EMD may be viewed as having an ongoing relationship with the client. Similarly, if an EMD acts for a client in a series of transactions, we would consider that the EMD has an ongoing relationship with the client. In the case of an EMD or other registrant that is not an SRO member with an ongoing relationship with a client, we recommend that they implement policies and procedures that reflect the SRO concept of "trigger events" as a best practice.

PMs

We think that a PM's suitability obligation in the context of a managed account is a continuing obligation to ensure that the investment strategy determined by the PM remains suitable for the client. Accordingly, we think that it would be prudent business practice for a PM with discretionary trading authority over a client's account to follow the SRO criteria relating to KYC "trigger events" (set out briefly below) in order to ensure that the investment strategy determined by the PM remains suitable for the client.

SRO rules

Both IIROC Rule 2500 *Minimum Standards for Retail Customer Account Supervision* and MFDA Rule 2.2.4 *Updating Client Information* have similar requirements that their dealer members must update KYC information when there is a material change in client information, such as a change in investment objectives, financial situation or risk tolerance. In addition, MFDA Rule 2.2.4 requires dealer members to (a) send a written request at least annually to each client asking the client to notify the dealer member if there are any material changes to the client's circumstances, and (b) update the client information accordingly.

As well, IIROC Notice 12-0109 provides that account information must be updated any time there is a material change in a client's circumstances such as marriage, divorce, birth of a child, loss of or change in employment, etc. The notice states that this requirement can be met by periodically asking each client about material changes in their circumstances, asking about material changes when meeting with the client to review his/her portfolio, otherwise corresponding with the client to discuss account related matters, or by annually contacting the client to verify the accuracy of account information.

2. Signing and dating of KYC information by clients and registrants

Although NI 31-103 does not expressly require the signing and dating of KYC information by clients and registrants, we recommend that registrants implement policies and procedures to ensure that both the client and the registrant that reviewed the KYC information with the client sign and date the information. Both the client and registrant should also sign and date amendments to KYC information, whether done as addendums to the original information, or as "fresh" KYC information. Signing and dating KYC information:

- assists with demonstrating compliance with securities law requirements,
- assists with providing evidence that the client confirmed that the information provided was accurate and that the information was discussed with the registrant, and
- may protect the registrant in the event a client later claims that an investment was unsuitable.

3. What processes should registrants use to determine whether investors are AIs?

NI 45-106 requires all registrants selling securities under an exemption to ensure that adequate processes are in place to determine whether the exemption is available. If a registrant is relying on the AI exemption, the registrant must ensure that the client meets the criteria in the AI definition.

In our compliance reviews, we identified some EMDs that had sold exempt securities to non-AIs without adequate processes in place to assess whether the investors were AIs, or whether other prospectus exemptions were available. In *Sawh and Trkulja* (*Re Sawh and Trkulja* (2012), 35 O.S.C.B. 7431, at 7454, para. 183, *affirmed* 2013 ONSC 4018 (Div. Ct.)), the Ontario Securities Commission said:

> The fact that an investor declared himself to be an accredited investor does not absolve a registrant of the responsibility to take adequate steps in the circumstances to ascertain that the investor meets the criteria to be accredited based on his or her financial circumstances.

As well, some KYC forms used by these EMDs were not designed to allow the EMD to determine whether the client met the AI definition. In addition, some of the information contained in the so-called "AI certificate" was inconsistent with the client's KYC form.

If a client does not satisfy the definition of AI or fall within another exemption, the distribution is a serious breach of securities law. It is also important to note that EMDs are limited to dealing with clients who are eligible to purchase securities under a prospectus exemption. Accordingly, if the client does not meet the requirements of the prospectus exemptions, then the EMD is acting outside of its registration category contrary to securities law.

Suggested practices for registrants that distribute securities in reliance on a prospectus exemption

Registrants should ensure that they have adequate policies and procedures in place to ensure compliance with the conditions of the exemption. Registrants should:

- **Develop a KYC form that has sufficient information about the client to allow the registrant to determine if the client meets the requirement of the prospectus exemptions.** Thresholds used in the KYC form should be consistent with the minimum income and asset thresholds in the AI or eligible investor definition contained in NI 45-106.
- **Tailor or develop a separate KYC form for clients that are corporations, partnerships, trusts or other entities, and not individuals, to support reliance on the exemption.** For example, if the registrant is relying on paragraph (t) of the AI definition in NI 45-106 *[an entity that is owned by persons who are AIs]*, the registrant must collect and document adequate information about the owners of the entity to support reliance on the exemption.
- **Understand the different categories of investor that make up the definition of AI or eligible investor and the conditions contained in these categories**. Registrants should pay specific attention to the differences between the definitions of "assets" and "financial assets" (which exclude an investor's personal residence or other real estate) and the requirement that financial assets be net of any related liabilities.
- **Obtain a breakdown of financial assets and net assets of the client** to ensure that the information collected accurately reflects the client's financial circumstances and to assist the registrant in assessing the availability of the prospectus exemptions and the suitability of any investment made.
- **Make further inquiries about the client's financial circumstances** in situations where there is a reasonable doubt about the accuracy of information given by the client or the validity of the client's claim to be an AI or eligible investor. Document the inquiries in the client's file.
- **Establish policies and procedures and provide training to dealing and advising representatives** to ensure they fully understand the prospectus exemptions and that exempt securities may only be distributed to investors who meet the requirement of the prospectus exemptions.

Unacceptable practices

Registrants should not:

- **Rely solely on the investor's representation in an AI certificate, Resident Exemption Form or Eligible Investor Questionnaire without obtaining KYC information from clients to independently assess reliance on the exemption.** Also, it is not appropriate to rely on inferences based on the registrant's knowledge of a client (example, job title, type of car, or location of residence) to assess whether a client is able to rely on an exemption.

- **Assume that another person (whether another registrant that has previously dealt with a client or another individual within a registrant firm that is dealing with a client) has complied with the KYC obligation or the obligation to determine that the client is eligible to purchase securities on a prospectus-exempt basis.** Each registrant dealing with a client has an obligation to comply with these obligations or to confirm that the registrant firm has properly conducted and documented this determination.

- **Process prospectus-exempt trades without complete and adequate KYC information to support reliance on the exemption.**

4. How should registrants collect and document KYC information?

In our compliance reviews, we continue to identify issues related to inadequate collection and documentation of KYC information. Registrants did not ensure that KYC forms were fully completed for all clients. As well, many registrants did not have a process in place to update KYC forms.

In order to meet the KYC and suitability obligations, registrants must take reasonable steps to ensure they have sufficient current information regarding a client's investment needs and objectives. Collecting and documenting KYC information is more than just a fact-finding or "tick the box" exercise. Registrants should make all necessary enquiries to obtain a solid understanding of a client's investment needs and objectives. They should engage in a meaningful dialogue with their clients and explain to them why the KYC information is required.

The MFDA and IIROC have issued similar KYC guidance to their member firms. For more details please refer to:

- IIROC Notice 12-0109,
- IIROC Notice 12-0108 *Client Relationship Model – Guidance*, and
- MFDA Staff Notice 0069.

Suggested practices for collecting and documenting KYC information

Registrants should:

- **Engage in meaningful KYC discussions with clients** and consider the use of a questionnaire to facilitate the collection and documentation of KYC information. If possible, meet with clients face to face and ask detailed questions to assist in their understanding of the clients' investment needs and objectives. If it is not possible to meet with a client face to face, a registrant should carefully document the additional steps taken to demonstrate compliance with KYC and suitability obligations.

- **Collect and document sufficient minimum KYC information** including name, age, investment objectives, annual income, net financial assets, net assets, liquidity needs, time horizon, risk tolerance, and portfolio composition. This should include registrant representatives' notes of discussions with clients. Registrants should also obtain a breakdown of financial assets (deposits and type of securities such as mutual funds, listed stocks, exempt securities etc.) and net worth (types of assets and liabilities).

- **Collect relevant information from each client so as to establish their identity.** Maintain a record of the identification document (for example, passport or driver's licence number and place of issue).

- **Develop an "investor-friendly" KYC form** by ensuring all terms used in the KYC form such as investment objectives, investment knowledge, and risk are clearly explained in plain language.

- **Consider a client's *willingness* to accept risk and *ability* to accept risk when assessing a client's risk tolerance.** A client may be willing to accept risk; however, this does not necessarily mean that a client has the ability to financially withstand a downturn in the market or other partial or total loss of their investment. Alternatively, a client may have the financial means to absorb losses, but may not be willing to do so.

- **Review the completed KYC form with the client for accuracy** to ensure that the information collected reflects the client's investment needs and objectives. The KYC form should also be signed, dated and reviewed by the registrant and the client should receive a signed copy of the KYC form for their records.

- **Update KYC information at least annually** (for PMs, and for EMDs that have an ongoing relationship with their clients), if there is a significant change in a client's life circumstances, or a significant change in market conditions. Any changes in KYC information (or a confirmation that there are no changes) should be signed, dated and reviewed by the registrant and the client should receive a signed copy of the revised KYC form for their records.

- **PMs should develop a tailored investment policy statement (IPS) for each managed account.** The IPS should document the client's investment needs and objectives and set out a planned asset allocation. PMs should provide a signed (and dated) copy of the IPS to each client at the time the IPS is first signed and when it is updated.

- **Establish policies and procedures for collecting, documenting and reviewing sufficient KYC information for each client.**

- **Provide adequate training to their staff** to ensure they fully understand the importance of collecting, reviewing and maintaining adequate and up-to-date KYC information.

Unacceptable practices

Registrants should not:

- **Collect KYC information solely by asking clients to tick a box that best describes their investment objectives or risk tolerance.** This mechanical "tick box" approach is not sufficient to fulfill a registrant's suitability obligation.

- **Rely only on a KYC form or other document to know the client.** This "form based" approach is not sufficient to fulfill a registrant's suitability obligation.

- **Process a trade (other than a liquidating transaction upon a client's request) if there is any missing or conflicting KYC information** that may affect their ability to assess the availability of the prospectus exemption or the suitability of the investment.

- **Delegate the KYC or suitability obligation to an unregistered individual** (for example, an administrative assistant or a referrer) to collect KYC information, complete the KYC form for the client, or explain products to a client. Although a registrant may rely on an unregistered individual to assist in incidental administrative tasks related to the collection of KYC information, the registrant has the obligation to "know" the client and the client's investment needs and objectives. If an unregistered individual or firm purports to collect KYC information or explain products to clients, these activities may be considered to be registerable dealing or advising activities (since these activities may themselves constitute acts in furtherance of a trade).

- **Use outdated KYC information or an outdated KYC form to assess the suitability of a client's investment.**

- **Use a KYC form or other document that contains disclaimer language** which purports to limit liability for all losses, including losses resulting from a breach of the registrant's obligations under securities law.

What is the basic KYP obligation?

NI 31-103

As explained in section 3.4 of CP 31-103 [*Proficiency – initial and ongoing*], registered individuals must understand the structure, features, and risks of each product they recommend as part of their initial and ongoing proficiency obligations. Section 3.4 of NI 31-103 sets out that an individual "must not perform an activity that requires registration unless the individual has the education, training and experience… including understanding the structure, features and risks of each security the individual recommends".

These requirements are applicable to all registrants, including SRO members. This proficiency requirement (also referred to as **know-your-product** or **KYP)** is in addition to the suitability obligation in section 13.3 and applies even when there is an exemption from the suitability obligation (such as, for example, the exemption for permitted clients).

The KYP obligation is also a necessary element of the KYC and suitability determination. Section 13.3 of NI 31-103 requires registrants to take reasonable steps to ensure that a proposed trade is suitable for a client before making a recommendation or accepting instructions from a client. To meet this obligation, registrants should have an in-depth knowledge of all securities that they buy and sell for, or recommend to, their clients.

Although the KYP obligation is triggered when a registrant "recommends" a product to a client, a registrant may expressly or implicitly recommend a product through conduct such as placing a product on the registrant's "shelf" and making it available to a client, by advertising or promoting the product, or by distributing marketing material about the product to a client.

SRO rules

IIROC Notice 12-0109 sets out similar requirements for their dealer members. In addition, IIROC Guidance Note 09-0087 *Best practices for product due diligence* revised on March 25, 2009 sets out IIROC's expectations regarding procedures and criteria that dealer members should consider when assessing and introducing products that they approve or recommend for sale. Lastly, IIROC recently published Guidance Note 13-0039 *Recommendations and best practices for distribution of non-arm's length investment products* which provides guidance on distributions of non-arm's length investment products.

MFDA Staff Notice MSN-0048 *Know Your Product* dated October 31, 2005 (**MSN-0048**) clarifies the obligations of MFDA dealer members and approved persons with respect to the approval and sale of investment products by dealer members. The notice requires dealer members to perform a reasonable level of due diligence on products prior to their approval for sale by Approved Persons.

In addition, as part of the KYP obligation, CSA staff expects a registrant to assess the suitability of leveraged trades or leveraging strategies for those clients that borrow funds to trade in securities. The MFDA recently amended their KYC rule and Policy No. 2 (see MFDA Rule 2.2.1 and Policy No. 2) to clarify the obligation of their dealer members to assess the suitability of orders involving the use of borrowed funds. The rule clarifies that dealer members must assess suitability of leveraging strategies in light of the client's investment knowledge, risk tolerance, and investment objectives. The MFDA also published a leveraging supervision guide which provides further guidance to its dealer members on how to maintain appropriate documentation of leverage recommendations and supervision, and addressing unsuitable leveraging.

KYP guidance

1. What are the key areas to consider in assessing KYP?

Registrants must conduct their own product due diligence and be able to explain to their clients the security's risks, key features, and initial and ongoing costs and fees. As part of their product due diligence, registrants should review and assess the information contained within the offering memorandum (**OM**) or other documentation provided by the issuer. If the information is not sufficient to allow the registrant to conduct a meaningful KYP assessment of the issuer and the product, the registrant will need to conduct further due diligence on the issuer and the product or refrain from dealing with that product. Registrants must be able to evidence their own product due diligence.

A registrant should only place a product on its approved product list after they have concluded that the product has a reasonable prospect of meeting its investment objectives and that the product has a reasonable prospect of being a suitable investment for some clients. The product assessment requires a critical analysis of the features inherent in the product, and how those features affect the investment's potential risk and reward. Registrants should assess what factors may affect the success of the product, and should proceed only on the basis of some reasoned assessment of the product's actual potential.

Having the registered firm's approval for representatives to sell a product does not mean that the product will be suitable for all clients. Individual registrants should understand the structure, features, risks, fees and costs of each product they recommend to their clients to determine the suitability of each transaction.

CSA staff take the view that the KYP obligation is triggered not only by the particular attributes of a security, viewed in isolation, but also by the proposed *quantum of the investment amount* or the proposed *trading strategy* involving the security.

For example, an investment in a high-risk security may be suitable for a client where the proposed investment would represent a small portion of the client's investment portfolio. However, an investment in the same security may not be suitable for the client where the proposed investment would represent a substantial portion of the client's portfolio or where the proposed investment strategy involves leverage. If registrants choose to categorize products using broad categories such as "low risk", "medium risk" and "high risk", registrants should ensure that the categorizations are reasonable, and consistent with industry standards and

client expectations. Registrants should carefully explain the meaning of these terms to the client in plain language terms and should document this process.

As well, registrants that choose to categorize investment objectives or trading strategies using terms such as “balanced” should ensure that these categorizations are reasonable, and consistent with industry standards and client expectations. Registrants should also carefully explain the meaning of these terms to the client in plain language terms and document this process.

2. Additional areas to consider when dealing with prospectus-exempt securities

The sale of prospectus-exempt securities poses a special KYP challenge for registrants. In *Sawh and Trkulja*, the Ontario Securities Commission reviewed the KYP obligation described in MSN-0048 and NI 31-103, and found that the registrants had failed to properly discharge their KYP obligation in the context of the sale of securities sold pursuant to prospectus exemptions. The Ontario Securities Commission was critical of the registrants’ simple reliance on representations made in the offering memorandum and other documents provided to them by the issuer. The Ontario Securities Commission went on to add:

> In our view, the Applicants’ due diligence process was particularly inadequate in light of the fact that [the securities in question] were sold pursuant to exemptions under applicable securities legislation. Limited partnership units sold under an exemption from securities law do not benefit from the same transparency and liquidity characteristics or regulatory oversight as other products. For example, securities sold under an exemption will not be liquid investments. Offering memoranda are not prospectuses and are not subject to regulatory review. Given the absence of such safeguards, we find that the Applicants failed to conduct an adequate review of the Exempt Products.

In assessing products sold on a prospectus-exempt basis, registrants should also consider additional risks associated with:

- Liquidity risk, reflecting the fact that any resale of such securities may be subject to resale restrictions or indefinite hold periods and the fact that there will generally be no market for such resale,
- Valuation risk, reflecting the fact that the securities may be more difficult to value due to the lack of prospectus and continuous disclosure about the issuer, and
- Conflict of interest risk, reflecting the fact that the securities may be issued by a related party.

A failure to properly categorize a product may result in significant legal and regulatory risk to a registrant. See *Re Trapeze Asset Management Inc.* (2012) 35 O.S.C.B. 4322.

3. Reliance on third-party analysis and reports

We have recently identified a number of situations where issuers and registrants have distributed securities on the basis of marketing materials that include so-called “independent” analyses or reports prepared by unregistered third parties.

We have also seen cases where a registrant may choose to rely on a report prepared by a third-party as part of its own due diligence process; however, this does not relieve the registrant of its obligation to "know-the-product" and to conduct its own KYP and suitability analysis. Registrants should be particularly careful when relying on disclosure prepared by an issuer or a so-called “independent” report prepared by a third-party and commissioned by the issuer.

Where a registrant distributes a security on the basis of a third-party report that purports to “rate” a security, compare a security with other securities of other issuers, or describes an exempt market security as “investment grade”, the registrant should perform its own product assessment to ensure that the report is fair, balanced and not misleading.

4. CSA Staff Notice 33-315 Suitability Obligation and Know-Your-Product

CSA Staff Notice 33-315 *Suitability Obligations and Know-Your-*Product dated September 2, 2009 reminds registrants of their duty under securities law to satisfy their suitability obligations, including the requirement to fully understand the products recommended to clients. In particular, the notice contains guidance on a firm’s product review process, including procedures for identifying, reviewing and approving (or rejecting) new products, and for monitoring existing products for significant changes to those products.

Suggested practices to satisfy the KYP obligation

Registrants should:

- **Have an in-depth understanding of each of the items listed below before recommending a product to clients:**
  - general features and structure – including return, use of leverage, conflicts of interest, time horizon, overall complexity of the product.
  - risks – including the possibility that clients may lose some or all of the principal invested, liquidity risk, redemption risk, risks from underlying derivatives or structured product, conflicts of interest risk.
  - costs – including fees paid to registrants or other parties (commissions, sales charges, trailer fees, management fees, incentive fees, referral fees, embedded fees, executive compensation)
  - parties involved – including issuer's financial position and history, qualifications, reputation and track record of the parties involved in key aspects of the product, and
  - legal and regulatory framework – including frequency, completeness and accuracy of the issuer's disclosure.
- **Establish policies and procedures for reviewing and approving new products and existing products whose structure or features have significantly changed.** The extent of the product review process will vary depending on the structure and features of the product. For example, complex investment products (including those that are novel, not transparent in structure, involve leverage, options, other derivatives, or have limited disclosure) may require a more extensive review than more straightforward products.
- **Carefully review offering documents or other documentation prepared by the issuer or other third parties and ask questions where appropriate.** Products that are sold under a prospectus exemption may require a more extensive review because of the limited disclosure available about them. As part of their product due diligence, registrants should review and assess the information contained within the offering documents or other documentation prepared by the issuer or other third parties. If the information contained within does not contain sufficient information to allow the registrant to conduct a meaningful KYP assessment of the issuer and the product, the registrant will need to conduct further due diligence on the issuer and the product or refrain from dealing with that product.
- **Consider competitive products that may be less risky or less costly to clients.** If competitive products are less risky or less costly, registrants should maintain adequate documentation to demonstrate the suitability of the product recommended.
- **Perform a conflict of interest assessment**, particularly if a registrant is planning to distribute a product of a related issuer or connected issuer, where often the same individuals form the management of both the registrant and the issuer. Assess and determine whether the conflicts of interest can be adequately managed through disclosure or control. If not, a registrant should not distribute the product.
- **Assess suitability of leveraging strategies** in light of the client's investment knowledge, risk tolerance, and investment objectives.
- **Provide training sessions** to ensure that dealing representatives and advising representatives fully understand and are able to explain clearly the product features and risks to clients.

Unacceptable practices

Registrants should not:

- **Fail to fully understand the structure and features of the products** and recommend a product solely based on:
  - information from issuers or other third parties, including related parties, about the product's suitability, risk profile or expected return,
  - similarities with other products, or
  - recommendations made by other market participants to their clients or by unregistered persons providing general advice.
- **Rely solely on a product being on the firm's "approved product list" rather than conducting a product analysis or understanding a product themselves.**

What is the basic suitability obligation?

NI 31-103

Section 13.3 of NI 31-103 requires a registrant to take reasonable steps to ensure that, before it makes a recommendation to, or accepts an instruction from, a client to buy or sell a security, or makes a purchase or sale of a security for a client's managed account, the purchase or sale is suitable for the client.

As explained in CP 31-103, suitability obligations cannot be:

- delegated to a third party,
- satisfied simply by disclosing the risks of the trade, or
- waived (except by investors that are "permitted clients" as defined in NI 31-103).

Some EMDs may have a relationship with the issuer (or other sellers of the securities). In some cases, these EMDs failed to recognize that the persons purchasing securities from these issuers or sellers were the EMD's clients and that the EMDs have obligations, including suitability obligations, to these purchasers. CSA staff reminds EMDs that it is a breach of their obligations, including their fair dealing obligations to prefer an issuer, seller or their own interests over an investor's interests.

Similarly, even if a registrant has determined that a prospectus exemption is available to the client this does not necessarily mean that the investment will be suitable for the client. The obligation to determine that a prospectus exemption is available is entirely separate and distinct from the obligation to determine that a proposed recommendation or client order is suitable for the client. A proposed trade or recommendation may be wholly unsuitable for a client in light of the client's time horizon, risk tolerance, existing portfolio composition, or other factors within the client's investment needs and objectives, notwithstanding the fact that the client is eligible to make the investment on a prospectus-exempt basis.

SRO rules

IIROC's suitability requirement is set out in IIROC Rule 1300.1, which requires dealer members to use due diligence to ensure that recommendations to clients regarding the purchase, sale, exchange, or holding or any security is suitable for the client based on factors including investment objectives, time horizon, risk tolerance and the account's current investment portfolio composition and risk level. IIROC Notice 12-0109 expands the suitability obligation and requires dealer members to ensure that the order type, trading strategy and method of financing the trade recommended are also suitable for the client.

Suitability guidance

1. Why is the suitability analysis so important?

As set out in this Notice, KYC, KYP, and suitability obligations are among the most fundamental obligations owed by registrants to their clients. These obligations are also cornerstones of our investor protection regime. Thus it is critical for registrants to fully comply with these obligations – not only the securities law requirements themselves, but also with the spirit of the requirements. CSA staff will take appropriate regulatory action to ensure compliance.

We expect registrants to perform a meaningful suitability assessment and to appropriately document that assessment. The suitability assessment should be more than a mechanical fact-finding or "tick the box" exercise. It requires a meaningful dialogue with the client to obtain a solid understanding of the client's investment needs and objectives, and to explain how a proposed investment is suitable for the client in light of the clients' investment needs and objectives.

Suggested practices to satisfy the suitability obligation

Registrants should:

- **Consider all relevant KYC information (including, investment objectives, time horizon and risk tolerance) when assessing the suitability of an investment.** For example, a client may have a high risk tolerance but also have a short term time horizon and therefore a high risk investment with redemption restrictions may not be suitable for that client.
- **Review each trade independently to ensure it is suitable**. A registrant should not process a trade unless it is reviewed and approved. In addition, PMs should have an adequate process in place to monitor clients' portfolio holdings in accordance with their investment mandate.

- **Develop a system or process to identify and reject trades that are inconsistent with a client's investment needs and objectives.** The firm should also monitor trends or patterns (for example, number of rejected trades by the Chief Compliance Officer for a particular dealing representative) that may indicate potential areas for training or revisions to processes to ensure compliance.

- **Provide adequate training to registered individuals** to ensure they fully understand the suitability obligation and the firm's process for assessing suitability of investments.

Unacceptable practices

Registrants should not:

- **Assume that all products that are set out on the firm's approved product list are suitable for every client.**

- **Rely on out-of-date KYC or KYP information.**

2. How should a registrant demonstrate compliance with the suitability assessment?

In our compliance reviews, we found a number of instances where it was not clear that the registrant had conducted an appropriate KYC, KYP, or suitability determination due to inadequate, incomplete, or (in some cases) completely missing documentation. These instances constitute a breach of securities law requirements as sections 11.1 and 11.5 of NI 31-103 require registrants to establish, maintain and apply policies and procedures that establish a system of internal controls and supervision, and to maintain books and records that demonstrate the extent of the registrant's compliance with applicable securities law requirements. As well, a failure to document the KYC, KYP, and suitability process also significantly raises the risk of adverse legal and regulatory consequences to the registrant in the event a client's investment ultimately proves to be unsuitable. Therefore, it is critical that registrants establish policies and procedures and maintain adequate documentation to support their suitability analysis.

EMDs and PMs are specifically reminded to take extra care in complying with their KYC, KYP, and suitability obligations when dealing with clients who are seniors, on a fixed income, or who otherwise may be in a position of vulnerability. A loss from a registrant's failure to comply with these obligations may have particularly devastating consequences for these clients. CSA staff will take regulatory action, including enforcement action, in circumstances where registrants do not appropriately address the special needs of these clients.

SROs

Both IIROC and the MFDA have provided suitability guidance to their member firms on how to comply with their suitability assessment requirements including when to perform a suitability assessment and how to deal with unsuitable investments. For details, please refer to IIROC Notice 12-0109, IIROC Notice 12-0108 *Client Relationship Model – Guidance* and MFDA Notice 69.

Suggested practices to demonstrate compliance with the suitability obligation

Registrants should:

- **Establish policies and procedures for assessing suitability of an investment** (including the criteria used to assess suitability and when to perform a suitability assessment) and ensure that it is consistently applied across the firm. Some examples of criteria include risk tolerance, investment objectives, time horizon, concentration risk, and conflicts of interest. There should also be adequate controls and oversight in place to identify and respond to any conflicts of interest with any investment recommendation.

- **Maintain adequate documentation of the suitability analysis for each trade.** A registrant should be able to demonstrate how each proposed trade was assessed for suitability.

- **Establish a process to periodically review a sample of client files to ensure that the suitability process is consistently applied throughout the firm.** Results of the suitability review should be documented and independently reviewed by someone senior in the firm (like the CCO). Areas of non-compliance should be discussed with staff in a timely manner and highlighted in training sessions. If the review identifies significant compliance issues, they should be escalated to the UDP to ensure that corrective action is taken in a timely manner to resolve the issues.

3. How is the client-directed trade instruction appropriately used?

Section 13.3(2) of NI 31-103 provides that, if a client instructs a registrant to buy, sell or hold a security and in the registrant's reasonable opinion following the instruction would not be suitable for the client, the registrant should inform the client of the registrant's opinion and should not buy or sell the security unless the client instructs the registrant to proceed nonetheless (**client-directed trade instruction**).

The client-directed trade instruction is not meant to be an alternative to assessing client suitability in circumstances where clients have no other available exemptions, or where the trades likely would not be suitable for them. A registrant cannot actively promote a security (and thereby recommend the security) and then rely on boiler plate language to claim that the trade was a client-directed trade and is not recommended by the registrant.

During compliance reviews, we noticed that some registrants recommended that clients purchase securities of a single exempt market issuer (that in many cases was a related or connected issuer to the registrant) in an amount that accounted for a large portion (in some cases over 30%) of their net financial assets. Although there may be circumstances for a registrant to proceed with a client-directed trade, we identified that some EMDs may be inappropriately using the client-directed trade instruction in an attempt to circumvent the suitability obligation.

For example, we identified one EMD who distributed products of a related issuer that relied extensively on the use of a purported "client-directed trade instruction" in situations where there were strong grounds for concluding that the trades were unsuitable for their clients. Most of the clients signed KYC forms that indicated that they were non-AIs and that they were relying on the $150,000 minimum purchase exemption to purchase the securities. In many cases, the KYC form had the client-directed trade instruction "buried" at the end of the KYC form, and when asked by staff of the Ontario Securities Commission, the clients did not recall being asked to sign the instruction or any discussion over suitability with the EMD. As well, we have concerns about whether clients were fully aware of the impact of concentration risk in their portfolios which resulted from these client-directed trades.

In our view, this practice is not acceptable, nor is it consistent with the client-directed trade instruction, or the obligation to deal honestly, fairly and good faith in securities laws. In future reviews, we will consider further regulatory action in these circumstances.

Suitability and concentration of investments

Registrants should recognize that diversification is an important factor to consider when assessing suitability of investments. The lack of diversification may expose the clients to significant investment risks. For example, in selling securities of mortgage investment corporations, real estate investment trusts, or similar real estate linked products, the EMD should consider and discuss with the client whether the client's portfolio may be subject to undue concentration risk through over-concentration in:

- Securities of a single issuer, or group of related issuers, as compared to a broadly based portfolio of issuers,
- Securities of illiquid exempt market securities as compared to publicly traded securities, and
- Securities of an issuer, or group of related issuers, that provides exposure to a single industry or asset class (for example, real estate) as compared with a broadly based portfolio of issuers that provide exposure to diversified industries or asset classes.

Most CSA staff will consider investments (either individually or taken together with prior investments) in securities of a single issuer or group of related issuers that represent more than 10% of the investor's net financial assets as potentially raising suitability concerns due to concentration.

With respect to real estate-linked products, we expect that registrants (as part of meeting their KYC obligation) will discuss the potential risks associated with the product and the issuer, including risks that may arise from a downturn in the real estate market or other adverse changes in market conditions. For example, if the performance of a product is sensitive to a change in the residential or commercial market values or to the ability of the sub-prime borrower to meet their mortgage repayment obligations, the registrant should ensure that the client is aware of the potential impact on the performance of the product if market values were to fall.

Suggested Practices for client-directed trades

Registrants should:

- **Analyze whether the investment is suitable for an investor in light of the investor's investment needs, objectives**, **time horizon and/or concentration and form an opinion based on this analysis.**
- **Inform the investor of their opinion that the proposed trade would not be suitable for the investor** in light of the investor's investment needs, objectives, time horizon and/or concentration and provide the client with a written explanation of the basis for the registrant's opinion.
- **Maintain adequate documentation of the suitability analysis which demonstrates the documentation reviewed and the suitability analysis completed.**
- **Maintain the investor's written instructions to proceed with the trade** (assuming that the client still directs the registrant to purchase the investment).
- **Develop a separate disclosure document for the client-directed trade instruction** and explain to the client how the client-trade instruction is used.
- **Assess the suitability of the client-directed trade considering the client's entire portfolio holdings within the same account for PMs accepting a client-directed trade.**
- **Establish policies and procedures** for ensuring that the client-directed trade instruction is appropriately used.
- **Provide adequate training to registered individuals** to ensure they understand when a client-directed trade instruction can be used.

Suggested practices relating to concentration of investments in client portfolios

Registrants should:

- **Consider and document reasonable concentration thresholds** to ensure that a client's total investment in a particular stock (e.g. securities in a single issuer or related group of issuers), sector or industry does not exceed thresholds which would result in the investment being unsuitable. Registrants should consider a number of factors when determining the thresholds, for example the type of security, market conditions, and redemption restrictions. Generally, the higher the concentration in a particular investment in a stock sector or industry, the more steps the registrant should take (and appropriately document) to demonstrate that the investment was suitable for the client.
- **Establish written procedures to monitor and manage concentration risks in a client's portfolio.** These procedures should be consistently applied to all client accounts.
- **Explain the concentration risk to the client and how it affects the overall account position if the proposed investment recommendation could result in a concentrated position.** If the registrant determines that an investment is unsuitable for a client in light of the concentration risk and the client's investment needs and objectives, the registrant is required to inform the client that the proposed trade is unsuitable. If the client still wishes to invest in the security, see *How is the client-directed trade instruction appropriately used?*

Unacceptable practices

Use of client-directed trade instruction

Registrants should not:

- **Promote a security actively (and thereby recommend the security) and then rely on boiler plate language to claim that the trade was a client-directed trade and was not recommended by the registrant.**
- **Determine that an exempt security is suitable for an investor solely because the investor qualifies for the prospectus exemption.**

- **"Hide" or "bury" the client-directed trade instruction in the KYC form or other client documentation.**

Suitability and concentration of investments

Registrants should not:

- **Fail to consider diversification as an important factor in their suitability determination.**
- **Fail to have adequate procedures in place to monitor the concentration level of a client's investments or evaluate whether the portfolios are appropriately diversified in light of client's KYC information.**

Questions

If you have questions regarding this Notice, please refer them to any of the following:

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1.1.2 CSA Staff Notice 13-315 (Revised) – Securities Regulatory Authority Closed Dates 2014

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 13-315 (Revised)
*Securities Regulatory Authority Closed Dates 2014**

January 9, 2014

We have a review system for prospectuses (including long form, short form and mutual fund prospectuses), prospectus amendments, pre-filings, and waiver applications. It is described in National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* (**NP 11-202**).

Under NP 11-202, a filer that receives a receipt from the principal regulator will be deemed to have a receipt in each passport jurisdiction where the prospectus was filed. However, the principal regulator's receipt will only evidence that the OSC has issued a receipt if the OSC is open on the date of the principal regulator's receipt and has indicated that it is "clear for final". If the OSC is not open on the date of the principal regulator's receipt, the principal regulator will issue a second receipt that evidences that the OSC has issued a receipt on the next day that the OSC is open.

The following is a list of the closed dates of the securities regulatory authorities for 2014 and January 2015. Issuers should note these dates in structuring their affairs.

1. Saturdays and Sundays (all)
2. Wednesday January 1 (all)
3. Thursday January 2 (QC)
4. Monday February 10 (BC)
5. Monday February 17 (AB, SK, MB, ON, PE)
6. Friday February 21 (YT)
7. Tuesday March 17 (NL)
8. Friday April 18 (all)
9. Monday April 21 (all except AB, SK, ON)
10. Monday May 19 (all)
11. Monday June 23 (NL)
12. Tuesday June 24 (QC)
13. Monday June 30 (SK)
14. Tuesday July 1 (all)
15. Wednesday July 9 (NU)
16. Monday July 14 (NL)
17. Monday August 4 (all except YT, QC, NL, PE)
18. Wednesday August 6 (NL**)
19. Friday August 15 (PE)
20. Monday August 18 (YT)
21. Monday September 1 (all)
22. Monday October 13 (all)
23. Tuesday November 11 (all except AB, ON, QC)
24. Wednesday December 24 (QC, NT)
25. Wednesday December 24 after 12:00 p.m. (AB, NB, PE, NS), after 1:00 p.m. (YT, BC, MB), after 3:00 p.m. (NU)
26. Thursday December 25 (all)
27. Friday December 26 (all)
28. Wednesday December 31 (NT, QC)
29. Wednesday December 31 after 12:00 p.m. (NB), after 1:00 p.m. (BC), after 3:00 p.m. (NU)
30. Thursday January 1, **2015** (all)
31. Friday January 2, **2015** (QC)

*Bracketed information indicates those jurisdictions that are closed on the particular date.
**Weather permitting, otherwise observed on the first following acceptable weather day, such determination made on morning of holiday.

1.1.3 CSA Staff Notice 13-319 – SEDAR Filer Manual Update

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 13-319
SEDAR Filer Manual Update

Introduction

National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (NI 13-101) incorporates by reference the SEDAR *Filer Manual* (the Manual). A new service agreement has been entered into with CGI Information Systems and Management Consultants Inc. ("CGI") for ongoing hosting and operations of the SEDAR system and this change will be reflected in a new version of the Manual. Staff of the CSA are issuing this Notice to inform users that a new version of the Manual will be available on January 13, 2014.

Manual Version 8.5

The new version of the Manual provides updated and new guidance on a number of matters, notably:

- Updated contact information for the CSA Service Desk
- Updated SEDAR forms to provide the correct contact information
- Updated SEDAR Filer Manual and SEDAR forms 1 and 2 to provide the correct SEDAR Software licensing information
- Updated Appendix B Categories and Types of Electronic Filings to correspond with SEDAR version 8.5.
- Revised Appendix D SEDAR System Fees in order to refer users to Multilateral Instrument 13-102 *System Fees for SEDAR and NRD* and similar regulations

The version number of the Manual is 8.5, to correspond with the most current SEDAR release, SEDAR version 8.5, to be implemented on January 13, 2014. Manual Version 8.5 will be accessible on the SEDAR website at www.sedar.com.

For more information

Please contact the CSA Service Desk at 1-800-219-5381 or your local securities regulator, for inquiries after January 13, 2014.

1.1.4 OSC Staff Notice 11-739 (Revised) – Policy Reformulation Table of Concordance and List of New Instruments

OSC STAFF NOTICE 11-739 (REVISED)

POLICY REFORMULATION TABLE OF CONCORDANCE AND LIST OF NEW INSTRUMENTS

The following revisions have been made to the Table of Concordance and List of New Instruments. A full version of the Table of Concordance and List of New Instruments as of December 31, 2013 has been posted to the OSC Website at www.osc.gov.on.ca.

Table of Concordance

Item Key
The third digit of each instrument represents the following: 1-National/Multilateral Instrument; 2-National/Multilateral Policy; 3-CSA Notice; 4-CSA Concept Release; 5-Local Rule; 6-Local Policy; 7-Local Notice; 8-Implementing Instrument; 9-Miscellaneous

Reformulation

Instrument	Title	Status

New Instruments

Instrument	Title	Status
13-102	System Fees for SEDAR and NRD	***Minister's approval published October 3, 2013***
13-101	System for Electronic Document Analysis and Retrieval (SEDAR) - Amendments	***Minister's approval published October 3, 2013***
31-102	National Registration Database - Amendments	***Minister's approval published October 3, 2013***
55-102	System for Electronic Disclosure by Insiders (SEDI) - Amendments	***Minister's approval published October 3, 2013***
31-335	Extension of Interim Relief for Members of the Investment Industry Regulatory Organization of Canada from the Requirement in section 14.2(1) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations in Respect of the Provision of Relationship Disclosure Information to Existing Clients*	***Published October 3, 2013***
11-739	Policy Reformulation Table of Concordance and List of New Instrument (Revised)	***Published October 3, 2013***
81-106	Investment Fund Continuous Disclosure - Amendments	***Commission approval published October 3, 2013***
41-101	General Prospectus Requirements - Amendments (tied to 81-106)	***Commission approval published October 3, 2013***
81-101	Mutual Fund Prospectus Disclosure - Amendments (tied to 81-106)	***Commission approval published October 3, 2013***
81-102	Mutual Funds – Amendments (tied to 81-106)	***Commission approval published October 3, 2013***
81-104	Commodity Pools – Amendments (tied to 81-106)	***Commission approval published October 3, 2013***

New Instruments

Instrument	Title	Status
21-707	Swap Execution Facilities – Exemption from Requirement to be Recognized as an Exchange	***Published October 10, 2013***
13-320	Regarding Implementation of Multilateral Instrument 13-102 System Fees for SEDAR and NRD and Related Consequential Amendments to CSA National Rules	***Published October 10, 2013***
51-101	Standards of Disclosure for Oil and Gas Activities – Amendments	***Published for comment October 17, 2013***
52-108	Auditor Oversight – Repeal and Replacement	***Published for comment October 17, 2013***
41-101	General Prospectus Amendments – Amendments (tied to 52-108)	***Published for comment October 17, 2013***
51-102	Continuous Disclosure Obligations – Amendments (tied to 52-108)	***Published for comment October 17, 2013***
11-737	Securities Advisory Committee – Vacancies (Revised)	***Published October 24, 2013***
11-501	Electronic Delivery of Documents to the Ontario Securities Commission	***Commission approval published October 31, 2013***
11-202	Process for Prospectus Reviews in Multiple Jurisdictions-Amendments – Amendments (tied to 11-501)	***Commission approval published October 31, 2013***
11-203	Process for Exemptive Relief Applications in Multiple Jurisdictions – Amendments – Amendments (tied to 11-501)	***Commission approval published October 31, 2013***
11-205	Process for Designation of Credit Rating Organizations in Multiple Jurisdictions – Amendments (tied to 11-501)	***Commission approval published October 31, 2013***
54-302	Update on Consultation Paper 54-401 Review of the Proxy Voting Infrastructure	***Published November 7, 2013***
33-742	2013 OSC Annual Summary Report for Dealers, Advisers and Investment Fund Managers	***Published November 7, 2013***
21-312	Update on Consultation Paper 21-401 Real Time Market Data Fees	***Published November 7, 2013***
91-506	Derivatives – Product Determination	***Commission approval published November 14, 2013***
91-507	Derivatives – Data Reporting	***Commission approval published November 14, 2013***
45-713	Reports of Exempt Distribution – Compliance with Filing Requirements	***Published November 21, 2013***
13-321	Update on New Service Provider for the Operation of the CSA National Systems and Implementation of Related Consequential Amendments to CSA National Systems Rules	***Published November 21, 2013***
33-105	Underwriting Conflicts – Amendments	***Published for comment November 28, 2013***
31-103	Registration Requirements, Exemptions and Ongoing Registrant Obligations - Amendments	***Published for comment December 5, 2013***
33-109	Registration Information – Amendments (tied to 31-103)	***Published for comment December 5, 2013***

New Instruments

Instrument	Title	Status
52-107	Acceptable Accounting Principles and Auditing Standards – Amendments (tied to 31-103)	***Published for comment December 5, 2013***
33-506	(Commodity Futures Act) Registration Information (tied to 31-103)	***Published for comment December 5, 2013***
35-502	Non-Resident Advisers – Amendments (tied to 31-103)	***Published for comment December 5, 2013***
23-702	Electronic Trading Risk Analysis Update	***Published December 12, 2013***
52-722	Report on Staff's Review of Non-GAAP Financial Measures and Additional GAAP Measures	***Published December 12, 2013***
11-742	Securities Advisory Committee (Revised)	***Published December 12, 2013***
81-324	Request for Comment – Proposed CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts	***Published for comment December 12, 2013***
81-323	Status Report on Consultation under CSA Discussion Paper and Request for Comment 81-407 Mutual Fund Fees	***Published December 19, 2013***
33-316	Status Report on Consultation under CSA Consultation Paper 33-403: The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients	***Published December 19, 2013***
31-103	Registration Requirements, Exemptions and Ongoing Registrant Obligations – Amendments (OBSI)	***Commission approval published December 19, 2013***
81-106	Investment Fund Continuous Disclosure (IFRS Amendments)	***Ministerial approval published December 19, 2013***
81-102	Mutual Funds (IFRS Amendments)	***Ministerial approval published December 19, 2013***
81-104	Commodity Pools (IFRS Amendments)	***Ministerial approval published December 19, 2013***
81-801	Implementing NI 81-106 Investment Fund Continuous Disclosure (IFRS Amendments)	***Ministerial approval published December 19, 2013***
91-303	Proposed Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives	***Published for comment December 19, 2013***
24-503	Clearing Agency Requirements	***Published for comment December 19, 2013***

For further information, contact:
Darlene Watson
Project Specialist
Ontario Securities Commission
416-593-8148

January 9, 2014

1.1.5 CSA Staff Notice 13-322 – Service Transition Cutover Date for Information Management Services and Implementation of Related Consequential Amendments to CSA National Systems Rules

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 13-322
Service Transition Cutover Date for Information Management Services and implementation of Related Consequential Amendments to CSA National Systems Rules

January 9, 2014

This notice provides an update on the transition of the operation of SEDAR, SEDI and NRD (the CSA National Systems) from CDS INC. to CGI Information Systems and Management Consultants Inc. (CGI) and the implementation of related amendments to:

- National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (NI 13-101),
- National Instrument 31-102 *National Registration Database* (NI 31-102), and
- National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* (NI 55-102),

(the Consequential Amendments).

On January 3, 2014, the Canadian Securities Administrators (CSA) announced that the implementation date of the change-over for hosting, operating and maintaining the CSA National Systems to CGI is scheduled for January 13, 2014.

In connection with the change-over, the Consequential Amendments will come into effect on January 13, 2014. In Ontario, amendments to OSC Rule 31-509 *National Registration Database (Commodity Futures Act)* (published at (2013) 36 OSCB 8572) will also come into effect on that date.

The system fees that are described in Multilateral Instrument 13-102 *System Fees for SEDAR and NRD* were implemented on October 12, 2013.

Questions

Please refer your questions to any of the following:

Autorité des marchés financiers
Mathieu Laberge
Legal Counsel
Legal Affairs
514-395-0337 ext.2537
1-877-525-0337 ext. 2537
mathieu.laberge@lautorite.qc.ca

Alberta Securities Commission
Samir Sabharwal
Associate General Counsel
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Manitoba Securities Commission
Chris Besko
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Ontario Securities Commission
Robert Galea
Legal Counsel
General Counsel's Office
416-593-2321
rgalea@osc.gov.on.ca

1.2 Notices of Hearing

1.2.1 Kevin Warren Zietsoff – ss. 127(1), 127.1

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

AND

IN THE MATTER OF
KEVIN WARREN ZIETSOFF

AND

IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND KEVIN WARREN ZIETSOFF

NOTICE OF HEARING
(Subsections 127(1) and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127(1) and 127.1 of the *Securities Act*, R.S.O., 1990 c. S.5, as amended (the "Act") at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on January 6, 2014, at 2:00 p.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the settlement agreement dated January 3, 2014 between Staff of the Commission and Kevin Warren Zietsoff;

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

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

DATED at Toronto this 3rd day of January, 2014.

"Daisy Aranha"
Per: Josée Turcotte
Acting Secretary to the Commission

1.3 News Releases

1.3.1 OSC Panel Finds Andrea McCarthy, BFM Industries Inc. and Liquid Gold International Inc. in Breach of the Securities Act

FOR IMMEDIATE RELEASE
January 6, 2014

OSC PANEL FINDS ANDREA MCCARTHY,
BFM INDUSTRIES INC. AND
LIQUID GOLD INTERNATIONAL INC.
IN BREACH OF THE SECURITIES ACT

TORONTO – In a decision released today, an Ontario Securities Commission (OSC) panel found that Andrea McCarthy (McCarthy) acquiesced in a fraud by two companies of which she was a director and officer: BFM Industries Inc. (BFM) and Liquid Gold International Inc. (Liquid Gold). The Commission also found that McCarthy and the companies illegally distributed securities and traded without registration.

Sandy Winick (Winick) was the directing mind of BFM and Liquid Gold while the frauds, illegal distributions and unregistered trading took place. The Commission found that McCarthy, although legally a director and officer of BFM and Liquid Gold, acted at Winick's direction when she incorporated the companies, communicated with investors and withdrew funds from the corporate accounts. The Commission also found that payments were made from the Liquid Gold and BFM accounts to Winick's credit cards and to companies he controlled.

The BFM Scheme ran from November 2008 to December 2010 and the Liquid Gold Scheme ran from May 2009 to November 2010. In those periods, the two frauds brought in a total of $445,000 by selling worthless BFM and Liquid Gold securities to 32 investors outside Canada. BFM and Liquid Gold claimed to be selling their shares through a Singapore investment bank that McCarthy subsequently admitted did not exist at all.

On January 21, 2013, McCarthy and the companies were severed from a proceeding that also included Winick, Greg Curry, Kolt Curry, Laura Mateyak, American Heritage Stock Transfer Inc., and American Heritage Stock Transfer, Inc. The Commission has already found Winick liable for his leading role in the frauds perpetrated by BFM and Liquid Gold.

Submissions in this matter were heard on December 10, 2013. A copy of the Reasons and Decision on the Merits is available on the OSC website at www.osc.gov.on.ca. A sanctions hearing has been scheduled for March 12, 2014.

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

For Media Inquiries:
media_inquiries@osc.gov.on.ca

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Follow us on Twitter: OSC_News

For Investor Inquiries:

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

1.3.2 OSC Approves Settlement Permanently Banning Kevin Warren Zietsoff from Ontario's Capital Markets

FOR IMMEDIATE RELEASE
January 7, 2014

OSC APPROVES SETTLEMENT PERMANENTLY BANNING KEVIN WARREN ZIETSOFF FROM ONTARIO'S CAPITAL MARKETS

TORONTO – The Ontario Securities Commission (OSC) has approved a settlement agreement reached between Staff and Kevin Warren Zietsoff.

Zietsoff admitted to securities fraud and agreed to be permanently banned from Ontario's capital markets. In total, Zietsoff's fraud took in over $15 million from more than 80 victims in Canada and the United States.

Zietsoff admitted to depriving his victims of more than $10 million, by selling them promissory note securities without registration, and to losing that money on bad trades. The remaining $5 million, which Zietsoff did not lose in the markets, was paid out to investors as interest or repayment of principal. This act was conducted fraudulently, in a pattern of behaviour commonly known as a Ponzi Scheme.

The fraudulent Ponzi Scheme ran from January 2006 to December 2012. According to the facts in the settlement agreement, Zietsoff persuaded his victims to invest with him through various falsehoods, including that he was a successful trader with a proven system and that the promissory notes were 'low risk or risk free'.

On December 19, 2013, Zietsoff pled guilty to Fraud Over $5,000 pursuant to the Criminal Code in the Ontario Court of Justice based on the same facts included in the OSC's settlement agreement. Zietsoff's sentence hearing on his criminal conviction is scheduled for January 7, 2014 at Old City Hall in Toronto.

This settlement is a result of a successful joint investigation between the OSC and the Royal Canadian Mounted Police. The OSC also acknowledges the assistance of the Arizona Corporation Commission in conducting this investigation.

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 Sandy Winick et al.

FOR IMMEDIATE RELEASE
December 31, 2013

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

AND

IN THE MATTER OF
SANDY WINICK, ANDREA LEE MCCARTHY,
KOLT CURRY, LAURA MATEYAK,
GREGORY J. CURRY,
AMERICAN HERITAGE STOCK TRANSFER INC.,
AMERICAN HERITAGE STOCK TRANSFER, INC.,
BFM INDUSTRIES INC.,
LIQUID GOLD INTERNATIONAL CORP.
(aka LIQUID GOLD INTERNATIONAL INC.), and
NANOTECH INDUSTRIES INC.

TORONTO – The Commission issued its Reasons and Decision on Sanctions and Costs with respect to Sandy Winick and Gregory J. Curry in the above named matter.

A copy of the Reasons and Decision on Sanctions and Costs dated December 30, 2013 and an Order dated December 30, 2013 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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

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

1.4.2 Kevin Warren Zietsoff

FOR IMMEDIATE RELEASE
January 3, 2014

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

AND

IN THE MATTER OF
KEVIN WARREN ZIETSOFF

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND KEVIN WARREN ZIETSOFF

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Kevin Warren Zietsoff in the above named matter.

The hearing will be held on January 6, 2014 at 2:00 p.m. in Hearing Room B on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated January 3, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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1.4.3 Andrea Lee McCarthy et al.

FOR IMMEDIATE RELEASE
January 6, 2014

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

AND

IN THE MATTER OF
ANDREA LEE MCCARTHY, BFM INDUSTRIES INC., and
LIQUID GOLD INTERNATIONAL CORP.
(aka LIQUID GOLD INTERNATIONAL INC.)

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

The Commission also issued an order, which provides that the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, Toronto, Ontario, on March 12, 2014 at 10:00 a.m.; and pursuant to subsections 127(1), (7) and (8) of the Act, the Temporary Order, as amended, shall be extended as against the Respondents until the conclusion of this proceeding;

A copy of the Reasons and Decision dated January 3, 2014 and the Order dated January 3, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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1.4.4 Kevin Warren Zietsoff

FOR IMMEDIATE RELEASE
January 7, 2014

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

AND

IN THE MATTER OF
KEVIN WARREN ZIETSOFF

TORONTO – Following a hearing held on January 6, 2014, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Kevin Warren Zietsoff.

A copy of the Order dated January 6, 2014 and Settlement Agreement dated January 3, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Husky Energy Inc.

Headnote

MI 11-102 and NP 11-203 – relief from the requirement to disclose reserves associated with assets accounted for by the equity method of accounting separately from the reserves of the Filer – relief granted provided that disclosure of the Filer's interest in the assets is provided proximate to the reserves disclosure.

Applicable Legislative Provisions

National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities, s. 8.1.

Citation: Husky Energy Inc., Re, 2013 ABASC 569

December 23, 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
HUSKY ENERGY INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirement of items 2.3(c) and 2.4(2) of Form 51-101F1 (the **Form Requirements**) to exclude the Filer's oil and gas reserves allocated to the Madura Strait Block (defined below) from the total disclosed reserves and future net revenue of the Filer and to disclose those oil and gas reserves separately because the Madura Strait Block is accounted for by the equity method of accounting (the **Exemption Sought**).

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

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

(b) the 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, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island 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

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

Representations

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

Husky Energy Inc.

1. The Filer is incorporated under the *Business Corporations Act* (Alberta). The head office of the Filer is located in Calgary, Alberta.

2. The Filer is a reporting issuer under the securities legislation of each of the provinces of Canada and is not in default of securities legislation in such jurisdictions.

Madura Strait Block

3. The Filer has a 40% interest in approximately 621,700 acres (2,516 square kilometres) of the Madura Strait block, located offshore East Java, south of Madura Island, Indonesia (the **Madura Strait Block**).

4. As at 31 December 2012, the Filer reported gross oil and natural gas proved plus probable reserves of 2,915.3 mmboe, of which 43.3 mmboe of proved plus probable reserves were attributable to the Filer's interest in the Madura Strait Block.

5. The Madura Strait Block represents 100% of the Filer's reserves in Indonesia and 21% of the Filer's total proved undeveloped natural gas reserves.

6. The Filer's beneficial interest in the Madura Strait block is held by way of a 40% interest in Husky – CNOOC Madura Limited (**HCML**), an entity that is party to a production sharing contract with the Government of Indonesia.

7. The Filer has entered into a unanimous shareholder agreement dated 8 April 2008 (the **USA**) with the other shareholders of HCML that provides for joint control of HCML.

Transition from IAS 31 to IFRS 11

8. In May 2011 the International Accounting Standards Board issued International Financial Reporting Standard 11 – Joint Arrangements (**IFRS 11**). IFRS 11 superseded International Accounting Standard 31 – Interests in Joint Ventures (**IAS 31**) and became effective for financial years beginning 1 January 2013.

9. IAS 31 permitted a "jointly controlled entity" to be accounted for either by way of the proportionate consolidation method of accounting or the equity method of accounting. HCML was a jointly controlled entity for purposes of IAS 31 and used the proportionate consolidation method of accounting. Accordingly, oil and gas reserves attributable to the Filer's interest in HCML have historically been included in total disclosed reserves and future net revenue in accordance with the Form Requirements.

10. The introduction of IFRS 11 has resulted in a change in accounting policy requiring the Filer to follow the equity method of accounting for its investment in the Madura Strait Block. IFRS 11 focuses on structure and legal form of the arrangement, the terms agreed by the parties in the contractual arrangement and, when relevant, other facts and circumstances. The Filer holds its interest in the Madura Strait Block through HCML and, although this has not changed, it is now required to use the equity method to account for this interest. Accordingly, the Form Requirements no longer permit oil and gas reserves attributable to the Filer's indirect interest in the Madura Strait Block to be included in total disclosed reserves and future net revenue.

11. Since 2008, there have not been any changes to the Filer's ownership of HCML or to its economic interest in the Madura Strait Block, other than the Filer's interest in HCML changing from 50% to 40% in 2011, when a portion of its working interest was sold to a third party which is now a partner in the joint venture. This sale would not have had any impact on the accounting treatment under IAS 31 or IFRS 11. The joint control of HCML has not changed. The Filer still has the same control and responsibilities as established through the board of directors and management agreement pursuant to the USA.

Disclosure

12. The Filer will include oil and gas reserves that are attributable to its interest in the Madura Strait Block (the **Madura Reserves Disclosure**) in the total reserves and future net revenue disclosed in the Filer's Statement of Reserves Data and Other Oil and Gas Information prepared, subject to the exemptive relief sought, in accordance with Form 51-101F1 and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that the Filer discloses its interest in the Madura Strait Block, and the treatment of that interest under IFRS 11, proximate to the Madura Reserves Disclosure for each year it relies on this relief.

This decision will terminate one year from the effective date of a change to the Form Requirements.

"Denise Weeres"
Manager, Legal
Corporate Finance

2.1.2 Bonnett's Energy Corp.

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 securities legislation – issuer has less than 15 securityholders in each jurisdiction and less than 51 securityholders worldwide – requested relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions

Citation: Bonnett's Energy Corp., Re, 2013 ABASC 568

December 23, 2013

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

AND

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

AND

IN THE MATTER OF
BONNETT'S ENERGY CORP.
(THE FILER)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation (the **Legislation**) of the Jurisdictions that the Filer is deemed not to be a reporting issuer.

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

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

(b) this 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 herein.

Representations

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

1. The Filer is a corporation subsisting under the laws of the Province of Alberta. The principal office of the Filer is located in Alberta.

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

3. The Filer is authorized to issue an unlimited number of common shares and an unlimited number of preferred shares, issuable in series. Currently, the securities of the Filer consist of 501,586 common shares (no preferred shares have been issued); there are no other securities of the Filer issued and outstanding other than share purchase options held by two management shareholders.

4. On November 5, 2013, Bonnett's Energy Corp. (**Bonnett's**) and BEC Acquisition Ltd. (**BEC**) completed an amalgamation pursuant to a plan of arrangement under section 193 of the *Business Corporations Act* (Alberta) (the **Arrangement**). The Arrangement was approved at the special meeting of shareholders of Bonnett's (the **Bonnett's Shareholders**) held on October 31, 2013. Under the terms of the Arrangement, among other things, each common share of Bonnett's (the **Common Shares)** held by Bonnett's Shareholders, other than certain Bonnett's Shareholders and members of the Bonnett's management team (each an **On-Going Shareholder**), was exchanged for Cdn.$7.08 in cash. Each Common Share held by an On-Going Shareholder was exchanged for either 0.0708 of a common share in the capital of BEC (a **BEC Share**) or a combination of cash and BEC Shares.

5. As a result of the Arrangement, the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total worldwide.

6. Following completion of the Arrangement, the common shares of the Filer were delisted from the Toronto Stock Exchange at the close of market on November 8, 2013.

7. No securities of the Filer, including debt securities, are listed, traded or quoted 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 and the Filer does not intend to have any of its securities listed, traded or quoted on such a marketplace in Canada or any other jurisdiction.

8. The Filer is not in default of any requirement of the Legislation of the Jurisdictions except for the obligation to file its quarterly financial statements for the interim period ended September 30, 2013, and its management discussion and analysis in respect of such financial statements, as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certification of such financial statements as required under National Instrument 52-109 *Certification of Disclosure in Filers' Annual and Interim Filings*, all of which became due on November 14, 2013.

9. The Filer was 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* as it is currently a reporting issuer in British Columbia and is in default of certain filing obligations under the Legislation of the Jurisdictions as described in paragraph 8.

10. The Filer did not voluntarily surrender its status as a reporting issuer in British Columbia pursuant to British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* because it wanted to avoid the 10-day waiting period under that instrument.

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

12. 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.

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 Filer is deemed to have ceased to be a reporting issuer.

“Denise Weeres”
Manager, Legal
Corporate Finance

2.1.3 Northwest International Healthcare Properties Real Estate Investment Trust

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions – issuer holds all of its properties through limited partnership – entity holds units in limited partnership which are exchangeable into and in all material respects the economic equivalent to the issuer's publicly traded units – issuer may include entity's indirect interest in issuer when calculating market capitalization for the purposes of using the 25% market capitalization exemption for certain related party transactions – relief granted subject to conditions.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, ss. 5.5(a), 5.7(1)(a), 9.1.

December 11, 2013

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

AND

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

AND

IN THE MATTER OF
NORTHWEST INTERNATIONAL HEALTHCARE PROPERTIES REAL ESTATE INVESTMENT TRUST
(the Filer)

DECISION

Background

The securities regulator in the Jurisdiction (the **Principal Regulator**) has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the Filer be granted an exemption pursuant to section 9.1 of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) from the minority approval and formal valuation requirements under Part 5 of MI 61-101 relating to any related party transaction of the Filer entered into indirectly through NWI Healthcare Properties LP (**NWI LP**) or any other subsidiary entity (as such term is defined in MI 61-101) of NWI LP if that transaction would qualify for the transaction size exemptions set out in sections 5.5(a) and 5.7(1)(a) of MI 61-101 if the indirect equity interest of NorthWest Value Partners Inc. and its affiliates (**NWVP**) in the Filer, which is held in the form of class B limited partnership units (**Class B Units**) and, if and when issued to them, class D general partnership units (**Class D Units**, and together with the Class B Units, **Exchangeable Units**) of NWI LP, were included in the calculation of the Filer's market capitalization (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 the 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 Québec.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and MI 61-101 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 an unincorporated, open-ended real estate investment trust established under the laws of the Province of Ontario. The Filer is governed pursuant to an amended and restated declaration of trust dated November 16, 2012 (the "**Declaration of Trust**").

2. The Filer's head office is located at 284 King Street East, Suite 100, Toronto, Ontario M5A 1K4.

3. The Filer is a reporting issuer (or the equivalent thereof) in each province and territory of Canada and is currently not in default of any applicable requirements under the securities legislation thereunder.

4. The Filer is authorized to issue an unlimited number of trust units (**Units**) and an unlimited number of special voting units (**Special Voting Units**). As at August 30, 2013, the Filer had 45,505,849 Units and 91,068,320 Special Voting Units issued and outstanding. The number of Special Voting Units outstanding at any point in time is equivalent to, and accompanies, the number of Exchangeable Units (defined below) issued and outstanding.

5. The Units are listed and posted for trading on the TSX Venture Exchange (the **TSXV**) under the trading symbol "MOB.UN".

6. The operating business of the Filer is carried on by NWI LP, which indirectly holds interest in healthcare properties and related assets located internationally.

7. NWI LP is a limited partnership formed under the laws of the Province of Ontario and is governed by the amended and restated limited partnership agreement of NWI LP dated November 16, 2012 (the **Limited Partnership Agreement**). NWI LP's head office is located at 284 King Street East, Suite 100, Toronto, Ontario, M5A 1K4.

8. The general partners of NWI LP are NWI Healthcare Properties GP Inc. (**NWI GP**) and NWVP (NWI LP) GP Inc. (**NWVP GP**). NWI GP is a subsidiary of the Filer. NWVP GP is a subsidiary of NWVP.

9. NWI LP is not a reporting issuer (or the equivalent thereof) in any jurisdiction and none of its securities are listed or posted for trading on any stock exchange or other market.

10. NWI LP is authorized to issue an unlimited number of (a) Class A limited partnership units (**Class A Units**), of which 19,122,461 are issued and outstanding and held by the Filer; (b) Class B Units, of which 91,068,320 Class B Units are issued and outstanding and held by NWVP; (c) Class C general partnership units (**Class C Units**), of which 10,000 Class C Units are issued and outstanding and held by NWVP GP; (d) Class D Units, of which no Class D Units are issued and outstanding; and (e) Class E general partnership units (**Class E Units**) of which one Class E Unit is issued and outstanding and held by NWI GP.

11. The Class C Units held by NWVP GP have nominal economic entitlements and no voting entitlements, but entitle NWVP GP as a general partner of NWVP to receive an annual payment if NWI LP meets certain performance metrics. Upon meeting such performance metrics, Class C Units held by NWVP can become convertible, on an annual basis and at NWVP GP's discretion, into any combination of: (a) cash, in an amount calculated with reference to the growth of the Filer's net tangible assets (referred to as the **Class C Amount**); (b) a promissory note in the amount of the Class C Amount; or (c) a number of Class D Units determined by the formula "A/B", where "A" is equal to the Class C Amount in respect of a particular adjustment date and "B" is equal to the volume weighted average price of all Units traded on the stock exchange upon which the Units trade for the five trading days immediately preceding the applicable adjustment date. The Filer does not currently intend to issue any Class D Units other than in connection with a conversion of Class C Units.

12. The Class B Units are, and the Class D Units will be, in all material respects, economically equivalent to each other and the Units on a per unit basis. Holders of Class B Units are, and holders of Class D Units will be, entitled to receive distributions equal to those paid by the Filer to holders of Units. The Class B Units have, and the Class D Units will have, attached thereto an equivalent number of Special Voting Units in the Filer that provide the holders thereof with the same voting rights as the holders of the Units at all meetings of voting Unitholders.

13. The Class B Units are, and the Class D Units will be, exchangeable for Units on a one-for-one basis and transferable, subject to the satisfaction of the applicable conditions set forth in the Limited Partnership Agreement and related exchange agreement. Such agreements provide the holder of the Exchangeable Units to require the Filer to exchange each Exchangeable Unit for one Unit, subject to customary anti-dilution adjustments. The exchange procedure may be initiated at any time by the holder of an Exchangeable Unit so long as all of the following conditions have been met: (a) the exchange would not cause the Filer to breach the restrictions respecting Non-Resident ownership contained in the Filer's Declaration of Trust or otherwise cause it to cease to be a "mutual fund trust" for purposes of the *Income Tax Act* (Canada) or create a substantial risk of such cessation; (b) the Filer is legally entitled to issue the Units in connection with the exercise of the exchange rights; and (c) the person receiving the Units upon the exercise of the exchange

rights complies with all applicable securities laws. The Exchangeable Units may not be exchanged for any other securities other than Units, nor for cash.

14. The principal activity of NWI LP is to own income-producing real estate and related assets.

15. The Filer completed its reconfiguration to focus on international healthcare initiatives in November 2012 (the **Reconfiguration**).

16. In connection with the Reconfiguration, NWI LP issued Class B Units to NWVP in November 2012.

17. As of the date hereof, NWVP holds an effective interest in the Filer of approximately 87% (on an issued and outstanding basis and assuming all Class B Units are exchanged for Units), comprised of 91,068,320 Class B Units and 27,432,703 Units of the Filer.

18. Pursuant to the terms of an asset management agreement dated November 16, 2012 among NWI Asset Management Inc. (**NWIAM**), the Filer and NWI LP (the **Asset Management Agreement**), NWIAM (an affiliate of NWVP), is the external asset manager of the Filer and provides the Filer and NWI LP with certain advisory and investment management services, including the services of Chief Executive Officer and Chief Financial Officer.

19. Pursuant to the Asset Management Agreement, the Filer and NWI LP have a right of first opportunity with respect to future acquisition of properties that meet certain investment criteria, which has been disclosed in the Filer's securities filings.

20. It is anticipated that the Filer may from time to time, indirectly (through NWI LP and/or its subsidiaries) enter into transactions with certain related parties, including NWVP.

21. NWI LP has issued Class B Units (rather than Units of the Filer) in order to provide NWVP with a tax deferred rollover on certain transactions undertaken with the Filer (which would have been permitted if the public entity were a corporation or limited partnership).

22. The Filer has disclosed its relationship with NWVP in its securities filings.

23. If Part 5 of MI 61-101 applies to a related party transaction by an issuer and the transaction is not otherwise exempt:

    a. the issuer must obtain a formal valuation of the transaction in a form satisfying the requirements of MI 61-101 by an independent valuator; and

    b. the issuer must obtain approval of the transaction by disinterested holders of the affected securities of the issuer (together, requirements (a) and (b) are referred to as the **Minority Protections**).

24. A related party transaction that is subject to MI 61-101 may be exempt from the Minority Protections if at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, exceeds 25% of the issuer's market capitalization (the **Transaction Size Exemption**).

25. The Filer may not be entitled to rely on the Transaction Size Exemption available under the Legislation because the definition of "market capitalization" in the Legislation does not contemplate securities of another entity that are exchangeable into equity securities of the issuer.

26. The Class B Units represent, and the Class D Units will represent, part of the equity value of the Filer. The Class B Units provide the holder of Class B Units, and the Class D Units will provide the holder of Class D Units, with economic rights which are, in all material respects, equivalent to the Units. The effect of NWVP's exchange right is that NWVP will receive Units upon the exchange of the Class B Units or, if and when issued, Class D Units. Moreover, the economic interests that underlie the Class B Units are, and the economic interests that will underlie the Class D Units will be, identical to those underlying the Units; namely, the assets held directly or indirectly by NWI LP.

27. If the Class B Units and, if and when issued, the Class D Units, are not included in the market capitalization of the Filer, the equity value of the Filer will be understated by the value of NWVP's interest in NWI LP represented by Class B Units and, if and when issued, Class D Units (currently, approximately 66%). As a result, related party transactions by the Filer may be subject to the Minority Protections in circumstances where the fair market value of the transactions is effectively less than 25% of the fully-diluted market capitalization of the Filer.

28. Section 1.4 of MI 61-101 treats an operating entity of an "income trust", as such term is defined in National Policy 41-201 *Income Trusts and Other Indirect Offerings* (**NP 41-201**), on a consolidated basis with its parent trust entity for the purpose of determining which entities are related parties of the issuer and what transactions MI 61-101 should apply to. Section 1.2 of NP 41-201 provides that references to an "income trust" refer to a trust or other entity (including corporate and non-corporate entities) that issues securities which provide for participation by the holder in net cash flows generated by an underlying business owned by the trust or other entity. Accordingly, it is consistent with MI 61-101 that securities of the operating entity, such as the Class B Units and, if and when issued, the Class D Units, be treated on a consolidated basis for the purposes of the Transaction Size Exemption.

29. The inclusion of the Class B Units and, if and when issued, Class D Units, when determining the Filer's market capitalization is consistent with the logic of including unlisted equity securities of the issuer which are convertible into listed securities of the issuer in determining an issuer's market capitalization in that both are securities that are considered part of the equity value of the issuer whose value is measured on the basis of the listed securities into which they are convertible or exchangeable.

Decision

The Principal Regulator is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Principal Regulator under the Legislation is that the Requested Relief be granted to the Filer provided that:

(a) the transaction would qualify for the Transaction Size Exemption contained in MI 61-101 if the Class B Units and, if and when issued, Class D Units, were considered an outstanding class of equity securities of the Filer that were convertible into Units;

(b) there be no material change to the terms of the Class B Units, Class D Units and Special Voting Units, including the exchange rights associated therewith, as described above and in the Declaration of Trust, Limited Partnership Agreement and the Filer's current annual information form, whether by amendment to either the Declaration of Trust or Limited Partnership Agreement, or by contractual agreement or otherwise;

(c) the transaction is made in compliance with the rules and policies of the TSXV or such other exchange upon which the Filer's securities trade; and

(d) any future annual information form of the Filer that is required to be filed in accordance with applicable Canadian securities law contain the following disclosure, with any immaterial modifications as the context may require:

> "Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") provides a number of circumstances in which a transaction between an issuer and a related party may be subject to valuation and minority approval requirements. An exemption from such requirements is available when the fair market value of the transaction is not more than 25% of the market capitalization of the issuer. NorthWest International Healthcare Properties Real Estate Investment Trust (the "**REIT**") has been granted exemptive relief from the requirements of MI 61-101 that, subject to certain conditions, permits it to be exempt from the minority approval and valuation requirements for transactions that would have a value of less than 25% of the REIT's market capitalization, if the class B limited partnership units and [if and when issued] class D general partnership units of NWI Healthcare Properties LP ("**NWI LP**") are included in the calculation of the REIT's market capitalization. As a result, the 25% threshold, above which the minority approval and valuation requirements would apply, is increased to include the approximately [87]% indirect interest held by NorthWest Value Partners Inc. and its affiliates in the REIT in the form of class B limited partnership units and [if and when issued] class D general partnership units of NWI LP."

(e) the Filer will disclose the number of Class B Units and, if and when issued, Class D Units, outstanding in its management's discussion and analysis, annual information form and management information circular, and as otherwise required by applicable securities law.

"Naizam Kanji"
Deputy Director, Corporate Finance
Ontario Securities Commission

2.1.4 Barrick Gold Corporation et al.

Headnote

Filers exempt from certain continuous disclosure, certification, audit committee, and corporate governance requirements, subject to conditions – Filers exempt from certain form requirements under Form 44-101F1 in respect of short form base shelf prospectuses together with applicable prospectus supplements and pricing supplements in respect of the issuance of non-convertible debt securities guaranteed by the credit supporter, subject to conditions.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1.
Form 44-101F1 Short Form Prospectus, s. 13.2.
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1, 13.4.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, ss. 8.5. 8.6.
National Instrument 52-110 Audit Committees, ss. 1.2(g), 8.1.
National Instrument 58-101 Corporate Governance Practices, ss. 1.3(c), 3.1.

December 23, 2013

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

AND

IN THE MATTER OF
BARRICK GOLD CORPORATION (Barrick),
BARRICK NORTH AMERICA FINANCE LLC (BNAF) AND
BARRICK GOLD FINANCECO LLC
(BGF, and together with BNAF, the Finance Companies, and together with BNAF and Barrick, the Filers)

DECISION

Background

The Ontario Securities Commission (the **Decision Maker**) has received an application from the Filers for a decision under the securities legislation (the **Legislation**) of the Province of Ontario (the **Jurisdiction**) that the Filers be exempt from the following requirements contained in the Legislation:

(a) the requirement under the Legislation that each of the Finance Companies comply with the requirements of National Instrument 51-102 – *Continuous Disclosure Obligations* (**NI 51-102**) (the **Continuous Disclosure Relief**);

(b) the requirement under the Legislation that each of the Finance Companies comply with the requirements of National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (the **Certification Relief**);

(c) the requirement under the Legislation that each of the Finance Companies comply with requirements of National Instrument 52-110 *Audit Committees* (the **Audit Committee Relief**);

(d) the requirement under the Legislation that each of the Finance Companies comply with the requirements of National Instrument 58-101 – *Disclosure of Corporate Governance Practices* (the **Corporate Governance Relief**); and

(e) the requirement under the Legislation that each of the Finance Companies: (i) include in Future Prospectuses (as defined below) filed with the Decision Maker for Future Offerings (as defined below) its earning coverage ratios required under Item 6.1 of Form 44-101F1 promulgated under National Instrument 44-101 – *Short Form Prospectus Distributions* (**NI 44-101**) and (ii) incorporate by reference in Future Prospectuses filed with the Decision Maker for Future Offerings any of the documents specified under paragraphs 1 through 4, and 6 through 8 of Item 11.1(1) of Form 44-101F1 (collectively, the **Prospectus Disclosure Relief**).

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* have the same meaning in this decision unless otherwise set forth herein.

Representations

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

1. Barrick is a corporation existing under the *Business Corporations Act* (Ontario). Barrick's head office and principal place of business is Brookfield Place, TD Canada Trust Tower, Suite 3700, 161 Bay Street, P.O. Box 212, Toronto, Ontario, Canada M5J 2S1.

2. Barrick is a leading international gold mining company. Barrick has operating mines and projects in Canada, the United States, Dominican Republic, Australia, Papua New Guinea, Peru, Chile, Argentina, Saudi Arabia, Zambia and Tanzania. Barrick's principal products and sources of earnings are gold and copper.

3. Barrick's common shares are listed on the New York Stock Exchange and the Toronto Stock Exchange under the symbol "ABX".

4. Barrick is a reporting issuer in each of the provinces and territories of Canada and is not on the lists of defaulting reporting issuers maintained pursuant to the legislation of any such jurisdiction.

5. BNAF is a limited liability company existing under the *Delaware Limited Liability Company Act*. BNAF's registered office in Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

6. BNAF is an indirect, wholly-owned subsidiary of Barrick.

7. BNAF does not have any securities outstanding other than the types of securities listed in Section 13.4(2)(c) of NI 51-102.

8. BNAF is a reporting issuer in the Jurisdiction and is not on the list of defaulting reporting issuers maintained pursuant to the Legislation.

9. BGF is a limited liability corporation existing under the *Delaware Limited Liability Company Act*. BGF's registered office in Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

10. BGF is an indirect, wholly-owned subsidiary of Barrick.

11. BGF does not have any securities outstanding other than the types of securities listed in Section 13.4(2)(c) of NI 51-102.

12. BGF is a reporting issuer in the Jurisdiction and is not on the list of defaulting reporting issuers maintained pursuant to the Legislation.

13. Barrick and the Finance Companies filed a short form base shelf prospectus with the securities regulatory authority in the Jurisdiction on June 12, 2008 in respect of certain non-convertible debt securities issuable by any of Barrick, BNAF or BGF.

14. In September 2008, the Finance Companies issued an aggregate of US$1.25 billion of non-convertible notes pursuant to a prospectus supplement dated September 8, 2008 to the short form base shelf prospectus dated June 12, 2008. Subsequently, BNAF has issued an additional US$3.05 billion of non-convertible notes.

15. Barrick and each of the Finance Companies may, from time to time in the future, offer additional non-convertible debt securities (**Future Offerings**), including potentially pursuant to one or more prospectuses, including without limitation, short form prospectuses, base shelf prospectuses, prospectus supplements and pricing supplements (collectively, **Future Prospectuses**). All non-convertible debt securities issued by the Finance Companies, whether currently outstanding or issued in the future, are collectively referred to herein as the **Notes**.

16. Since June 12, 2008, the Finance Companies have issued Notes in the aggregate principal amount of $4.3 billion, of which Notes in the aggregate principal amount of US$3.8 billion remain outstanding (US$0.5 billion has been repaid).

17. Barrick has fully and unconditionally guaranteed the Notes and no other subsidiary of Barrick has provided a guarantee or alternative credit support for the Notes.

18. The Notes are "designated credit support securities", as defined in Section 13.4(1) of NI 51-102.

19. The Notes have received an "approved rating" (as defined in NI 44-101) and the Notes have not been the subject of an announcement by an "approved rating organization" (as defined in NI 51-102) that the "approved rating" given by the organization may be down-graded to a rating category that would not be an "approved rating". All Notes issued pursuant to any Future Offering will have an "approved rating".

20. Neither of the Finance Companies has any assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the Notes issued by it and each of the Finance Companies is a "finance subsidiary" as defined in Rule 3-10(h) of Regulation S-X promulgated by the United States Securities and Exchange Commission (the **SEC**).

21. Pursuant to Rule 3-10(b) of Regulation S-X, the requirement to provide the tabular disclosure similar to that set forth in Section 13.4(2)(g)(ii) of NI 51-102 and Item 13.2(f)(ii) of Form 44-101F1 does not apply to a "finance subsidiary" that is 100% owned by the parent company guarantor, if the guarantee is full and unconditional, no other subsidiary of the parent company guarantees the securities and the parent company's financial statements include a footnote (i) stating that the issuer subsidiary is a 100%-owned finance subsidiary of the parent company guarantor and the parent company guarantor has fully and unconditionally guaranteed the securities and (ii) including the disclosure contemplated in paragraph (d) of the Continuous Disclosure Relief granted below in each of its annual and interim financial statements.

22. Each of the Finance Companies will meet the eligibility requirements set out in Section 13.4(2) of NI 51-102 except that Barrick will not meet the test set forth in Section 13.4(2)(g)(i)(B).

23. Each of the Finance Companies will meet the eligibility requirements of Item 13.2 of Form 44-101F1 except that Barrick does not meet the test set forth in Item 13.2(f)(i)(B).

24. The requested Continuous Disclosure Relief, the Certification Relief, the Audit Committee Relief, the Corporate Governance Relief and the Prospectus Disclosure Relief is substantially the same as the relief granted pursuant to a decision of the Decision Maker dated May 23, 2008 (the **2008 Decision**). The 2008 Decision is valid until December 31, 2013.

Decision

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

Continuous Disclosure Relief

The decision of the Decision Maker under the Legislation is that the Continuous Disclosure Relief is granted provided that:

(a) each of the Finance Companies is a "finance subsidiary" of Barrick as defined in Rule 3-10(h) of Regulation S-X promulgated by the SEC;

(b) the Finance Companies and Barrick continue to satisfy all the conditions set forth in subsection 13.4(2) of NI 51-102, other than paragraph 13.4(2)(g);

(c) Barrick discloses in each of its annual financial statements and interim financial statements filed with the Decision Maker any significant restrictions on the ability of Barrick to obtain funds from its subsidiaries by dividend or loan;

(d) Barrick discloses in each of its annual and interim financial statements filed with the Decision Maker: (i) any significant restrictions on the ability of Barrick or any of the Finance Companies to obtain funds from its subsidiaries by dividend or loan; (ii) the nature of any restrictions on the ability of the consolidated subsidiaries and unconsolidated subsidiaries of Barrick to transfer funds to Barrick in the form of cash dividends, loans or advances (i.e., borrowing arrangements, regulatory constraints, foreign government, etc.) and (iii) the amount of "restricted net assets" (calculated in the manner specified in paragraph (e) below) for unconsolidated subsidiaries and consolidated subsidiaries of Barrick as of the end of its most recently completed fiscal year (with such amounts for unconsolidated subsidiaries and consolidated subsidiaries disclosed separately), provided that, the disclosure contemplated in paragraphs (d)(ii) and (d)(iii) above are only required to be

provided when the "restricted net assets" of consolidated and unconsolidated subsidiaries of Barrick, and Barrick's equity in undistributed earnings of 50% or less owned persons accounted for by the equity method, together exceed 25% of the consolidated net assets of Barrick as of the end of its most recently completed fiscal year;

(e) "restricted net assets" shall be calculated in the manner specified in this paragraph (e). "Restricted net assets" of subsidiaries shall mean that amount of Barrick's proportionate share of net assets (after intercompany eliminations) reflected in the balance sheets of its consolidated and unconsolidated subsidiaries as of the end of the most recent fiscal year which may not be transferred to Barrick in the form of loans, advances or cash dividends by the subsidiaries without the consent of a third party (i.e., lender, regulatory agency, foreign government, etc.). Not all limitations on transferability of assets are considered to be restrictions for purposes of calculating "restricted net assets", which considers only specific third party restrictions on the ability of subsidiaries to transfer funds outside of the entity. For example, the presence of subsidiary debt which is secured by certain of the subsidiary's assets does not constitute a restriction for purposes of calculating "restricted net assets". However, if there are any loan provisions prohibiting dividend payments, loans or advances to Barrick by a subsidiary, these are considered restrictions for purposes of computing "restricted net assets". When a loan agreement requires that a subsidiary maintain certain working capital, net tangible asset, or net asset levels, or where formal compensating arrangements exist, there is considered to be a restriction because the lender's intent is normally to preclude the transfer by dividend or otherwise of funds to Barrick. Similarly, a provision which requires that a subsidiary reinvest all of its earnings is a restriction, since this precludes loans, advances or dividends in the amount of such undistributed earnings by the entity. Where restrictions on the amount of funds which may be loaned or advanced differ from the amount restricted as to transfer in the form of cash dividends, the amount least restrictive to the subsidiary shall be used. Redeemable preferred stocks and minority interests shall be deducted in computing net assets for purposes of these calculations;

(f) each of the Finance Companies continues to have minimal or no assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the Notes and any other securities guaranteed by Barrick; and

(g) each of the Finance Companies files, with the annual and interim financial statements of Barrick, a statement that the financial results of the Finance Companies are included in the consolidated results of Barrick.

Certification Relief

The further decision of the Decision Maker under the Legislation is that the Certification Relief is granted provided that the Filers continue to satisfy the conditions of the Continuous Disclosure Relief, above.

Audit Committee Relief

The further decision of the Decision Maker under the Legislation is that the Audit Committee Relief is granted provided that the Filers continue to satisfy the conditions of the Continuous Disclosure Relief, above.

Corporate Governance Relief

The further decision of the Decision Maker under the Legislation is that the Corporate Governance Relief is granted provided that the Filers continue to satisfy the conditions of the Continuous Disclosure Relief, above.

Prospectus Disclosure Relief

The further decision of the Decision Maker under the Legislation is that the Prospectus Disclosure Relief is granted provided that:

(a) the Finance Companies and Barrick satisfy the conditions set forth in Item 13.2 of Form 44-101F1 and NI 44-101, other than Items 13.2(f)(i)(B) and 13.2(f)(ii) of Form 44-101F1, unless otherwise exempted therefrom;

(b) Barrick provides the disclosure contemplated in paragraphs (c) and (d) of the Continuous Disclosure Relief granted above in each of its annual and interim financial statements incorporated by reference into any Future Prospectus filed with the Decision Maker in respect of a Future Offering;

(c) each of the Finance Companies continues to have minimal or no assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the Notes and any other securities guaranteed by Barrick at the time a Future Prospectus is filed in respect of a Future Offering; and

(d) each Future Prospectus includes a statement that the financial results of the Finance Companies are included in the consolidated results of Barrick.

Date: December 23, 2013

"Shannon O'Hearn"
Manager, Corporate Finance

2.1.5 ONE Financial Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to commodity pools from paragraphs 2.1(1), 2.2(1)(a), and 2.5(2)(a),(b),(c) of NI 81-102 to permit certain fund on fund structures – relief subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.1(1), 2.2(1)(a), 2.5(2)(a), (b), (c), 19.1.

October 10, 2012

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

AND

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

AND

IN THE MATTER OF
ONE FINANCIAL CORPORATION
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of each of the Funds (as defined below) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Funds from the requirements of sections 2.1(1), 2.2(1)(a) and 2.5(2)(a) and (c) of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) and, in the case of ONE Financial All-Weather Profit Growth & Income Balanced Fund, ONE Financial All-Weather Profit Conservative Growth 2022 Protected Portfolio and ONE Financial All-Weather Profit Monthly ROC Income 2022 Protected Portfolio (collectively, the **Multi-Layer Funds**), section 2.5(2)(b) of NI 81-102, to permit the Funds to invest in or gain exposure to the Investment Pools (as defined below) (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* is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia the Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and the Yukon.

Interpretation

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

Representations

1. The Filer has launched a family of open-end commodity pools listed below (the **Funds**), each of which is a class of shares of ONE Financial All-Weather Profit Family Inc. (the **Mutual Fund Corporation**), a mutual fund corporation incorporated pursuant to the laws of the province of Ontario, pursuant to a preliminary long form prospectus dated December 29, 2011, as amended and restated on July 13, 2012 (the **Prospectus**).

ONE Financial All-Weather Profit Canada Fund	ONE Financial All-Weather Profit Global Diversified Growth Fund
ONE Financial All-Weather Profit U.S. Fund	ONE Financial All-Weather Profit Growth & Income Balanced Fund
ONE Financial All-Weather Profit Europe & Asia Fund	ONE Financial All-Weather Profit Monthly Tax-Efficient Bond Fund
ONE Financial All-Weather Profit Emerging Markets Fund	ONE Financial All-Weather Profit Tax-Efficient Short-term Savings Fund
ONE Financial All-Weather Profit Commodities Fund	ONE Financial All-Weather Profit Conservative Growth 2022 Protected Portfolio
ONE Financial All-Weather Profit Global Diversified Fund	ONE Financial All-Weather Profit Monthly ROC Income 2022 Protected Portfolio

2. The Filer will be appointed manager of the Funds pursuant to a management agreement between the Filer and the Mutual Fund Corporation. The Filer is a corporation incorporated under the laws of the province of Ontario having its head office in Toronto, Ontario. The Filer is registered as an investment fund manager, portfolio manager, exempt market dealer and commodity trading manager under applicable Ontario securities laws. The Filer is not a reporting issuer in any province or territory of Canada.

3. None of the Filer, the Mutual Fund Corporation, any of the Funds or any of the Investment Pools (as defined below) is in default under any applicable securities legislation in any of the provinces or territories of Canada.

4. The Filer has filed the Prospectus in all of the provinces and territories of Canada pursuant to which it will offer various series of shares of the Funds. No securities of the Mutual Fund Corporation, the Funds or the Investment Pools (as defined below) will be listed for trading on a stock exchange.

5. As the respective investment objectives and strategies of each of the Funds will permit it to use or invest in specified derivatives in a manner not permitted by NI 81-102, each Fund will be a commodity pool under applicable securities legislation.

6. With the exception of the Requested Relief and certain other requested relief, the investment practices of each of the Funds will comply with the requirements of Part 2 of NI 81-102, as modified by National Instrument 81-104 – *Commodity Pools* (**NI 81-104**).

7. It is proposed that each Fund will initially seek to achieve its investment objectives by investing in the units (the **Unit Strategy**) of an investment pool trust (each, an **Investment Pool** and collectively, the **Investment Pools**), which Investment Pool will invest:

   (a) directly in a portfolio of securities; and

   (b) in the case of the All-Weather Profit Growth & Income Balanced Investment Pool (the **Growth & Income Balanced Investment Pool**) and the All-Weather Conservative Growth 2022 Protected Investment Pool and the All-Weather Profit Monthly ROC Income 2022 Protected Investment Pool (together, the **Protected Investment Pools**), in the units of certain other Investment Pools.

   Pursuant to the Unit Strategy, the Funds and, where applicable, the Investment Pools, will subscribe for units of the applicable Investment Pools on a private placement basis. Each Investment Pool will file a non-offering prospectus and as result will be a reporting issuer in Ontario and Québec. As a result of the Unit Strategy, each Fund would gain direct or indirect exposure to the investment return of one or more Investment Pools.

8. In addition, each Fund may use a portion of its assets to enter into one or more forward contracts (each, a **Forward**) with a Canadian chartered bank (each, a **Counterparty**) (the **Forward Strategy**). The Counterparty under each Forward may use the amount received from the Fund to subscribe for units of an Investment Pool. As a result of the Forward Strategy, each Fund would gain indirect exposure to the investment return of one or more Investment Pools.

9. The Investment Pool to which each Fund will gain exposure is set out below:

Fund	Investment Pool
ONE Financial All-Weather Profit Canada Fund	ONE Financial All-Weather Profit Canada Investment Pool
ONE Financial All-Weather Profit U.S. Fund	ONE Financial All-Weather Profit U.S. Investment Pool
ONE Financial All-Weather Profit Europe & Asia Fund	ONE Financial All-Weather Profit Europe & Asia Investment Pool
ONE Financial All-Weather Profit Emerging Markets Fund	ONE Financial All-Weather Profit Emerging Markets Investment Pool
ONE Financial All-Weather Profit Commodities Fund	ONE Financial All-Weather Profit Commodities Investment Pool
ONE Financial All-Weather Profit Global Diversified Fund	ONE Financial All-Weather Profit Global Diversified Investment Pool
ONE Financial All-Weather Profit Global Diversified Growth Fund	ONE Financial All-Weather Profit Global Diversified Growth Investment Pool
ONE Financial All-Weather Profit Growth & Income Balanced Fund	ONE Financial All-Weather Profit Growth & Income Balanced Investment Pool
ONE Financial All-Weather Profit Monthly Tax-Efficient Bond Fund	ONE Financial All-Weather Profit Monthly Bond Investment Pool
ONE Financial All-Weather Profit Tax-Efficient Short-term Savings Fund	ONE Financial All-Weather Profit Short-term Savings Investment Pool
ONE Financial All-Weather Profit Conservative Growth 2022 Protected Portfolio	ONE Financial All-Weather Profit Conservative Growth 2022 Protected Investment Pool
ONE Financial All-Weather Profit Monthly ROC Income 2022 Protected Portfolio	ONE Financial All-Weather Profit Monthly ROC Income 2022 Protected Investment Pool

10. Each of the Funds is a clone fund as that term is currently defined in NI 81-102.

11. Each of the Investment Pools will be a trust established pursuant to a declaration of trust governed by the laws of the province of Ontario as it may be amended and/or restated (the Declaration of Trust) and the Filer will be the trustee of each of the Investment Pools. The Filer will also be the manager of the Investment Pools pursuant to the Declaration of Trust. Except as described herein, each of the Investment Pools will invest the proceeds from its sale of units in accordance with the investment objectives and strategies of the applicable Investment Pool or Investment Pools, as will be described in the final Prospectus. Certain of the Investment Pools, namely the Growth & Income Balanced Investment Pool and the Protected Investment Pools, will invest, in part, in units of certain other Investment Pools in accordance with the investment objectives and strategies of the applicable Investment Pool, as will be described in the final Prospectus. The investment practices of each of the Investment Pools will be in accordance with the requirements of Part 2 of NI 81-102, as modified by NI 81-104, other than, in respect of the Growth & Income Balanced Investment Pool and the Protected Investment Pools, sections 2.1(1), 2.2(1)(a), and 2.5(2)(a) to (c).

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 investments of a Fund in an Investment Pool or the exposure of a Fund to an Investment Pool will be in accordance with the fundamental investment objectives of the Fund;

(b) each of the Funds is a commodity pool subject to NI 81-102, as modified by NI 81-104;

(c) each of the Investment Pools will operate in accordance with the Part 2 of NI 81-102, as modified by NI 81-104, other than those sections that are referenced in representation 11 above, and in accordance with NI 81-104, other than section 3.2(1);

(d) the investment of a Fund in units of an Investment Pool or the exposure of a Fund to an Investment Pool will be in accordance with each provision of section 2.5 of NI 81-102 except paragraphs 2.5(2)(a) and 2.5(2)(c) and, in the case of the Multi-Layer Funds, paragraph 2.5(2)(b);

(e) the Prospectus discloses and the final prospectus of the Funds will disclose that the Funds will invest in or gain exposure to the Investment Pools;

(f) the Investment Pools will be reporting issuers subject to NI 81-106 – Investment Fund Continuous Disclosure; and

(g) no securities of an Investment Pool will be distributed other than to a Fund, a Counterparty, the Growth & Income Balanced Investment Pool, a Protected Investment Pool, the Filer or an affiliate thereof.

"Sonny Randhawa"
Manager, Investment Funds
Ontario Securities Commission

2.1.6 Man Investments Canada Corp. and GLG Income Opportunities Fund

Headnote

NP 11-203 – Process for Exemptive Relief Application in Multiple Jurisdictions – Relief granted to a commodity pool from subsection 2.1(1), 2.2(1) and paragraphs 2.5(2)(a) and (b) of National Instrument 81-102 Mutual Funds to permit the commodity pool to gain exposure to, and purchase and hold, another investment fund in a two-tier structure, subject to certain conditions. The bottom fund will observe NI 81-102, except as permitted by NI 81-104 and in accordance with exemptive relief obtained by the Top Fund including that the bottom fund may engage in short selling.

Relief granted to permit purchases at the next weekly net asset value after order received two business days before, even though net asset value is calculated daily – daily net asset value calculated to provide more frequent and up-to-date information – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.1(1), 2.2(1), 2.5(2)(a), 2.5(2)(c), 9.3, 19.1.

November 22, 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
MAN INVESTMENTS CANADA CORP. (the Filer)
and GLG INCOME OPPORTUNITIES FUND
(the Top Fund)

DECISION

Background

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

(i) to revoke and replace the Previous Decision (as defined below); and

(ii) to grant exemptive relief pursuant to Part 19 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**), from the following provisions of NI 81-102, as further described below:

a. subsections 2.1(1), 2.2(1) and 2.5(2)(a) and (c) of NI 81-102 to permit the Top Fund to gain exposure to, and purchase and hold, securities of GLG Prospect Mountain Ltd. (the **Bottom Fund**), which has adopted the investment restrictions contained in NI 81-102 and is managed in accordance with these restrictions, except as otherwise permitted by National Instrument 81-104 *Commodity Pools* (**NI 81-104**), and in accordance with any exemptions therefrom obtained by the Top Fund, including that the Bottom Fund may engage in short selling in accordance with the terms of this decision; and

b. section 9.3 of NI 81-102 to permit the issue price of the Units (as defined below) of the Top Fund to which a purchase order pertains to be the net asset value (**NAV**) per Unit determined on the next Weekly Valuation Date (as defined below) after receipt by the Top Fund of a purchase order two business days before,

(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 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 (collectively, with Ontario, the **Jurisdictions**).

Interpretation

Unless expressly defined herein, terms in this application have the respective meanings given to them in NI 81-102, National Instrument 14-101 *Definitions* and MI 11-102.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* and is the trustee and manager of the Top Fund.

2. The Filer is registered as an Investment Fund Manager in Ontario, Québec and Newfoundland and Labrador, as an adviser in the category of Portfolio Manager in Ontario and Alberta and as a dealer in the category of Exempt Market Dealer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia.

3. The Filer's head office is located in Toronto, Ontario.

4. None of the Filer, the Top Fund or the Bottom Fund is in default of any securities legislation in any of the Jurisdictions.

The Top Fund and the Previous Decision

5. The Top Fund is a mutual fund to which NI 81-102 applies. The Top Fund is also a commodity pool as such term is defined in NI 81-104, in that the Top Fund has adopted fundamental investment objectives that permit the Top Fund to gain exposure to or use or invest in specified derivatives in a manner that is not permitted under NI 81-102.

6. The Top Fund is a reporting issuer in each of the Jurisdictions. The Top Fund filed and obtained a receipt for a prospectus dated September 27, 2012 with respect to the offering of Class L Units and Class M Units of the Top Fund (together with the Class A Units, Class F Units, Class O Units and Class R Units, the **Units**) (the **Current Prospectus**).

7. The Top Fund's investment objectives are to: (i) provide holders of Class L Units and Class M Units with monthly tax-advantaged distributions; (ii) provide holders of Units (the **Unitholders**) the opportunity for long-term capital appreciation; and (iii) profit over the entire credit cycle by generally investing or otherwise gaining exposure across the capital structure of leveraged companies and other issuers often driven by a pending event or catalyst.

8. The Top Fund has been created to provide exposure to a set of securities comprised primarily of companies with credit, legal, structural or other risks through a broad range of investment instruments which may include high-yield bonds, below-par/distressed bank loans, par/near-par bank loans, debtor-in-possession loans, trade claims or receivables, asset-backed securities, convertible and municipal bonds, credit default swaps, credit default indexes, preferred and common stock, warrants and other rights to purchase shares, collateralized debt, bond and loan obligations, futures, options, swaps and other derivative contracts, bridge loans, mezzanine loans, and other types of debt instruments (collectively, the **Underlying Assets**).

9. The Bottom Fund will acquire the Underlying Assets. The return to the Top Fund will be based on the performance of the Bottom Fund, which, in turn, will be based on the performance of the Underlying Assets.

10. The Top Fund does not intend to list the Units on any stock exchange.

11. The Filer obtained a previous decision dated September 26, 2012 (the **Previous Decision**) exempting the Top Fund from subsections 2.5(2)(a) and (c) of NI 81-102 to permit the Top Fund to obtain exposure to the Bottom Fund through one or more forward agreements.

12. The Previous Decision represented that the Top Fund will obtain exposure to the economic returns of the Bottom Fund through one or more forward agreements (each a **Forward Agreement)** entered into with one or more Canadian chartered banks and/or their affiliates (each a **Counterparty**). The character conversion measure announced in Federal Government's Economic Action Plan 2013 prevents investment funds, including the Top Fund, from increasing the notional amount of existing derivative forward agreements, including the Forward Agreement, after March 20, 2013, which would be required if additional units of the Top Fund were issued.

13. The Requested Relief is required to permit the Top Fund to purchase and hold securities of the Bottom Fund in order to obtain exposure to the Underlying Assets in respect of additional units of the Top Fund issued after the character conversion measure was announced. The Top Fund will purchase and hold securities of the Bottom Fund and obtain exposure to the securities of the Bottom Fund through a Forward Agreement or other specified derivative.

The Bottom Fund and the Underlying Assets

14. The Bottom Fund is an exempted company with limited liability incorporated in the Cayman Islands on August 22, 2012 that will acquire and maintain the Underlying Assets.

15. GLG Ore Hill LLC (the **GLG Manager**), a Delaware limited liability company, serves as the manager and investment manager of the Bottom Fund and actively manages the Underlying Assets. The GLG Manager is registered as an investment adviser with the U.S. Securities and Exchange Commission (the **SEC**) pursuant to the U.S. *Investment Advisers Act of 1940*, as amended. The GLG Manager is ultimately owned by Man Group plc and is an affiliate of the Filer.

16. The Bottom Fund is a reporting issuer under the *Securities Act* (Ontario) and the *Securities Act* (Québec) and subject to the continuous disclosure requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**). Accordingly, the financial statements and other reports required to be filed by the Bottom Fund are available through SEDAR.

17. The Bottom Fund is a mutual fund because holders of its securities will be entitled to receive, on demand, an amount computed by reference to the NAV of the Bottom Fund. However, the Bottom Fund has not distributed any securities under its non-offering prospectus. Accordingly, the Bottom Fund is a mutual fund to which NI 81-106 applies, but is not subject to the requirements of NI 81-102.

18. The Bottom Fund is a commodity pool as such term is defined in NI 81-104 in that the Bottom Fund has adopted fundamental investment objectives that permit it to use specified derivatives in a manner that is not permitted under NI 81-102.

19. The Bottom Fund has adopted the investment restrictions contained in NI 81-102 and the Underlying Assets are managed in accordance with these restrictions, except as otherwise permitted by NI 81-104, and in accordance with any exemptions therefrom obtained by the Top Fund including that the Bottom Fund may engage in short selling as more fully described below.

20. The GLG Manager will monitor the Bottom Fund's compliance with its investment restrictions for the Underlying Assets.

21. The indirect investment by the Top Fund in securities of the Bottom Fund will constitute more than 10% of the NAV of the Top Fund.

22. The Top Fund complies, and will comply, with the requirements under NI 81-106 relating to the top 25 positions portfolio holdings disclosure in its management reports of fund performance as if the Top Fund were investing directly in the Underlying Assets.

23. The prospectus of the Top Fund discloses that fees and expenses payable by the Top Fund or holders of Units in respect for the same service will not be duplicated as a result of the direct or indirect investment by the Top Fund in securities of the Bottom Fund.

25. The direct and indirect investment by the Top Fund in securities of the Bottom Fund will comply with the requirements of section 2.5 of NI 81-102, except that, contrary to subsections 2.5(a) and (c) of NI 81-102, the Bottom Fund is a mutual fund that:

    (a) is not subject to NI 81-102 and will never have offered securities under a simplified prospectus in accordance with National Instrument 81-101 *Mutual Fund Distributions*; and

(b) will not be a reporting issuer in any jurisdiction that the Top Fund is a reporting issuer in except Ontario and Quebec.

25. The direct and indirect investment by the Top Fund in securities of the Bottom Fund represents the business judgement of responsible persons uninfluenced by considerations other than the best interest of the Top Fund and the holders of Units, respectively.

Short Selling

26. The Bottom Fund wishes to be able to engage in a limited, prudent and disciplined amount of short selling. Each short sale made by the Bottom Fund will comply with its investment objectives. In order to effect short sales of securities, the Bottom Fund will borrow securities from either its custodian or a dealer (in either case, a **Borrowing Agent**), which Borrowing Agent may be acting either as principal for its own account or as agent for other lenders of securities.

27. The GLG Manager will monitor the short positions of the Bottom Fund at least as frequently as daily.

Purchase Price

28. Units of the Top Fund may be purchased or redeemed on a weekly basis on each Monday, or if Monday is not a business day, the following business day (the **Weekly Valuation Date**) at a price equal to the NAV per Unit. Purchase and redemption orders must be received before 4:00 p.m. (Toronto time) on the second business day immediately preceding a Weekly Valuation Date to be processed at the Unit price calculated as at the next Weekly Valuation Date.

29. Subsection 14.2(3) of NI 81-106 requires that the NAV of an investment fund be calculated at least once every business day if the fund will use specified derivatives. The Top Fund will calculate NAV once every business day.

30. Sections 9.3 and 10.3 of NI 81-102 require that the purchase or redemption price of units of a mutual fund be the NAV per unit next determined after receipt, by the mutual fund, of the purchase or redemption order.

31. The Filer has structured the Top Fund's operations so that it can consolidate all purchase and redemption orders into one efficient weekly transaction. It has determined that effecting such purchases and redemptions on a weekly basis strikes the best balance between the needs of purchasers to invest or access their assets in a timely manner and the need to provide timely exposure to the Underlying Assets held by the Bottom Fund.

32. As of the date that the Requested Relief is granted, the Filer will no longer rely on the Previous Decision.

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:

1. the Top Fund is a commodity pool subject to NI 81-102 and NI 81-104;

2. the Bottom Fund is an investment fund that complies with the investment restrictions contained in NI 81-102 and the Underlying Assets are managed in accordance with these restrictions, except as otherwise permitted by NI 81-104 and in accordance with any exemptions therefrom obtained by the Top Fund including that the Bottom Fund may engage in short selling in accordance with the terms of this decision;

3. the direct and indirect investment by the Top Fund in securities of the Bottom Fund is in accordance with the fundamental investment objectives of the Top Fund;

4. the prospectus of the Top Fund discloses, and any annual information form filed will disclose, that the Top Fund will directly and indirectly invest in securities of the Bottom Fund and the risks associated with such an investment;

5. the Bottom Fund is a reporting issuer subject to National Instrument 81-106 – *Investment Fund Continuous Disclosure*;

6. no securities of the Bottom Fund are distributed in Canada other than to the Top Fund or the Counterparty under the Forward Agreement or otherwise to a counterparty under a forward agreement;

7. each short sale made by the Bottom Fund will comply with its investment objectives;

8. the Top Fund disclosed in its prospectus and the Bottom Fund disclosed in its prospectus the following information:

   (a) a description of short selling, how the Bottom Fund engages in short selling, the risks associated with short selling and, in the investment strategies section, the Bottom Fund's strategy with respect to short selling;

   (b) that there are written policies and procedures in place that set out the objectives and goals for short selling and the risk management procedures applicable to short selling;

   (c) who is responsible for setting and reviewing the policies and procedures referred to in the preceding paragraph, how often the policies and procedures are reviewed, and the extent and nature of the involvement of the GLG Manager or other applicable parties in the risk management process;

   (d) the trading limits and controls on short selling and who is responsible for authorizing the trading and placing limits or other controls on the trading;

   (e) whether there are individuals or groups that monitor the risks independent of those who trade; and

   (f) whether risk measurement procedures or simulations are used to test the Portfolio under stress conditions;

9. the Bottom Fund and the GLG Manager will implement the following controls when conducting short sales of securities:

   (a) securities will be sold short for cash, with the Bottom Fund assuming the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;

   (b) the short sales will be effected through market facilities through which the securities sold short would normally be bought and sold;

   (c) the Bottom Fund will receive cash for securities sold short within normal trading settlement periods for the market in which the short sale is effected;

   (d) the securities sold short will be liquid securities that satisfy either (i) or (ii) below:

      i. the securities are listed and posted for trading on a stock exchange; and

         A. the issuer of the security has a market capitalization of not less than CDN$300 million, or the equivalent thereof at the time the short sale is effected; or

         B. the Bottom Fund's portfolio advisor has prearranged to borrow the securities for the purpose of such sale; or

      ii. the securities are fixed-income securities, bonds, debentures or other evidences of indebtedness of, or guaranteed by, any issuer;

10. the securities sold short will not include any of the following:

   (a) a security that a mutual fund subject to NI 81-102 is otherwise not permitted by securities legislation to purchase at the time of the short sale transaction;

   (b) an illiquid asset;

   (c) a security of an investment fund other than an index participation unit;

11. the aggregate market value of all securities sold short by the Bottom Fund does not exceed 40% of the NAV of the Bottom Fund on a daily marked-to-market basis;

12. the aggregate market value of all securities of a particular issuer sold short by the Bottom Fund, whether direct short positions or indirect short positions through specified derivatives, does not exceed 10% of the NAV of the Bottom Fund on a daily marked-to-market basis;

13. the Bottom Fund will deposit its assets with the Borrowing Agent as security in connection with the short sale transaction;

14. except where the Borrowing Agent is the Bottom Fund's custodian or sub-custodian, when the Bottom Fund deposits portfolio assets with a Borrowing Agent as security in connection with a short sale of securities, the market value of portfolio assets deposited with the Borrowing Agent does not, when aggregated with the market value of portfolio assets already held by the Borrowing Agent as security for outstanding short sales of securities by the Bottom Fund, exceed 10% of the NAV of the Bottom Fund at the time of deposit;

15. the Bottom Fund holds cash cover (as defined in NI 81-102) in an amount, including the Bottom Fund's assets deposited with Borrowing Agents as security in connection with short sale transaction, that is at least 150% of the aggregate market value of all securities sold short by the Bottom Fund on a daily marked-to-market basis;

16. the Bottom Fund will not use the cash from a short sale to enter into a long position in a security, other than a security that qualifies as cash cover;

17. the Bottom Fund will not deposit portfolio assets as security in connection with a short sale of securities with a dealer in Canada unless the dealer is registered dealer in Canada and is a member of Investment Industry Regulatory Organization of Canada (or IIROC);

18. the Bottom Fund will not deposit portfolio assets as security in connection with a short sale of securities with a dealer outside of Canada unless that dealer:

    (a) is a member of a stock exchange and is subject to a regulatory audit; and

    (b) has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of $50 million;

19. the security interest provided by the Bottom Fund over any of its assets that is required to enable the Bottom Fund to effect short sale transaction will be made in accordance with industry practice for that type of transaction and relate only to obligations arising under such short sale transactions;

20. the Bottom Fund and the GLG Manager will maintain appropriate internal controls regarding its short sales prior to conducting any short sales, including written policies and procedures, risk management controls and proper books and records;

21. the Bottom Fund and the GLG Manager will keep proper books and records of short sales and all of its assets deposited with Borrowing Agents as security; and

22. the Top Fund uses the NAV per Unit determined on the next Weekly Valuation Date after receipt by the Top Fund of a purchase order two business days before to calculate the issue price of Units.

"Vera Nunes"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.7 BMO Nesbitt Burns Inc. et al.

Headnote

NP 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from requirement in section 2.1 of NI 81-101 and Item 5(b) of Form 81-101F1, Item 2 of Form 81-101F3, to permit existing funds to preserve their respective start dates once continued as mutual fund trust following the mergers – Exemption from Item 4 of Form 81-101F3, to permit continuing funds to use information of existing funds for the average return and year-by-year return in the fund facts – Exemption from sections 15.3(2), 15.8(a)(i), 15.6(b), 15.6(d), 15.8(2)(a), 15.8(3)(a) and 15.9(2)(d) of NI 81-102 to permit the continuing funds to use the performance data of the existing funds in sales communications and reports to securityholders – Exemption from section 4.4 of NI 81-106 and Items 3.1(1), 3.1(7), 3.1(8), 4.1(1), 4.1(2), 4.2(2) and 4.3(1)(a) of Part B of Form 81-106F1 and Item 3(1) and 4 of Part C of Form 81-106F1 to permit the continuing funds to include in their annual and interim management reports of fund performance the financial highlights' and past performance of the existing funds – continuing funds granted relief from seed capital requirements in section 3.1 of NI 81-102.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, s. 6.1.
National Instrument 81-102 Mutual Funds, s. 19.1.
National Instrument 81-106 Investment Fund Continuous Disclosure, s. 17.1.

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
BMO NESBITT BURNS INC.,
BMO INVESTMENTS INC.
(collectively, the Filers)

AND

BMO NESBITT BURNS CANADIAN STOCK SELECTION FUND,
BMO NESBITT BURNS INTERNATIONAL EQUITY FUND,
BMO CANADIAN STOCK SELECTION FUND,
BMO INTERNATIONAL VALUE FUND
(collectively, the Funds)

DECISION

BACKGROUND

1. The principal regulator in the Jurisdiction (the **Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**):

   (a) for an exemption from

      (i) section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) for the purposes of the exemption sought from Form 81-101F1 – *Contents of Simplified Prospectus* (**Form 81-101F1**) and for the purposes of the exemption sought from Form 81-101F3 – *Contents of Fund Facts Document* (**Form 81-101F3**);

(ii) sections 15.3(2), 15.6(a)(i), 15.6(b), 15.6(d), 15.8(2)(a), 15.8(3)(a) and 15.9(2)(d) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) to permit the BMO Canadian Stock Selection Fund and BMO International Value Fund (collectively, the **Continuing Funds**) to use performance data of the BMO Nesbitt Burns Canadian Stock Selection Fund and BMO Nesbitt Burns International Equity Fund (collectively, the **Existing Funds**) in sales communications and other communications to securityholders (collectively, the **Fund Communications**);

(iii) item 5(b) of Part B of Form 81-101F1 to permit the Continuing Funds to disclose the Start Dates of the Existing Funds as their respective Start Dates in the simplified prospectus;

(iv) item 2 of Part 1 of Form 81-101F3 to permit the Continuing Funds to disclose the Date Fund Created dates of the respective Existing Funds as their Date Fund Created dates in the fund facts documents;

(v) item 4 of Part 1 of Form 81-101F3 to permit the Continuing Funds to use performance data of the respective Existing Funds in the Average Return and Year-by-Year Returns in the fund facts documents; and

(vi) item 13.2 of Part B of Form 81-101F1 to permit the Continuing Funds to use performance data of the respective Existing Funds in the Fund Expenses Indirectly Borne by Investors in the simplified prospectus,

(collectively, the **Past Performance Relief**), and,

(b) section 3.1 of NI 81-102 (the **Seed Capital Relief** and together with the Past Performance Relief, the **Requested Relief**) to permit the filing of a simplified prospectus for the Continuing Funds notwithstanding that the initial investment required in respect of each Continuing Fund under section 3.1 of NI 81-102 will not be provided.

2. 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 section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in each of the other provinces and territories of Canada.

II. INTERPRETATION

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

III. REPRESENTATIONS

The Filers and the Funds

1. The head office of each of the Filers is located in Toronto, Ontario.

2. The Filers are not in default of securities legislation in any jurisdiction in Canada.

3. The Filers are each corporations governed under the laws of Canada, and are registered as investment fund managers in Ontario, Quebec and Newfoundland and Labrador. The Filers are both indirect wholly-owned subsidiaries of Bank of Montreal.

4. BMO Nesbitt Burns Inc. (**BMONB**) is the manager of certain mutual funds known as the “BMO Nesbitt Burns Group of Funds”, which include the Existing Funds. Units of the Existing Funds are currently qualified for sale in each of the provinces and territories of Canada pursuant to a simplified prospectus dated October 23, 2012 as amended by amendment no. 1 dated August 30, 2013 and amendment no. 2 dated September 27, 2013, and an annual information form dated October 23, 2012, as amended by amendment no. 1 dated August 30, 2013 and amendment no. 2 dated September 27, 2013. On October 17, 2013, BMONB was granted an exemption which extended the time limits pertaining to filing the renewal prospectus for the Existing Funds to December 17, 2013.

5. BMO Investments Inc. (**BMOII**) is the manager of certain mutual funds known as the “BMO Mutual Funds” and will be manager and trustee of the Continuing Funds.

6. The Filers have proposed to merge the Existing Funds with the Continuing Funds (the **Mergers**) on or about December 13, 2013 (the **Merger Date**).

7. The Continuing Funds are being created for purposes of implementing the Mergers, and therefore will have investment objectives and investment strategies that are substantially similar in all material respects to the investment objectives and investment strategies of the corresponding Existing Funds.

8. The Continuing Funds are being created for purposes of implementing the Mergers, and therefore:

   (a) the unitholders of Existing Funds will have rights as unitholders of the Continuing Funds that are substantially similar in all material respects to the rights they had as unitholders of the Existing Funds;

   (b) the unitholders of the Existing Funds will hold units of the equivalent series of the relevant Continuing Funds with the same aggregate net asset value as they held before as unitholders of the relevant Existing Fund;

   (c) the Continuing Funds will have investment objectives and investment strategies that are substantially similar in all material respects to the investment objectives and investment strategies of the corresponding Existing Funds; and

   (d) the Continuing Funds will have fee structures and valuation procedures that are identical to the fee structures and valuation procedures of the corresponding Existing Funds.

9. As a result, notwithstanding the Mergers, the Continuing Funds will be managed in a manner which is substantially similar in all material respects to the manner in which the Existing Funds have been managed.

10. The assets of the Existing Funds will be transferred to the Continuing Funds in connection with the implementation of the Mergers.

11. The Independent Review Committee of each of the Existing Funds approved the Mergers on August 19, 2013. The Mergers are expected to occur after the close of business on or about the Merger Date. Purchases of, and switches into, units of each of the Existing Funds will be suspended at the close of business on the fifth business day prior to the Merger Date.

12. BMOII filed a preliminary simplified prospectus and preliminary annual information form and preliminary fund facts documents on October 11, 2013, with respect to the Continuing Funds. BMOII anticipates filing a final simplified prospectus and final annual information form and final fund facts documents on or about December 12, 2013, with respect to the Continuing Funds.

13. The Existing Funds are, and the Continuing Funds will be, reporting issuers under the applicable securities legislation of each province and territory of Canada. The Existing Funds have been reporting issuers for at least 12 months.

14. The Existing Funds have operated, and the Continuing Funds will operate in accordance with NI 81-102, except for any exemptive relief that has been previously obtained.

15. Subject to receipt of the Seed Capital Relief, the Continuing Funds will not have any assets (other than a nominal amount to establish each Continuing Fund) or liabilities at the time of the Mergers.

16. BMOII will not begin distribution of units of the Continuing Funds prior to the Mergers.

17. Information regarding net assets (as of September 30, 2013), series offered and Start Dates for the Existing Funds are as follows:

Fund Name	Net Asset Value	Series currently offered by the Existing Funds	Date first offered for sale	Equivalent series to be offered by the Continuing Funds
BMO Nesbitt Burns Canadian Stock Selection Fund	$234 million*	Class A units	January 22, 1997	Series NBA units
		Class F units	October 31, 2008	Series NBF units
		Class I units	October 31, 2008	Series I units
BMO Nesbitt Burns International Equity Fund	$20 million*	Class A units	October 31, 2008	Series NBA units
		Class F units	October 31, 2008	Series NBF units

*As at September 30, 2013

18. As BMONB intends to cease distribution of units of the Existing Funds at the close of business on December 9, 2013, it does not intend to renew the Continuing Funds' simplified prospectus and annual information form under subsection 62(2) of the Securities Act (Ontario).

Seed Capital

19. BMOII does not intend to subscribe for $150,000 of shares of each of the Continuing Funds as required by the seed capital requirement because the assets of the Existing Funds (which will become the assets of the Continuing Funds in connection with the implementation of the Mergers) are significantly in excess of the $150,000 seed capital requirement. Accordingly, the Filers are of the view that any seed capital injected into the Continuing Funds prior to the Mergers will not provide any additional benefit to unitholders.

20. On the Merger Date, unitholders of the Continuing Funds will hold units of the equivalent series of the relevant Continuing Fund with the same aggregate net asset value as they did before as unitholders of the relevant Existing Fund, and therefore, each Continuing Fund will have already received subscriptions aggregating not less than $500,000.

Past Performance

21. The Continuing Funds will be new funds. However, while the Continuing Funds will each have the same assets and liabilities as the corresponding Existing Funds, as new funds, they will not have their own performance data or information derived from financial statements (collectively, the **Financial Data**) as at the Merger Date.

22. The Financial Data of the Existing Funds is significant information which can assist investors in determining whether to purchase units of the Continuing Funds. In the absence of the relief requested herein, investors will have no financial information (such as past performance) on which to base such an investment decision.

23. The Filers propose to include the performance data of each of the Existing Funds in the corresponding Continuing Funds' Fund Communications and fund facts.

24. The Filers propose to incorporate by reference the following financial statements and management reports of fund performance of each Existing Fund in the simplified prospectus for the Continuing Funds (the **Existing Fund Disclosure**):

    (a) the annual financial statements and management report of fund performance of each of the Existing Funds, for the year ended December 31, 2012; and

    (b) the interim financial statements and management report of fund performance of each of the Existing Funds, for the period ended June 30, 2013,

    until such Existing Fund Disclosure is superseded by more current financial statements and management reports of fund performance of each Continuing Fund.

25. The Filers propose to state that the start date in the "Fund Details" table in Part B of the simplified prospectus for each of the Continuing Funds is based upon the start date of the corresponding Existing Fund.

26. The Filers propose to state under the subheading "Date Fund Created" under the heading "Quick Facts" in the fund facts for each of the Continuing Funds, that each series of such Continuing Fund was created on the date such series of the corresponding Existing Fund was created.

27. The Filers propose to use information of the Existing Funds for purposes of calculating the information required under the subheading "Fund Expenses Indirectly Borne by Investors" in Part B of the Continuing Funds' simplified prospectus for each of the Continuing Funds.

28. Each Continuing Fund will be indistinguishable from its corresponding Existing Fund since the investment objectives, investment strategies and management fees attached to each continuing series of each Continuing Fund will be substantially similar in all material respects as the corresponding Existing Fund.

29. The Filers are seeking to make the Mergers as seamless as possible for investors of the Existing Funds. Accordingly, the Filers submit that treating each Continuing Fund as a continuation of the Existing Fund for purposes of the Start Date and Financial Data would be beneficial to investors and that to do otherwise would cause unnecessary confusion among investors concerning the difference between the Existing Funds and the Continuing Funds.

30. The Filers submit that investors will not be misled if the Start Date and Financial Data of each Continuing Fund reflect the actual Start Date and Financial Data of the corresponding Existing Fund.

31. The Filers have filed a separate application for exemptive relief from certain provisions of NI 81-106 *Investment Fund Continuous Disclosure* to enable the Continuing Funds to (i) prepare annual and interim management reports of fund performance using the Existing Funds' historical financial data and (ii) prepare annual and interim financial statements using the Existing Funds' historical financial data (**NI 81-106 Relief**).

IV. 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 Seed Capital Relief is granted.

The decision of the Decision Maker under the Legislation is that the Past Performance Relief is granted provided that in respect of the Past Performance Relief:

(a) the Continuing Funds' Fund Communications include the applicable performance data of the Existing Funds prepared in accordance with Part 15 of NI 81-102;

(b) the Continuing Funds' simplified prospectus:

  (i) incorporates by reference the Existing Fund Disclosure, until such Existing Fund Disclosure is superseded by more current financial statements and management reports of fund performance of the Continuing Funds;

  (ii) states that the Start Date for each series of the Continuing Funds is the Start Date of the corresponding series of the Existing Funds; and

  (iii) discloses the Mergers where the Start Date for each series of the Continuing Funds is stated;

(c) the fund facts document of each series of the Continuing Funds:

  (i) states that the Date Fund Created date for each series of the Continuing Funds is the Date Fund Created date of the corresponding series of the Existing Funds;

  (ii) includes the performance data of the Existing Funds prepared in accordance with Part 15 of NI 81-102, including section 15.9(1) of NI 81-102; and

  (iii) discloses the Mergers where the Date Fund Created date of each series of the Continuing Fund is stated; and

(d) the Continuing Funds prepare their respective management reports of fund performance in accordance with the NI 81-106 Relief.

"Vera Nunes"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.8 BMO Nesbitt Burns Inc. et al.

Headnote

NP 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from requirement in section 2.1 of NI 81-101 and Item 5(b) of Form 81-101F1, Item 2 of Form 81-101F3, to permit existing funds to preserve their respective start dates once continued as mutual fund trust following the mergers – Exemption from Item 4 of Form 81-101F3, to permit continuing funds to use information of existing funds for the average return and year-by-year return in the fund facts – Exemption from sections 15.3(2), 15.8(a)(i), 15.6(b), 15.6(d), 15.8(2)(a), 15.8(3)(a) and 15.9(2)(d) of NI 81-102 to permit the continuing funds to use the performance data of the existing funds in sales communications and reports to securityholders – Exemption from section 4.4 of NI 81-106 and Items 3.1(1), 3.1(7), 3.1(8), 4.1(1), 4.1(2), 4.2(2) and 4.3(1)(a) of Part B of Form 81-106F1 and Item 3(1) and 4 of Part C of Form 81-106F1 to permit the continuing funds to include in their annual and interim management reports of fund performance the financial highlights' and past performance of the existing funds – continuing funds granted relief from seed capital requirements in section 3.1 of NI 81-102.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, s. 6.1.
National Instrument 81-102 Mutual Funds, s. 19.1.
National Instrument 81-106 Investment Fund Continuous Disclosure, s. 17.1.

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
BMO NESBITT BURNS INC.,
BMO INVESTMENTS INC.
(collectively, the Filers)

AND

BMO NESBITT BURNS CANADIAN STOCK SELECTION FUND,
BMO NESBITT BURNS INTERNATIONAL EQUITY FUND,
BMO CANADIAN STOCK SELECTION FUND,
BMO INTERNATIONAL VALUE FUND
(collectively, the Funds)

DECISION

BACKGROUND

The principal regulator in the Jurisdiction (the **Decision Maker**) has received an application from the Filers on behalf of the Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) granting an exemption from the following provisions of the Legislation to enable BMO Canadian Stock Selection Fund and BMO International Value Fund (collectively, the **Continuing Funds**) to include in their annual and interim management reports of fund performance the performance data and information derived from the financial statements (collectively, the **Financial Data**) of BMO Nesbitt Burns Canadian Stock Selection Fund and BMO Nesbitt Burns International Equity Fund (collectively, the **Existing Funds**) that will be presented in the Existing Funds' annual management reports of fund performance:

(a) Section 4.4 of National Instrument 81-106 – *Investment Fund Continuous Disclosure* (**NI 81-106**) for the relief requested from Form 81-106F1 – *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**) for the Continuing Funds;

(b) Items 3.1(1), 3.1(7), 3.1(8), 4.1(1) in respect of the requirement to comply with subsections 15.3(2) and 15.9(2)(d) of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**), 4.1(2), 4.2(1), 4.2(2) and 4.3(1)(a) of Part B of Form 81-106F1; and

(c) Items 3(1) and 4 of Part C of Form 81-106F1 for the Continuing Funds;

(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 Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in each of the other provinces and territories of Canada.

II. INTERPRETATION

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

III. REPRESENTATIONS

The Filers and the Funds

1. The head office of each of the Filers is located in Toronto, Ontario.

2. The Filers are not in default of securities legislation in any jurisdiction in Canada.

3. The Filers are each corporations governed under the laws of Canada, and are registered as investment fund managers in Ontario, Quebec and Newfoundland and Labrador. The Filers are both indirect wholly-owned subsidiaries of Bank of Montreal.

4. BMO Nesbitt Burns Inc. (**BMONB**) is the manager of certain mutual funds known as the "BMO Nesbitt Burns Group of Funds", which include the Existing Funds. Units of the Existing Funds are currently qualified for sale in each of the provinces and territories of Canada pursuant to a simplified prospectus dated October 23, 2012 as amended by amendment no. 1 dated August 30, 2013 and amendment no. 2 dated September 27, 2013, and an annual information form dated October 23, 2012, as amended by amendment no. 1 dated August 30, 2013 and amendment no. 2 dated September 27, 2013. On October 17, 2013, BMONB was granted an exemption which extended the time limits pertaining to filing the renewal prospectus for the Existing Funds to December 17, 2013.

5. BMO Investments Inc. (**BMOII**) is the manager of certain mutual funds known as the "BMO Mutual Funds" and will be manager and trustee of the Continuing Funds.

6. BMOII filed a preliminary simplified prospectus and preliminary annual information form and preliminary fund facts documents on October 11, 2013, with respect to the Continuing Funds.

7. The Existing Funds are, and the Continuing Funds will be, reporting issuers under the applicable securities legislation of each province and territory of Canada. The Existing Funds have been reporting issuers for at least 12 months.

8. The Existing Funds have operated, and the Continuing Funds will operate in accordance with NI 81-102, except for any exemptive relief that has been previously obtained.

The Mergers

9. The Filers have proposed to merge the Existing Funds with the Continuing Funds (the **Mergers**) on or about December 13, 2013 (the **Merger Date**).

10. The Continuing Funds are being created for purposes of implementing the Mergers, and therefore:

(a) the unitholders of Existing Funds will have rights as unitholders of the Continuing Funds that are substantially similar in all material respects to the rights they had as unitholders of the Existing Funds;

(b) the unitholders of the Existing Funds will hold units of the equivalent series of the relevant Continuing Funds with the same aggregate net asset value as they held before as unitholders of the relevant Existing Fund;

(c) the Continuing Funds will have investment objectives and investment strategies that are substantially similar in all material respects to the investment objectives and investment strategies of the corresponding Existing Funds; and

(d) the Continuing Funds will have fee structures and valuation procedures that are identical to the fee structures and valuation procedures of the corresponding Existing Funds.

11. As a result, notwithstanding the Mergers, the Continuing Funds will be managed in a manner which is substantially similar in all material respects to the manner in which the Existing Funds have been managed.

12. The assets of the Existing Funds will be transferred to the Continuing Funds in connection with the implementation of the Mergers.

13. The Financial Data of the Existing Funds is significant information which can assist investors in determining whether to purchase units of the Continuing Funds. In the absence of the relief requested herein, investors will have no financial information (such as past performance) on which to base such an investment decision.

14. The Continuing Funds will be new funds. However, while the Continuing Funds will each have the same assets and liabilities as the corresponding Existing Funds, as new funds, they will not have their own Financial Data as at the Merger Date. In order for the Mergers to be as seamless as possible for unitholders of the Existing Funds, the Filers propose that:

(a) the Continuing Funds will prepare annual management reports of fund performance commencing with the year ended December 31, 2013 and interim management reports of fund performance commencing with the six-month period ended June 30, 2014 using the relevant Existing Funds' historical financial data;

(b) the Continuing Funds will prepare comparative annual financial statements commencing with the year ended December 31, 2013 and interim financial statements commencing with the six-month period ended June 30, 2014 under sections 2.1 and 2.3, respectively, of NI 81-106 using the Existing Funds' historical financial data.

15. Each Continuing Fund will be indistinguishable from its corresponding Existing Fund since the investment objectives, investment strategies and management fees attached to each continuing series of each Continuing Fund will be the same as the corresponding Existing Fund.

16. The Filers are seeking to make the Mergers as seamless as possible for investors of the Existing Funds. Accordingly, the Filers submit that treating each Continuing Fund as fungible with its corresponding Existing Fund for purposes of the Financial Data would be beneficial to investors and that to do otherwise would cause unnecessary confusion among investors concerning the difference between the Existing Funds and the Continuing Funds.

17. The Filers submit that investors will not be misled if the Financial Data of each Continuing Fund reflect the Financial Data of the corresponding Existing Fund.

18. The Filers have filed a separate application for exemptive relief from certain provisions of (a) NI 81-102 to permit the Continuing Funds to use performance data of the Existing Funds in sales communications and other communications to securityholders (the **Fund Communications**) and (b) National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and Form 81-101F1 *Contents of Simplified Prospectus* and Form 81-101F3 *Contents of Fund Facts Document* to permit the Continuing Funds to disclose the start dates of the Existing Funds as their respective start dates (**NI 81-102 and NI 81-101 Relief**).

IV. 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 Decision Maker under the Legislation is that the Requested Relief is granted provided that:

(a) the management reports of fund performance for each Continuing Fund include the Financial Data of the Existing Funds, pertaining to the corresponding series of the Existing Funds, and disclose the Mergers for the relevant time periods; and

(b) the Continuing Funds prepare their simplified prospectus, fund facts and other Fund Communications in accordance with the NI 81-102 and NI 81-101 Relief.

"Vera Nunes"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.9 BMO Investments Inc. et al.

Headnote

National Policy 11-203 Process for Exemption Relief Applications in Multiple Jurisdictions – Relief from section 4.1 of NI 81-102 for dealer-managed mutual funds to invest in distributions of debt securities for which dealer-manager acts as underwriter during distribution period or 60 day period following distribution – debt securities will not have "designated rating" by "designated rating organization" as required by subsection 4.1(4) – limited supply of new debt offerings have designated ratings, and trend is expected to continue – dominant position of related dealers in debt underwriting limits funds' ability to acquire debt securities for the funds – all purchases must be consistent with fund investment objectives and subject to approval of independent review committee – debt offerings must have at least one underwriter in addition to related dealer, at least one arm's length purchaser purchasing at least 5% of the offerings – related funds can collectively purchase no more than 20% of offering and must pay no more than lowest price paid by arm's length purchaser(s) – funds must not be money market fund funds and cannot purchase asset backed commercial paper pursuant to relief – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 4.1, 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
BMO INVESTMENTS INC.,
BMO HARRIS INVESTMENT MANAGEMENT INC. AND
BMO ASSET MANAGEMENT INC.
(collectively, the Filers)

AND

IN THE MATTER OF
THE FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers on behalf of the existing mutual funds subject to National Instrument 81-102 *Mutual Funds* (**NI 81-102**) for which the Filers currently act as manager or the portfolio adviser or both, and any future mutual funds that are subject to NI 81-102 and for which a Filer, or an affiliate of a Filer, acts as manager or the portfolio adviser or both (each a **Fund**, and collectively, the **Funds**), for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for relief (the **Exemption Sought**) from the prohibition in section 4.1(1) of NI 81-102 (the **Prohibition**) to permit the investment by the Funds in debt securities of an issuer during the period of the distribution (the **Distribution**) or during the period of 60 days after the Distribution (the **60-Day Period**), notwithstanding that any Filer, or an associate or affiliate of a Filer, acts or has acted as an underwriter in the Distribution and notwithstanding that the debt securities do not have a designated rating by a designated rating organization as contemplated by section 4.1(4)(b) of NI 81-102.

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

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

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

Interpretation

Terms defined in MI 11-102, National Instrument 14-101 *Definitions*, NI 81-102 and National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) have the same meaning if used in this decision, unless otherwise defined. For greater certainty, the term "designated rating", as used in section 4.1(4)(b) of NI 81-102, has the meaning given to such term in National Instrument 44-101 *Short Form Prospectus Distributions*.

Representations

This decision is based on the following facts represented by the Filers in respect of the Filers and the Funds:

1. BMO Investments Inc. (**BMOII**) is the manager of a group of the Funds collectively known as the BMO Mutual Funds. BMO Harris Investment Management Inc. (**BHIMI**) is the manager of a group of the Funds collectively known as the BMO Harris Private Portfolios. BMO Asset Management Inc. (**BMOAM**) is the manager of a group of the Funds collectively known as the BMO Exchange Traded Funds.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Ontario or another jurisdiction of Canada.

3. The securities of each Fund are, or will be, qualified for distribution in one or more of the jurisdictions of Canada pursuant to a simplified prospectus.

4. None of the Funds are, or will be, a "money market fund" as that term is defined in NI 81-102.

5. Each of the Funds has, or will have, an independent review committee (**IRC**) appointed in accordance with NI 81-107.

6. A Filer, or an affiliate of a Filer, is, or will be, the manager of the Funds. A Filer, or any affiliate of a Filer, is, or will be, the portfolio adviser of the Funds.

7. None of the Filers or the existing Funds are in default of securities legislation in any jurisdiction of Canada.

8. Each of the Filers is an indirect wholly-owned subsidiary of the Bank of Montreal (**BMO**).

9. Each of the Filers is currently an affiliate of BMO Nesbitt Burns Inc. as well as certain other dealers, including BMO Capital Markets Corp. and BMO Capital Markets GKST Inc.. Each Filer, or an affiliate of each Filer, may become an associate or affiliate of additional dealers in the future (each a **Related Dealer** and collectively, the **Related Dealers**), any of which may act as underwriter in a Distribution.

10. Each of BHIMI and BMOAM is, or may be, a "dealer manager" in respect of the Funds within the meaning of NI 81-102 (each a **Dealer Manager**). An affiliate of a Filer is also, or may also be, a Dealer Manager in respect of the Funds. Accordingly, the Funds are, or will be, "dealer managed funds" within the meaning of NI 81-102.

11. As portfolio advisers to a Fund, BHIMI and BMOAM, or any affiliate of a Filer that acts as the portfolio adviser to a Fund and is a Dealer Manager, may wish to cause a Fund to invest in debt securities that do not have a "designated rating" by a "designated rating organization" as such terms are defined in NI 81-102, and where a Related Dealer is underwriting the offering of such debt securities.

12. The Funds require the Exemption Sought from the Prohibition because:

    (a) there is a limited supply of debt securities issued by issuers other than the federal or provincial government (**Non-Government Debt Securities**);

    (b) frequently, the only source of new issues of Non-Government Debt Securities will be offerings that are, in whole or in part, underwritten by a Related Dealer; and

    (c) frequently, Non-Government Debt Securities that the Filers which to purchase for the Funds may not have a "designated rating" by a "designated rating organization".

13. The Filers consider that a Fund may be prejudiced if it cannot purchase, during a Distribution or in the 60-Day Period, Non-Government Debt Securities that are consistent with a Fund's investment objective. Forgoing participation in these investment opportunities may be a significant opportunity cost for the relevant Fund(s), as they would be denied timely access to these securities purely as a result of the coincidental participation of a Related Dealer in the transaction and the lack of a designated rating of the securities distributed.

14. The Filers, and any affiliate of a Filer that is a Dealer Manager, operates or will operate, independently from the Related Dealers with regard to their respective investment decisions and this is reflected in the policies and procedures approved by the IRCs of the Funds. Information and influence barriers ensure that a Fund has no involvement in a Related Dealer's function as an underwriter. Further, any purchase of Non-Government Debt Securities by a Fund will be consistent with the investment objectives of the Fund and represent the business judgment of the Fund's portfolio adviser uninfluenced by considerations other than the best interests of the Fund.

15. Any purchase of Non-Government Debt Securities by a Fund during the relevant Prohibition Period will only be made with the prior approval of the IRC in accordance with section 5.2(2) of NI 81-107.

16. None of the Funds will be required or obligated to purchase any Non-Government Debt Securities during the Prohibition Period.

17. The Funds would not be restricted by the Prohibition if, in accordance with section 4.1(4) of NI 81-102, certain conditions are met, including: (i) the IRC of the Funds has approved the transaction in accordance with section 5.2(2) of NI 81-107; (ii) for equity securities, a prospectus is filed with one or more securities regulatory authorities or regulators in Canada in connection with the relevant offering, and during the 60-Day Period, the investment is made on an exchange on which the class of equity securities is listed and traded; and (iii) for debt securities, the securities have been given and continue to have a designated rating by a designated rating organization.

18. The Filers are not able to rely on section 4.1(4) of NI 81-102 to invest the Funds in debt securities if the securities in the offering do not have a designated rating by a designated rating organization as required by section 4.1(4)(b) of NI 81-102.

19. The details of a Distribution and a Related Dealer's involvement as an underwriter in such Distribution will not be known to a Filer sufficiently long enough in advance to make an application for relief on a case-by-case basis.

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 from the Prohibition is granted in respect of purchases of Non-Government Debt Securities by each Fund, provided that:

(a) at the time of each purchase, the purchase is consistent with or is necessary to meet the investment objective of the Fund, and represents the business judgment of the portfolio adviser of the Fund uninfluenced by considerations other than the best interests of the Fund or in fact is in the best interests of the Fund;

(b) the manager of the Fund complies with section 5.1 of NI 81-107, and the manager and IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the investment in the securities;

(c) at the time of the purchase, the IRC of the Fund has approved the transaction in accordance with section 5.2(2) of NI 81-107;

(d) if the Non-Government Debt Securities are acquired during the Distribution,

(i) at least one underwriter acting as underwriter in the Distribution is not a Related Dealer,

(ii) at least one purchaser who is independent and arm's length to the Fund(s) and the Related Dealers must purchase at least 5% of the securities distributed under the Distribution,

(iii) the price paid for the securities by a Fund in the Distribution shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Distribution, and

(iv) a Fund and any related Funds for which a Filer or its associate or affiliate acts as manager and/or portfolio adviser can collectively acquire no more than 20% of the securities distributed under the Distribution in which a Related Dealer acts as underwriter;

(e) if the Non-Government Debt Securities are acquired during the 60-Day Period,

(i) the ask price of the securities is readily available as provided in Commentary 7 to section 6.1 of NI 81-107,

(ii) the price paid for the securities by a Fund is not higher than the available ask price of the security, and

(iii) the purchase is subject to market integrity requirements as defined in NI 81-107;

(f) the Non-Government Debt Securities acquired by the Funds pursuant to the Exemption Sought cannot be asset backed commercial paper; and

(g) no later than the time a Fund files its annual financial statements, the manager of the Fund will file the particulars of each investment made by the Fund pursuant to the Exemption Sought during its most recently completed financial year.

"Vera Nunes"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.10 Sun Life Global Investments (Canada) Inc. and Sun Life Schroder Emerging Markets Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from s. 2.5 of NI 81-102 - relief sought for mutual fund to invest in underlying mutual fund that is not distributed by prospectus in Canada – underlying fund is EU qualified SICAV managed by affiliate of fund's portfolio sub adviser– underlying fund's portfolio and strategies relatively unique in Canada – top fund's investment will be *de minimis* – rules governing investments by SICAVs substantially similar to NI 81-102 – top fund to divest holdings if SICAV rules materially change.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.5(2)(a) and (c), 19.1.

January 2, 2014

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
SUN LIFE GLOBAL INVESTMENTS (CANADA) INC.
(the Filer)

AND

IN THE MATTER OF
SUN LIFE SCHRODER EMERGING MARKETS FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Fund from sections 2.5(2)(a) and 2.5(2)(c) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) to permit the Fund to invest in securities of Schroder International Selection Fund Frontier Markets Equity (the **Underlying Fund**) (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 the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

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

2. The Filer is registered as: (i) an investment fund manager in Ontario, Quebec and Newfoundland and Labrador; (ii) a portfolio manager in Ontario; (iii) a mutual fund dealer in each of the Jurisdictions; and (iv) a commodity trading manager in Ontario.

3. The Filer acts as manager and portfolio manager of the Fund.

4. Neither the Filer nor the Fund are in default of securities legislation in any of the Jurisdictions.

5. The Fund is an open-end mutual fund trust established under the laws of the province of Ontario.

6. The Fund is a reporting issuer in each of the provinces and territories in Canada and is subject to NI 81-102.

7. The securities of the Fund are currently qualified for distribution pursuant to a simplified prospectus, annual information form and Fund Facts dated August 29, 2013, that were prepared and filed in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**).

8. The investment objective of the Fund is to seek capital appreciation by investing primarily in equity securities of companies with a connection to emerging markets.

9. Schroder Investment Management North America Inc. is the sub-adviser of the Fund (the **Sub-Adviser**).

10. To achieve the Fund's investment objectives, the Filer has determined that it would be in the best interests of the Fund if the Fund has the ability to invest up to 10% of its net asset value in securities of the Underlying Fund, which is a sub-fund of Schroder International Selection Fund (**SISF**).

11. SISF is an open-ended investment company that qualifies as a Société d'Investissment à Capital Variable (SICAV) governed by the laws of Luxembourg. SISF complies with EU Council Directive 2009/65/EC of 13 July 2009 on the Coordination of Laws, Regulations and Administrative Provisions relating to *Undertakings for Collective Investment in Transferable Securities* (**UCITS**), as amended (the **EU Directives**).

12. Securities of the Underlying Fund are distributed in certain European countries pursuant to the EU Directives. The Underlying Fund has issued a prospectus which contains disclosure pertaining to the Underlying Fund and SISF.

13. The management company and investment manager of the Underlying Fund are Schroder Investment Management (Luxembourg) S.A. and Schroder Investment Management Limited, respectively, both of which are affiliates of the Sub-Adviser. The investment objective of the Underlying Fund is to provide capital growth primarily through investment in equity and equity related securities of "frontier markets" companies. Frontier markets are countries included in the MSCI Frontier Markets Index or any other recognized frontier markets financial index and are considered a subset of emerging market countries.

14. The Underlying Fund is subject to investment restrictions and practices under the laws of the European Union that are applicable to mutual funds that are sold to the general public and that are consistent with similar restrictions and practices applicable to mutual funds under NI 81-102. The Underlying Fund is not generally considered to be a hedge fund and it is not an "index mutual fund" as that term is defined in NI 81-102.

15. The Underlying Fund does not invest more than 10% of its net asset value in other investment funds.

16. Section 2.5(2) of NI 81-102 would permit the Fund to invest in the Underlying Fund but for the fact that the Underlying Fund is not subject to NI 81-101 and NI 81-102 and does not (or has not) distributed its securities in Canada under a simplified prospectus.

17. The Filer believes that it is in the best interests of the Fund to be permitted to invest in the Underlying Fund as such investment will allow the Fund to gain exposure to certain securities in frontier markets in an economically viable way compared to direct investment in such securities.

18. The Fund will otherwise comply with Section 2.5 of NI 81-102 in investing in the Underlying Fund and will provide all mandatory disclosure for mutual funds investing in other mutual funds.

Decision

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

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

(a) The Underlying Fund qualifies as a UCITS and is distributed in accordance with the EU Directives, which subject the Underlying Fund to investment restrictions and practices that are substantially similar to those that govern the Fund;

(b) The investment of the Fund in the Underlying Fund otherwise complies with section 2.5 of NI 81-102 and the Fund provides the disclosure required for fund-of-fund investments in NI 81-101. Specifically, the investment by the Fund in the Underlying Fund is disclosed in its simplified prospectus;

(c) The Fund will not purchase securities of the Underlying Fund if, immediately after the purchase, more than 10 per cent of its net asset value would consist of investments in the Underlying Fund; and

(d) The Fund shall not acquire any additional securities of the Underlying Fund and shall dispose of the securities of the Underlying Fund then held in an orderly and prudent manner, after the date that the laws applicable to the Underlying Fund that are at the date of this decision substantially similar to Part 2 of NI 81-102, change to be materially inconsistent with Part 2 of NI 81-102.

"Darren McKall"
Manager, Investment Funds
Ontario Securities Commission

2.1.11 Certain Exempt Market Dealer and Restricted Dealer Firms Listed in Schedule A

Headnote

Order to vary previous orders granting filers certain relief from National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103) under section 15.1 of NI 31-103 – previous orders provided relief to permit filers who are exempt market dealers or restricted dealers and registered with the U.S. Securities Exchange Commission (SEC) and members of the Financial Regulatory Authority (FINRA) to provide margin, to file the US FOCUS Report in lieu of Form 31-103F1, and to file the annual audited financial statements that it files with the SEC and FINRA – previous order varied to extend the sunset clause to the earlier of the date on which amendments to NI 31-103 come into force limiting brokerage activities in which exempt market dealers or restricted dealers engage or December 31, 2014 – extension of sunset clause is in line with CSA Staff Notice 31-333 Follow-Up to Broker-Dealer Registration in the Exempt Market Dealer Category.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 12.1, 12.10, 12.12(1)(b), 12.13(b), 13.12, 15.1.
National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, s. 3.15(b).

December 20, 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
CERTAIN EXEMPT MARKET DEALER AND RESTRICTED DEALER FIRMS LISTED IN SCHEDULE A
(the FILERS)

DECISION

UPON the application (the **Application**) to the principal regulator in the Jurisdiction by the Director (the Director) for a decision, pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), to vary previous orders (the **Previous Orders**) of the principal regulator made under section 15.1 of NI 31-103 with respect to the Filers.

AND WHEREAS the Previous Orders provided that the Filers are exempt, subject to certain terms and conditions, from the following requirements contained in NI 31-103:

(a) the requirement contained in section 13.12 of NI 31-103 that a registrant must not lend money, extend credit or provide margin to a client (the **Margin Relief**);

(b) the requirement contained in section 12.1 of NI 31-103 to maintain and calculate excess working capital using Form 31-103F1 *Calculation of Excess Working Capital* and instead use United States Securities and Exchange Commission Form X-17a-5 (**FOCUS Report**);

(c) the requirement contained in paragraphs 12.12(1)(b) and 12.13(b) of NI 31-103 to deliver Form 31-103F1 and instead to deliver the FOCUS Report (together with (b) above, the **FOCUS Relief**);

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

(e) the requirement contained in section 12.10 *Annual financial statements* of NI 31-103 that the registrant prepare a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and a statement of financial position for the financial year immediately preceding the most recently completed financial year and that at least one director of the registrant sign the registrant's statement of financial position so long as the registrant delivers to the principal regulator the annual audited financial statements that it files with the Securities Exchange Commission (**SEC**) and the Financial Regulatory Authority (**FINRA**) (together with (d) above, the **Financial Statement Relief**).

AND WHEREAS a condition in the Previous Orders is that the relief is subject to a sunset clause which expires on December 31, 2013.

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 section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is being relied upon in the jurisdictions noted in Schedule A for each Filer.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and the Previous Orders have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the same representations made by the Filers in the Previous Orders and which remain true and complete.

The Filers were granted Margin Relief, FOCUS Relief and Financial Statement Relief as noted in Schedule A for each Filer subject to certain terms and conditions including a sunset clause while the Canadian Securities Administrators (**CSA**) considered the regulatory issues arising from FINRA member firms seeking registration in the EMD category. It was hoped that by December 31, 2013, amendments to NI 31-103 would have been made effective to prohibit EMDs or restricted dealers from conducting brokerage activities. Proposed rule amendments were published on December 5, 2013, as part of the ongoing amendments to NI 31-103. However, the public comment period will last for 90 days and the rule amendments are not expected to be effective until December, 2014.

It would be appropriate to include a new sunset clause in the Previous Orders to extend the relief until such rule amendments become effective. The extension of the sunset clause in the Previous Orders is in line with CSA Staff Notice 31-333 *Follow-Up to Broker-Dealer Registration in the Exempt Market Dealer Category* which was published on February 7, 2013 and which indicates that EMDs and restricted dealers may continue to conduct brokerage activities until rule amendments become effective.

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.

It is the decision of the principal regulator that, in line with CSA Staff Notice 31-333 *Follow-Up to Broker-Dealer Registration in the Exempt Market Dealer Category*, the Previous Orders shall expire on the date that is the earlier of:

(a) The date on which amendments to NI 31-103 come into force limiting the brokerage activities in which EMDs or restricted dealers may engage; and

(b) December 31, 2014.

"Debra Foubert"
Director, Compliance & Registrant Regulation
Ontario Securities Commission

Schedule A

Filer	Date of Previous Order	Type of Relief	Jurisdictions
Goldman Sachs & Co.	September 28, 2010, July 27, 2011 and June 15, 2012	Margin, FOCUS Report, Financial Statements	Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory
Goldman Sachs Execution & Clearing, LP	September 28, 2010, July 27, 2011 and June 15, 2012	Margin, FOCUS Report, Financial Statements	Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory
Morgan Stanley & Co. LLC	September 28, 2010, November 15, 2011 and July 11, 2012	Margin, FOCUS Report, Financial Statements	Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, North West Territories, Nunavut
Morgan Stanley Smith Barney LLC	September 28, 2010, November 15, 2011 and July 11, 2012	Margin, FOCUS Report, Financial Statements	Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, North West Territories, Nunavut
Merrill Lynch, Pierce, Fenner & Smith Incorporated	September 21, 2012	FOCUS Report, Financial Statements	Ontario, British Columbia, Alberta, Quebec
Piper Jaffray & Co.	October 29, 2010, November 4, 2011 and October 9, 2012	Margin, FOCUS Report, Financial Statements	Ontario, British Columbia, Manitoba, Quebec
JP Morgan Securities LLC	November, 11, 2011 and November 7, 2012	Margin, FOCUS Report, Financial Statements	Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, North West Territories, Nunavut
Credit Suisse Securities (USA) LLC	September 28, 2010, February 3, 2012 and November 16, 2012	Margin, FOCUS Report, Financial Statements	Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, North West Territories, Nunavut

2.1.12 Covington Strategic Capital Fund Inc. and Covington Capital Corporation

Headnote

Approval of mutual fund reorganization – approval required because merger does not meet the criteria for pre-approval – merger of labour sponsored investment funds – merger is not a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act - securityholders provided with timely and adequate disclosure regarding the mergers.

Applicable Legislative Provisions

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

November 1, 2013

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE JURISDICTION)

AND

IN THE MATTER OF
COVINGTON STRATEGIC CAPITAL FUND INC.
(THE SELLING FUND)

AND

COVINGTON CAPITAL CORPORATION
(THE COVINGTON MANAGER)

DECISION

Background

The Ontario Securities Commission has received an application from the Selling Fund for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for approval pursuant to subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) for the sale of assets of the Selling Fund to Covington Fund II Inc. (**Covington Fund II**) which would result in securityholders of the Selling Fund becoming securityholders of Covington Fund II (the **Approval Sought**).

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are otherwise defined in this decision.

Representations

The decision is based on the following facts represented by the Selling Fund:

The Selling Fund

1. The Selling Fund is not in default of securities legislation in the Jurisdiction.

2. The Selling Fund was incorporated on November 18, 2003 under the *Business Corporations Act* (Ontario) (the **OBCA**).

3. The Selling Fund is registered as a labour sponsored investment fund corporation (**LSIF**) under the *Community Small Business Investment Funds Act* (Ontario) (the **CSBIF Act**) and is a prescribed labour-sponsored venture capital corporation (**LSVCC**) under the *Income Tax Act* (Canada) (the **Tax Act**). The Selling Fund's investment activities are governed by the CSBIF Act.

4. The Selling Fund is a reporting issuer in Ontario only.

5. The fundamental investment objective of the Selling Fund is to achieve long-term capital appreciation through investment in a diversified portfolio of private and public technology companies which qualify as "eligible businesses" under the CSBIF Act.

6. The manager of the Selling Fund is the Covington Manager.

7. The labour sponsor of the Selling Fund is the Canadian Police Association (the CPA).

Covington Fund II

8. Covington Fund II was incorporated under the OBCA by articles of incorporation dated September 20, 1999 and was continued under the *Canada Business Corporations Act* (**CBCA**) by articles of continuance dated November 25, 2010. The articles of Covington Fund II were amended by articles of amendment dated November 29, 2010 and September 1, 2011.

9. Covington Fund II is a registered LSIF under the CSBIF Act and by virtue of a prior transaction is a registered LSVCC under the Tax Act. Covington Fund II's investment activities are governed by the CSBIF Act and the Tax Act.

10. Covington Fund II is a reporting issuer in all of the Provinces and Territories of Canada.

11. The fundamental investment objective of Covington Fund II is to earn long-term capital appreciation on part of its investment portfolio and current yield and early return of capital on the remainder of its investment portfolio through investment in common shares, convertible preference shares or other instruments which create a right to acquire common shares, debt (with or without conversion features), warrants and other securities of both early stage, high growth companies as well as established businesses.

12. The manager of Covington Fund II is the Covington Manager.

13. The labour sponsors of Covington Fund II are the CPA and the Association of Canadian Financial Officers.

The Transaction

14. The shareholders of the Selling Fund passed a special resolution approving the Transaction (as defined below) at a shareholders' meeting held on October 24, 2013 (the **Shareholders' Meeting**).

15. The board of Covington Fund II has concluded, based largely on the relative sizes of the Selling Fund and Covington Fund II, that the Transaction is not material to Covington Fund II and has approved the Transaction at a meeting of the board of directors.

16. Details of the proposed sale of assets of the Selling Fund which would result in shareholders of the Selling Fund becoming shareholders of Covington Fund II (the **Transaction**) were contained in information circular dated September 27, 2013 (the **Circular**) sent by the Selling Fund to its shareholders, which Circular contains details of the Transaction, including income tax considerations associated with the Transaction. A copy of the Circular was filed on SEDAR on October 2, 2013.

17. In accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*, a press release announcing the Transaction was filed on SEDAR on September 19, 2013. A material change report of the Selling Fund was filed on SEDAR on September 20, 2013.

18. The board of Covington Fund II has proposed an asset purchase agreement (the APA) setting out the terms and conditions of the Transaction for consideration by the shareholders' of the Selling Fund at the Shareholders' Meeting in connection with their consideration of the Transaction. A copy of the APA is attached to the Circular filed on SEDAR.

19. The APA will be entered into by Covington Fund II and the Selling Fund, and the Transaction will be expected to close on a date (the **Closing Date**) to be determined by the Covington Manager, currently expected to be on or about November 1, 2013.

20. Pursuant to National Instrument 81-107 *Independent Review Committee for Investment Funds*, the independent review committee (**IRC**) has reviewed the Transaction on behalf of the Selling Fund and Covington Fund II, and has advised the Covington Manager that in the IRC's opinion, having reviewed the Transaction as a potential conflict of interest, the Transaction achieves a fair and reasonable result for the Selling Fund and Covington Fund II.

21. On the Closing Date, Covington Fund II will issue Class A shares, Series I (the **Transaction Shares**), as described in the Circular, to the Selling Fund on a prospectus exempt basis pursuant to section 2.11 of National Instrument 45-106 *Prospectus and Registration Exemptions* in exchange for the assets of the Selling Fund. The number of Transaction Shares issued to the Selling Fund will be determined by reference to the net asset value of the Selling Fund (as determined in accordance with the Selling Fund's valuation policies and procedures) as at the Closing Date. The remaining distribution service fees owed by the Selling Fund to the Covington Manager will be paid so that all shareholders' of the Selling Fund will receive Class A shares, Series I of Covington Fund II.

22. No sales charges will be payable in connection with the acquisition by Covington Fund II of the investment portfolio of the Selling Fund.

23. Pursuant to the redemption procedure for the redemption of Class A Shares of the Selling Fund approved by the shareholders of the Selling Fund as part of the special resolution passed at the Shareholders' Meeting, the Selling Fund will redeem its Class A shares in exchange for the Transaction Shares received by the Selling Fund.

24. Upon closing, the shareholders of the Selling Fund will receive an equivalent value of Transaction Shares in payment for the Class A shares of the Selling Fund held by each such shareholder on the Closing Date. The number of Transaction Shares delivered in payment of the redemption price of the redeemed Class A shares of a shareholder of the Selling Fund will be equal to the number of Class A shares of the Selling Fund held by the shareholder multiplied by the "**Exchange Ratio**". For the purposes of the foregoing, the Exchange Ratio equals the Transaction NAV per Share of the Selling Fund's Class A shares divided by the Transaction NAV per Share of the Transaction Shares where "**Transaction NAV per Share**" means:

    (a) The NAV of a fund (as determined in accordance with that fund's valuation policies and procedures and adjusted as necessary to account for any proceeds to be paid under any dissent rights) as at the Closing Date allocated to each series of Class A shares of that fund; divided by

    (b) The number of outstanding Class A shares of that series of that fund (adjusted for shareholders exercising dissent rights) as of the Closing Date.

25. The costs and expenses specifically associated with the Transaction will be borne by the Covington Manager.

26. Redemptions of Class A shares of Covington Fund II and the Selling Fund are currently occurring without suspension, which situation is proposed to continue throughout the completion of the Transaction. Shareholders of the Selling Fund will continue to have the right to redeem securities of the Selling Fund up to the close of business immediately before the effective date of the Transaction. Upon completion of the Transaction, holders of Class A shares of Covington Fund II and the Selling Fund will not be subject to any new redemption fees or redemption restrictions on their Class A shares of Covington Fund II.

27. All redemptions will also be subject to tax credit recapture withholdings under the CSBIFA or the Tax Act and applicable deferred sales commissions if Class A shares are redeemed at a date when they have been issued for less than eight years. The Transaction qualifies as a business combination within the meaning of section 27.1 of the CSBIF Act and as such each Transaction Share will be deemed to have an issue date that is the same date as the issue date of the Class A share which such Transaction Share replaced. The Transaction also qualifies as a merger for purposes of subsection 204.85(3) of the Tax Act such that, for certain purposes of the provisions of the Tax Act relating to LSVCCs and the holders of the Transaction Shares, the Transaction Shares will be deemed to be issued at the time the Selling Fund issued the Class A Share which the Transaction Share replaced.

28. The Covington Manager estimates that approximately 99% of the shareholders of the Selling Fund hold their Class A Shares in a registered account and, as such, would not pay tax on any gain they might receive as a result of the transaction.

29. The Covington Manager will continue to serve as manager for Covington Fund II.

30. Upon completion of the Transaction, the existing management agreement and servicing agreement between the Selling Fund and Covington Manager shall be terminated without compensation to Covington Manager and the distribution service fees for the Selling Fund will be prepaid as described below.

31. Shareholders of the Selling Fund are expected to benefit from the increased scale and operational efficiencies of Covington Fund II, enjoying the same or lower management fees, and the ongoing right to redeem from the Selling Fund if the shareholder does not choose to participate in the Transaction.

32. A distribution services fee is payable to the Covington Manager in respect of the Selling Fund. The Covington Manager is responsible for managing the relationships with registered dealers selling the Class A shares of the Selling Fund. Prior to the cessation of new sales of Class A shares by the Selling Fund, the Covington Manager financed the payment of a 10% sales commission to such dealers in respect of sales of Class A shares, Series I sold prior to December 27, 2010 and a 6% sales commission to such dealers in respect of sales of Class A shares, Series II sold prior to December 19, 2011. The Covington Manager is remunerated for this service through a monthly fee of 0.160% of the original issue price of the Class A shares, Series I (1.92% annually) and a monthly fee of 0.096% of the original issue price of the Class A shares, Series II (1.15% annually) which are still outstanding during that month. In the event that such shares are redeemed prior to the eighth anniversary of the date of their issue, the Selling Fund charges redeeming shareholders a fee equal to 1.25% of the original issue price for Class A Shares, Series I times the number of years until the eighth anniversary of the sale of the shares and 0.75% of the original issue price for Class A shares, Series II times the number of years until the eighth anniversary of the sale of the shares. The Selling Fund pays this redemption fee to the Covington Manager in lieu of the monthly fee on such redeemed shares. In merging the Selling Fund with Covington Fund II, only Class A shares, Series I of Covington Fund II are being issued and in respect of which no distribution service fees are paid. Investors who receive Transaction Shares will no longer be subject to the distribution services fees since the remaining distribution service fees will be prepaid as part of the Transaction and such pre-payment will be reflected in the Exchange Ratio.

33. The pre-payment of the distribution service fees on the transaction will result in the payment of the principal amount of the sales commissions in respect of which the distribution service fee is calculated, rather than the full distribution service fee otherwise payable by the Selling Fund over the next four years in respect of those sales commissions. This will result in the Selling Fund paying approximately $207,000 rather than approximately $311,000 in remaining distributions service fees anticipated to be due over the next four years. This will represent a savings of approximately $104,000 for the benefit of the Class A Shareholders of the Selling Fund.

34. Based on current projections of Covington Fund II, including the fact that the MER of Class A Shares, Series I is estimated to be approximately 1.34% per annum lower than the MER of Class A Shares, Series II on account of the lack of distribution service fees, the Class A shareholders of the Selling Fund could be expected to incur approximately $269,000 in additional management expenses over the next four years if they received Class A Shares, Series II of Covington Fund II and continued to pay distribution service fees over the next four years. The pre-payment of the distribution service fees of approximately $207,000 and the issue of Class A Shares, Series I of Covington Fund II will represent a savings of approximately $62,000 for the benefit of the Class A Shareholders of the Selling Fund.

35. After the Selling Fund redeems all Class A shares, the Class B shares will be the only outstanding shares of the Selling Fund.

36. The Selling Fund will retain the Covington Manager for the purpose of winding up the Selling Fund as soon as reasonably possible after the Closing Date.

37. The CPA has agreed, upon completion of the Transaction, that it will execute an agreement with the Selling Fund which will terminate its sponsorship agreement and facilitate the wind-up of the Selling Fund without further compensation payable to the CPA over the fees due to the Closing Date. There will be no change to the existing sponsorship arrangement of Covington Fund II.

38. Under Section 5.5(1)(b) of NI 81-102, the Selling Fund is required to obtain the approval of the securities regulatory authority or regulator where a transfer of its assets is implemented, if the transaction will result in the securityholders of a Selling Fund becoming securityholders in another mutual fund. Each securityholder of the Selling Fund would, as a result of the Transaction, become a securityholder of Covington Fund II.

39. Section 5.6(1) of NI 81-102 sets out the circumstances in which a mutual fund need not obtain the approval of the securities regulatory authority or regulator under Section 5.5(1)(b). Section 5.6 cannot be relied upon because the Transaction is not a “qualifying exchange” within the meaning of Section 132.2 of the Tax Act as it does not involve a transfer of property of the Selling Fund to a mutual fund trust. The Transaction will not be a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the Tax Act. The directors of the Selling Fund have concluded that all other conditions for the reliance on Section 5.6(1) have been met.

40. Shareholders of Covington Fund II will not be subject to tax as a result of the Transaction.

41. Shareholders of the Selling Fund who hold their Class A shares in a registered plan, such as an RRSP or RRIF, will not pay any income tax as a result of the redemption of their Class A shares pursuant to the Transaction.

42. Shareholders of the Selling Fund who hold their Class A shares outside a registered account may realize a capital gain or a capital loss as a result of the Transaction. Details of the tax considerations for the Selling Fund's shareholders are described in the Circular.

43. The Transaction qualifies as a business combination within section 27.1 of the CSBIF Act and as such each Transaction Share will be deemed to have an issue date that is the same date as the issue date of the Class A share which such Transaction Share replaced. The Transaction also qualifies as a merger for purposes of subsection 204.85(3) of the Tax Act such that, for certain purposes of the provisions of the Tax Act relating to LSVCCs, the Transaction Shares will be deemed to be issued at the time the Selling Fund issued the Class A Share which the Transaction Share replaced.

Decision

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

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

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

2.1.13 Pacific Rim Mining Corp.

Headnote

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

Ontario Statutes

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

December 27, 2013

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ONTARIO, ALBERTA, SASKATCHEWAN, MANITOBA, NEW BRUNSWICK,
PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
PACIFIC RIM MINING CORP.
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer in the Jurisdictions (the Exemptive Relief Sought).

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

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

1. the Filer was formed on April 11, 2002 by way of amalgamation and is a corporation governed by the *Business Corporations Act* (British Columbia) (BCBCA) with its head office located at 1050 - 625 Howe Street, Vancouver, BC, V6C 2T6;

2. the Filer is a reporting issuer in each of the Jurisdictions;

3. effective November 27, 2013, OceanaGold Corporation (Oceana), a corporation incorporated under the laws of British Columbia, acquired all of the issued and outstanding common shares in the capital of the Filer (Common Shares) it did not already hold by way of a statutory plan of arrangement (the Arrangement) under

Division 5 of Part 9 of the BCBCA; under the Arrangement, Oceana transferred the Common Shares to its wholly owned subsidiary, 0981436 B.C. Ltd. (Subco);

4. the Filer's share capital consists entirely of the Common Shares, which are held by Oceana through Subco; as a result of the Arrangement, the Filer became an indirect wholly owned subsidiary of Oceana; there are no securities of the Filer that are held by persons other than Oceana through Subco, other than share purchase options;

5. Oceana is a reporting issuer in all provinces and territories of Canada;

6. there are currently outstanding 14,480,000 share purchase options of the Filer (the Options); following the Arrangement, all of the Options became exercisable into Oceana common shares, subject to adjustment in number based on an exchange ratio;

7. the Options are held by 16 holders; seven holders are resident in the United States, one holder is resident in Costa Rica, two holders are resident in El Salvador and six holders are resident in Canada, five of which are resident in British Columbia and one of which is resident in Ontario;

8. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions in Canada and fewer than 51 securityholders in total worldwide;

9. the Common Shares were delisted from the Toronto Stock Exchange effective at the close of business on December 2, 2013, removed from quotation on the OTCQX effective the open of market on November 29, 2013, and removed from the over-the-counter trading market in the United States by the Financial Industry Regulatory Authority on December 2, 2013;

10. no securities of the Filer, including debt securities, are traded 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;

11. the Filer has no current intention to seek public financing by way of an offering of securities;

12. the Filer is not in default of any of its obligations under the Legislation other than its obligation to file and deliver on or before December 16, 2013 its interim financial statements and related management's discussion and analysis for the interim period ended October 31, 2013, as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certification of such financial statements as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;

13. the Filer did not voluntarily surrender its status as a reporting issuer in British Columbia under British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* because the Filer did not wish to wait the 10-day waiting period under the Instrument;

14. the Filer is not eligible to use the simplified procedure under CSA Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia and is in default of certain filing obligations under the Legislation as described in paragraph 12;

15. the Filer is applying for a decision that it is not a reporting issuer in any of the Jurisdictions; and

16. upon the granting of the Exemptive Relief Sought, the Filer will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada.

Decision

4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

"Peter Brady"
Director, Corporate Finance
British Columbia Securities Commission

2.2 Orders

2.2.1 Metro Inc. – s. 104(2)(c)

Headnote

Clause 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, up to 1,225,000 of its common shares from two of its shareholders – due to discounted purchase price, proposed purchases cannot be made through TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Securities Act and in accordance with the TSX rules governing normal course issuer bid purchases – no adverse economic impact on or prejudice to issuer or public shareholders – proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions, including that the issuer not purchase, in the aggregate, more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 94 to 94.8, 97 to 98.7, 104(2)(c).

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

AND

IN THE MATTER OF
METRO INC.

ORDER
(Clause 104(2)(c))

UPON the application (the **Application**) of Metro inc. (the **Issuer**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from the requirements of sections 94 to 94.8 and 97 to 98.7 of the Act (the **Issuer Bid Requirements**) in respect of the proposed purchases by the Issuer of up to 965,000 (collectively, the **Subject Shares**) of its common shares (the **Common Shares**) in one or more trades from Bank of Montreal (or one of its affiliates) (the **Selling Shareholder**);

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

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 10, 22 and 23, as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Business Corporations Act* (Québec).

2. The head office and registered office of the Issuer are at 11011 Maurice-Duplessis Boulevard, Montréal, Quebec, H1C 1V6.

3. The Issuer is a reporting issuer in each of the provinces of Canada and the Common Shares of the Issuer are listed for trading on the Toronto Stock Exchange (the **TSX**) under the symbol "MRU". The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized common share capital of the Issuer consists of an unlimited number of Common Shares, of which approximately 91,648,145 Common Shares were issued and outstanding as of November 1, 2013.

5. The corporate headquarters of the Selling Shareholder are located in the Province of Ontario.

6. The Selling Shareholder has advised the Issuer that it does not directly or indirectly beneficially own more than 5% of the issued and outstanding Common Shares.

7. The Selling Shareholder has advised the Issuer that it is the beneficial owner of at least 965,000 Common Shares and that the Subject Shares were not acquired in anticipation of resale to the Issuer pursuant to private agreements under an issuer bid exemption order issued by a securities regulatory authority (**Off-Exchange Block Purchases**).

8. The Selling Shareholder is at arm's length to the Issuer and is not an "insider" of the Issuer or "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act. The Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions*.

9. Pursuant to a "Notice of Intention to Make a Normal Course Issuer Bid" filed with the TSX as of September 8, 2010 (as amended on November 12, 2010) which was renewed on September 6, 2013 (the **Notice**), the Issuer is permitted to make normal course issuer bid (the **Normal Course Issuer Bid**) purchases for up to 7,000,000 Common Shares. In accordance with the Notice, the Normal Course Issuer Bid is conducted through the facilities of the TSX or such other means as may be permitted by the TSX or a securities regulatory authority, in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the **TSX NCIB Rules**), including, private agreements under an issuer bid

exemption order issued by a securities regulatory authority at a purchase price which is at a discount to the prevailing market price for the Common Shares.

10. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an **Agreement**) pursuant to which the Issuer will agree to acquire the Subject Shares from the Selling Shareholder by one or more purchases each occurring on or before September 9, 2014 (each such purchase, a **Proposed Purchase**) for a purchase price (the **Purchase Price**) that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price will be at a discount to the prevailing market price of the Common Shares on the TSX and below the bid-ask price for the Common Shares at the time of each Proposed Purchase.

11. The purchase of the Subject Shares by the Issuer pursuant to each Agreement will constitute an "issuer bid" for purposes of the Act to which the Issuer Bid Requirements would apply.

12. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX NCIB Rules.

13. Because the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Common Shares at the time of each Proposed Purchase, each Proposed Purchase cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.

14. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Common Shares at the time of each Proposed Purchase, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a **Block Purchase**) in accordance with the block purchase exception in section 629(l)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.

15. The sale of any of the Subject Shares to the Issuer will not be a "distribution" (as defined in the Act).

16. The Notice contemplates that purchases under the Normal Course Issuer Bid may be made by such other means as may be permitted by the TSX or a securities regulatory authority.

17. For each Proposed Purchase, the Issuer will be able to acquire the Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.

18. The Issuer is of the view that it will be able to purchase the Subject Shares at a lower price than the price at which it would be able to purchase the Common Shares under the Normal Course Issuer Bid through the facilities of the TSX and the Issuer is of the view that this is an appropriate use of the Issuer's funds on hand.

19. The purchase of the Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's securityholders and it will not materially affect the control of the Issuer. To the knowledge of the Issuer, the Proposed Purchases will not prejudice the ability of other shareholders of the Issuer to otherwise sell Common Shares in the open market at the prevailing market price. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.

20. To the best of the Issuer's knowledge, as of November 1, 2013, the "public float" for the Common Shares represented more than 69% of all issued and outstanding Common Shares for purposes of the TSX NCIB Rules.

21. The market for the Common Shares is a "liquid market" within the meaning of section 1.2 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.

22. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.

23. At the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor the Trading Products Group of the Selling Shareholder, nor personnel of the Selling Shareholder that have negotiated the Agreement or have made, or participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

24. A similar order has been applied for by the Issuer in connection with the proposed acquisition by the Issuer of up to 260,000 Common Shares from Canadian Imperial Bank of Commerce (or one of its affiliates).

25. A similar order has been applied for by the Issuer with the Autorité des marchés financiers in connection with the proposed acquisition by the

Issuer of up to 115,000 Common Shares from National Bank of Canada (or one of its affiliates).

26. The Issuer will not purchase, pursuant to private agreements under an issuer bid exemption order by a securities regulatory authority, in aggregate, more than one-third of the maximum number of Common Shares that the Issuer can purchase under its Normal Course Issuer Bid.

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

IT IS ORDERED pursuant to clause 104(2)(c) of the Act that the Issuer be exempt from the Issuer Bid Requirements in connection with each Proposed Purchase, provided that:

a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX NCIB Rules during the calendar week that it completes each Proposed Purchase and may not make any further purchases under the Normal Course Issuer Bid for the remainder of that calendar day on which it completes each Proposed Purchase;

c) the Purchase Price of each Proposed Purchase is not higher than the last "independent trade" (as that term is used in paragraph 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of each Proposed Purchase;

d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Normal Course Issuer Bid and in accordance with the Notice and the TSX NCIB Rules, as applicable;

e) immediately following each Proposed Purchase of the Subject Shares from the Selling Shareholder, the Issuer will report the purchase of the Subject Shares to the TSX;

f) at the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor the Trading Products Group of the Selling Shareholder, nor personnel of the Selling Shareholder that have negotiated the Agreement or have made, or participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

g) the Issuer will issue a press release disclosing (i) its intention to make the Proposed Purchases and (ii) that information regarding each Proposed Purchase, including the number of Common Shares purchased and the aggregate purchase price, will be available on the System for Electronic Document Analysis and Retrieval (**SEDAR**) following the completion of each such purchase;

h) the Issuer will report information regarding each Proposed Purchase, including the number of Common Shares purchased and the aggregate purchase price, on SEDAR before 5:00 p.m. (Toronto time) on the business day following such purchase; and

i) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares the Issuer can purchase under the Normal Course Issuer Bid.

DATED at Toronto this 29th day of November 2013.

"James Turner"
Vice Chair
Ontario Securities Commission

"Judith Robertston"
Commissioner
Ontario Securities Commission

2.2.2 Metro Inc. – s. 104(2)(c)

Headnote

Clause 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, up to 1,225,000 of its common shares from two of its shareholders – due to discounted purchase price, proposed purchases cannot be made through TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Securities Act and in accordance with the TSX rules governing normal course issuer bid purchases – no adverse economic impact on or prejudice to issuer or public shareholders – proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions, including that the issuer not purchase, in the aggregate, more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 94 to 94.8, 97 to 98.7, 104(2)(c).

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

AND

IN THE MATTER OF
METRO INC.

ORDER
(Clause 104(2)(c))

UPON the application (the **Application**) of Metro inc. (the **Issuer**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from the requirements of sections 94 to 94.8 and 97 to 98.7 of the Act (the I**ssuer Bid Requirements**) in respect of the proposed purchases by the Issuer of up to 260,000 (collectively, the **Subject Shares**) of its common shares (the **Common Shares**) in one or more trades from Canadian Imperial Bank of Commerce (or one of its affiliates) (the **Selling Shareholder**);

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

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 10, 22 and 23, as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Business Corporations Act* (Québec).

2. The head office and registered office of the Issuer are at 11011 Maurice-Duplessis Boulevard, Montréal, Quebec, H1C 1V6.

3. The Issuer is a reporting issuer in each of the provinces of Canada and the Common Shares of the Issuer are listed for trading on the Toronto Stock Exchange (the **TSX**) under the symbol "MRU". The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized common share capital of the Issuer consists of an unlimited number of Common Shares, of which approximately 91,648,145 Common Shares were issued and outstanding as of November 1, 2013.

5. The corporate headquarters of the Selling Shareholder are located in the Province of Ontario.

6. The Selling Shareholder has advised the Issuer that it does not directly or indirectly beneficially own more than 5% of the issued and outstanding Common Shares.

7. The Selling Shareholder has advised the Issuer that it is the beneficial owner of at least 260,000 Common Shares and that the Subject Shares were not acquired in anticipation of resale to the Issuer pursuant to private agreements under an issuer bid exemption order issued by a securities regulatory authority (**Off-Exchange Block Purchases**).

8. The Selling Shareholder is at arm's length to the Issuer and is not an "insider" of the Issuer or "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act. The Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions*.

9. Pursuant to a "Notice of Intention to Make a Normal Course Issuer Bid" filed with the TSX as of September 8, 2010 (as amended on November 12, 2010) which was renewed on September 6, 2013 (the **Notice**), the Issuer is permitted to make normal course issuer bid (the **Normal Course Issuer Bid**) purchases for up to 7,000,000 Common Shares. In accordance with the Notice, the Normal Course Issuer Bid is conducted through the facilities of the TSX or such other means as may be permitted by the TSX or a securities regulatory authority, in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the **TSX NCIB Rules**), including, private agreements under an issuer bid

exemption order issued by a securities regulatory authority at a purchase price which is at a discount to the prevailing market price for the Common Shares.

10. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an **Agreement**) pursuant to which the Issuer will agree to acquire the Subject Shares from the Selling Shareholder by one or more purchases each occurring on or before September 9, 2014 (each such purchase, a **Proposed Purchase**) for a purchase price (the **Purchase Price**) that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price will be at a discount to the prevailing market price of the Common Shares on the TSX and below the bid-ask price for the Common Shares at the time of each Proposed Purchase.

11. The purchase of the Subject Shares by the Issuer pursuant to each Agreement will constitute an "issuer bid" for purposes of the Act to which the Issuer Bid Requirements would apply.

12. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX NCIB Rules.

13. Because the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Common Shares at the time of each Proposed Purchase, each Proposed Purchase cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.

14. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Common Shares at the time of each Proposed Purchase, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a **Block Purchase**) in accordance with the block purchase exception in section 629(l)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.

15. The sale of any of the Subject Shares to the Issuer will not be a "distribution" (as defined in the Act).

16. The Notice contemplates that purchases under the Normal Course Issuer Bid may be made by such other means as may be permitted by the TSX or a securities regulatory authority.

17. For each Proposed Purchase, the Issuer will be able to acquire the Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.

18. The Issuer is of the view that it will be able to purchase the Subject Shares at a lower price than the price at which it would be able to purchase the Common Shares under the Normal Course Issuer Bid through the facilities of the TSX and the Issuer is of the view that this is an appropriate use of the Issuer's funds on hand.

19. The purchase of the Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's securityholders and it will not materially affect the control of the Issuer. To the knowledge of the Issuer, the Proposed Purchases will not prejudice the ability of other shareholders of the Issuer to otherwise sell Common Shares in the open market at the prevailing market price. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.

20. To the best of the Issuer's knowledge, as of November 1, 2013, the "public float" for the Common Shares represented more than 69% of all issued and outstanding Common Shares for purposes of the TSX NCIB Rules.

21. The market for the Common Shares is a "liquid market" within the meaning of section 1.2 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.

22. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.

23. At the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor the Selling Shareholder will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

24. A similar order has been applied for by the Issuer in connection with the proposed acquisition by the Issuer of up to 965,000 Common Shares from Bank of Montreal (or one of its affiliates).

25. A similar order has been applied for by the Issuer with the *Autorité des marchés financiers* in connection with the proposed acquisition by the Issuer of up to 115,000 Common Shares from National Bank of Canada (or one of its affiliates).

26. The Issuer will not purchase, pursuant to private agreements under an issuer bid exemption order by a securities regulatory authority, in aggregate, more than one-third of the maximum number of

Common Shares that the Issuer can purchase under its Normal Course Issuer Bid.

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

IT IS ORDERED pursuant to clause 104(2)(c) of the Act that the Issuer be exempt from the Issuer Bid Requirements in connection with each Proposed Purchase, provided that:

a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX NCIB Rules during the calendar week that it completes each Proposed Purchase and may not make any further purchases under the Normal Course Issuer Bid for the remainder of that calendar day on which it completes each Proposed Purchase;

c) the Purchase Price of each Proposed Purchase is not higher than the last "independent trade" (as that term is used in paragraph 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of each Proposed Purchase;

d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Normal Course Issuer Bid and in accordance with the Notice and the TSX NCIB Rules, as applicable;

e) immediately following each Proposed Purchase of the Subject Shares from the Selling Shareholder, the Issuer will report the purchase of the Subject Shares to the TSX;

f) at the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor the Selling Shareholder will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

g) the Issuer will issue a press release disclosing (i) its intention to make the Proposed Purchases and (ii) that information regarding each Proposed Purchase, including the number of Common Shares purchased and the aggregate purchase price, will be available on the System for Electronic Document Analysis and Retrieval (**SEDAR**) following the completion of each such purchase;

h) the Issuer will report information regarding each Proposed Purchase, including the number of Common Shares purchased and the aggregate purchase price, on SEDAR before 5:00 p.m. (Toronto time) on the business day following such purchase; and

i) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares the Issuer can purchase under the Normal Course Issuer Bid.

DATED at Toronto this 29th day of November 2013.

"James Turner"
Vice Chair
Ontario Securities Commission

"Judith Robertson
Commissioner
Ontario Securities Commission

2.2.3 Sandy Winick 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
SANDY WINICK, ANDREA LEE MCCARTHY,
KOLT CURRY, LAURA MATEYAK,
GREGORY J. CURRY,
AMERICAN HERITAGE STOCK TRANSFER INC.,
AMERICAN HERITAGE STOCK TRANSFER, INC.,
BFM INDUSTRIES INC.,
LIQUID GOLD INTERNATIONAL CORP.
(aka LIQUID GOLD INTERNATIONAL INC.),
and NANOTECH INDUSTRIES INC.**

**ORDER
(Sections 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 merits hearing;

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 would 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 before the Commission and advised the panel that an Agreed Statement of Facts had been reached for Kolt Curry, Mateyak, AHST Ontario and AHST Nevada (the "**Curry Respondents**") and jointly requested that the hearing on the merits, as it relates to the Curry Respondents, be severed;

AND WHEREAS on May 16, 2013, the Commission ordered that the hearing as against the Curry Respondents be severed from the main proceeding in this matter;

AND WHEREAS the remaining respondents, Winick, Greg Curry and Nanotech, did not make submissions or tender evidence in response to Staff's evidentiary briefs and written submissions of November 30, 2012 and did not appear;

AND WHEREAS following a hearing on the merits with respect to Winick, Greg Curry and Nanotech, the Commission issued its Reasons and Decision on August 7, 2013 (the "**Merits Decision**");

AND WHEREAS the Commission determined that Winick and Greg Curry had not complied with Ontario securities law and had acted contrary to the public interest, as described in the Merits Decision;

AND WHEREAS the Commission held a hearing in writing with respect to the sanctions and costs to be imposed in this matter with respect to Winick and Greg Curry;

AND WHEREAS on December 30, 2013, the Commission released its Reasons and Decision on Sanctions and Costs in this matter with respect to Winick and Greg Curry;

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 Winick or Greg Curry shall cease permanently;

2. pursuant to clause 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Winick or Greg Curry shall be prohibited permanently;

3. pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law shall not apply to Winick or Greg Curry permanently;

4. pursuant to clause 6 of subsection 127(1) of the *Act*, Winick and Greg Curry are reprimanded;

5. pursuant to clause 7 of subsection 127(1) of the *Act*, Winick and Greg Curry shall resign any position that they hold as a director or officer of an issuer;

6. pursuant to clause 8 of subsection 127(1) of the *Act*, Winick and Greg Curry shall be prohibited permanently from becoming or acting as a director or officer of any issuer;

7. pursuant to clause 8.5 of subsection 127(1) of the *Act*, Winick and Greg Curry shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

8. pursuant to clause 9 of subsection 127(1) of the *Act*, Winick shall pay an administrative penalty of $750,000 for his 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*;

9. pursuant to clause 9 of subsection 127(1) of the *Act*, that Greg Curry shall pay an administrative penalty of $150,000 for his 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*;

10. pursuant to clause 10 of subsection 127(1) of the *Act*, Winick shall disgorge to the Commission a total of $359,200 obtained as a result of his non-compliance with Ontario securities law, of which USD$78,000 shall be jointly and severally payable with Greg Curry;

11. pursuant to clause 10 of subsection 127(1) of the *Act*, Greg Curry shall disgorge to the Commission a total of USD$78,000 obtained as a result of his non-compliance with Ontario securities law, which shall be jointly and severally payable with Winick;

12. the disgorgement orders referred to in each of paragraphs 10 and 11, above, shall be designated for allocation or for use by the Commission, pursuant to subsection 3.4(2)(b) of the *Act*; and

13. pursuant to subsection 127.1 of the *Act*, Winick and Greg Curry shall jointly and severally pay $50,000 for the costs incurred in the hearing of this matter.

DATED at Toronto this 30th day of December, 2013.

"James D. Carnwath"

2.2.4 ICE Clear Credit LLC – s. 147

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

AND

IN THE MATTER OF
ICE CLEAR CREDIT LLC (ICC)

ORDER
(Section 147 of the Act)

WHEREAS ICC has filed an application (**Application**) with the Ontario Securities Commission (**Commission**) pursuant to section 147 of the Act requesting an order exempting ICC from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act (**Order**);

AND WHEREAS the Commission issued an interim order (**Interim Order**) exempting ICC from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act, until the earlier of (i) December 30, 2013 and (ii) the effective date of a subsequent order exempting ICC from the requirement to be recognized as a clearing agency under section 147 of the Act;

AND WHEREAS the Interim Order will be replaced by this order and therefore be automatically revoked upon issuance of this order;

AND WHEREAS ICC has represented to the Commission that:

1. ICC is a limited liability corporation incorporated under the laws of the State of Delaware in the United States (**U.S.**) and is a wholly-owned subsidiary of ICE U.S. Holding Company L.P. which in turn is a wholly-owned subsidiary of IntercontinentalExchange, Inc. (**ICE**);

2. ICE is a publicly traded corporation organized under the laws of Delaware and listed for trading on the New York Stock Exchange. ICE is an operator of regulated exchanges and clearing houses serving the risk management needs of global markets for agricultural, credit, currency, emissions, energy and equity index products;

3. ICC is a Derivatives Clearing Organization (**DCO**) within the meaning of that term under the U.S. Commodity Exchange Act (**CEA**). As a DCO, ICC is subject to regulatory supervision by the United States Commodity Futures Trading Commission (**CFTC**), a U.S. federal regulatory agency. The CFTC reviews, assesses, and enforces a DCO's adherence to the CEA and the regulations promulgated thereunder on an ongoing basis, including but not limited to, the DCO's compliance with "Core Principles" relating to financial resources, participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, rule enforcement and system safeguards. ICC is subject to ongoing examination and inspection by the CFTC;

4. ICC is also a clearing agency within the meaning of that term under the Securities Exchange Act of 1934, as amended (**Exchange Act**), and as such is regulated by the United States Securities and Exchange Commission (**SEC**). As a SEC registered securities clearing agency, ICC is subject to regulatory supervision by the SEC, a federal regulatory agency that reviews, assesses and enforces a clearing agency's adherence to the Exchange Act and the regulations promulgated thereunder on an ongoing basis, including but not limited to, the clearing agency's compliance relating to risk management, participant access, records of financial resources and audited financial statements and minimum operating standards. ICC has frequent contact with the SEC, which includes regular reporting as well as reporting that arises on an "as needed" basis;

5. On July 18, 2012, ICC was designated as a systemically important financial market utility (**SIFMU**) by the Financial Stability Oversight Council. SIFMUs receive increased oversight by regulators including the Board of Governors of the Federal Reserve;

6. ICC currently offers clearing services for 64 North American CDS Indices, 7 Emerging Markets CDS Indices, 47 European CDS Indices, 161 North American Corporate Single Names, 4 Sovereign Single Names and 121 European Corporate Single Names (collectively, the **Clearing Products**). New product launches may require the approval of the CFTC and/or SEC;

7. ICC serves as the central counterparty for all OTC trades submitted for clearing;

8. ICC's risk model includes clear and certain rules and procedures (and other aspects of its legal framework) governing ICC's role as central counterparty, as well as appropriate membership criteria that are risk-based. ICC operates a robust pricing and margining/collateral methodology. ICC also has in place appropriate banking and custody arrangements, default resources and management processes. These components are linked by daily monitoring and oversight, undertaken by an experienced risk management team, with appropriate oversight by the Board of Managers;

9. The membership requirements of ICC are publicly disclosed and are designed to permit fair and open access, while protecting ICC and its Clearing Participants as defined in Schedule "A" to this order. The clearing membership requirements include fitness criteria, financial standards, operational standards and appropriate registration qualifications with applicable statutory regulatory authorities. ICC applies a due diligence process to ensure that all applicants meet the required criteria and conducts on-going monitoring of Clearing Participants;

10. All ICC Clearing Participants, including those that are incorporated/domiciled in non-U.S. jurisdictions, must complete an application for participation and make a deposit into the ICC guaranty fund;

11. ICC's Clearing Participants consist of banks and futures commission merchant (**FCM**)/broker dealers (**BD**);

12. ICC does not have any offices or maintain other physical installations in Ontario or any other Canadian province or territory. ICC does not have any plans to open such an office or to establish any such physical installations in Ontario or elsewhere in Canada. However, ICC offers or proposes to offer direct clearing access in Ontario for clearing OTC derivatives products to entities that have a head office or principal place of business in Ontario (**Ontario Clearing Participants**);

13. ICC currently has one Ontario Clearing Participant that has a head office or principal place of business in Ontario, with privileges to clear CDS products on its own behalf, and on behalf of its branches and affiliated companies;

14. ICC currently carries on business in Ontario pursuant to the Interim Order;

15. ICC submits that it does not pose a significant risk to the Ontario capital markets and is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction;

16. Section 21.2(0.1) of the Act prohibits clearing agencies from carrying on business in Ontario unless they are recognized by the Commission as a clearing agency or exempted from such recognition under section 147;

AND WHEREAS ICC has agreed to the respective terms and conditions as set out in Schedule "B" to this order;

AND WHEREAS based on the Application and the representations ICC has made to the Commission, the Commission has determined that ICC satisfies the criteria set out in Schedule "A" and that the granting of the order exempting ICC from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act would not be prejudicial to the public interest;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and ICC's activities on an ongoing basis to determine whether it is appropriate that ICC continue to be exempted from the requirement to be recognized as a clearing agency and, if so, whether it is appropriate that it continue to be exempted subject to the terms and conditions in this order;

IT IS HEREBY ORDERED by the Commission that, pursuant to section 147 of the Act, ICC is exempt from recognition as a clearing agency under subsection 21.2(0.1) of the Act;

PROVIDED THAT ICC complies with the terms and conditions attached hereto as Schedule "B".

DATED December 18th, 2013.

"Anne Marie Ryan"
OSC Commissioner

"James Turner"
OSC Commissioner

SCHEDULE "A"

Criteria for Exemption from Recognition by the Ontario Securities Commission as a Clearing Agency pursuant to section 21.1(0.1) of the *Securities Act* (Ontario)

PART 1. Governance

1.1 The governance structure and governance arrangements of the clearing agency ensures:

(a) effective oversight of the clearing agency;

(b) the clearing agency's activities are in keeping with its public interest mandate;

(c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;

(d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;

(e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;

(f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and

(g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

PART 2. Fees

2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 3. Access

3.1 The clearing agency has appropriate written standards for access to its services.

3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of

(a) each grant of access including, for each participant, the reasons for granting such access, and

(b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

PART 4. Rules and Rulemaking

4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and

(a) are not inconsistent with securities legislation,

(b) do not permit unreasonable discrimination among participants, and

(c) do not impose any burden on competition that is not necessary or appropriate.

4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

4.3 The clearing agency monitors participant activities to ensure compliance with the rules.

4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

PART 5. Due Process

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

(a) an applicant or a participant is given an opportunity to be heard or make representations; and

(b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

PART 6. Risk Management

6.1 The clearing agency's settlement services are designed to minimize systemic risk.

6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.

6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

PART 7. Systems and Technology

7.1 For its settlement services systems, the clearing agency:

(a) develops and maintains,

(i) reasonable business continuity and disaster recovery plans,

(ii) an adequate system of internal control,

(iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) makes reasonable current and future capacity estimates,

(ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

(iii) tests its business continuity and disaster recovery plans; and

(c) promptly notifies the regulator of any material systems failures.

7.2 The clearing agency annually engages a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 7.1(a).

PART 8. Financial Viability and Reporting

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

PART 9. Operational Reliability

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

PART 10. Protection of Assets

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

PART 11. Outsourcing

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

PART 12. Information Sharing and Regulatory Cooperation

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE "B"

Terms and Conditions

DEFINITIONS

For the purposes of this Schedule "B":

"Clearing Participant" means a clearing participant as defined under ICC's rules;

"client clearing" means the ability of a Clearing Participant to clear transactions at ICC for and on behalf of a client who is not a Clearing Participant;

"rule" means any provision or other requirement in ICC's rulebook, operating procedures or manuals, user guides, or similar documents governing rights and obligations between ICC and the Clearing Participants or among the Clearing Participants;

"U.S. Authorities" means the CFTC and SEC.

Unless the context otherwise requires, other terms used in this Schedule "B" have the meanings ascribed to them in Ontario securities law (including terms defined elsewhere in this exemption order).

REGULATION OF ICC

1. ICC will maintain its registration as a DCO and as a registered securities clearing agency in the United States and will continue to be subject to the regulatory oversight of the U.S. Authorities.

2. ICC will continue to comply with its ongoing regulatory requirements as a DCO and as a registered securities clearing agency in the United States.

3. ICC will continue to meet the criteria for exemption from recognition as a clearing agency as set out in Schedule "A".

GOVERNANCE

4. ICC will continue to promote a corporate governance structure that minimizes the potential for any conflicts of interest between IntercontinentalExchange, Inc. (and its affiliates) and ICC that could adversely affect the clearance and settlement of trades in contracts or the effectiveness of ICC's risk management policies, controls, and standards.

FILING REQUIREMENTS

Filings with U.S. Authorities

5. ICC will promptly provide staff of the Commission the following information, and to the extent that it is required to file such information with the U.S. Authorities it will file such information concurrently with staff of the Commission:

   (a) the annual audited financial statements of ICC;

   (b) details of any material legal proceeding instituted against it;

   (c) notification that ICC has failed to comply with an undisputed obligation to pay money or deliver property to a Clearing Participant for a period of thirty days after receiving notice from the Clearing Participant of ICC's past due obligation;

   (d) notification that ICC has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate ICC or has a proceeding for any such petition instituted against it;

   (e) the appointment of a receiver or the making of any voluntary arrangement with creditors; and

   (f) material changes to its bylaws and rules.

Prompt Notice

6. ICC will promptly notify staff of the Commission of any of the following:

   (a) any material change to its business or operations or the information as provided in the Application;

   (b) any material problem with the clearance and settlement of transactions in contracts cleared by ICC that could materially affect the safety and soundness of ICC;

   (c) any event of default by a Clearing Participant;

   (d) any material system failure of a clearing service utilized by an Ontario Clearing Participant;

   (e) any material change or proposed material change in ICC's status as a DCO or registered securities clearing agency or to the regulatory oversight by the U.S. Authorities;

   (f) the admission of any new Ontario Clearing Participant or any other Ontario resident that has entered into a direct connection arrangement with ICC for facilitating the Ontario resident's direct access to one or more ICC systems; and

   (g) the clearing of new products that are proposed to be offered to Ontario Clearing Participants or products that will no longer be available to Ontario Clearing Participants.

Quarterly Reporting

7. ICC will maintain the following updated information and submit such information to the Commission in a manner and form acceptable to the Commission on a quarterly basis (by the end of the month following the end of the calendar quarter), and at any time promptly upon the request of staff of the Commission:

   (a) a current list of all Ontario Clearing Participants;

   (b) a list of all Ontario Clearing Participants against whom disciplinary action has been taken in the quarter by ICC or, to the best of ICC's knowledge, by the U.S. Authorities with respect to such Ontario Clearing Participants' clearing activities on ICC;

   (c) a list of all referrals for disciplinary action by ICC relating to Ontario Clearing Participants;

   (d) a list of all Ontario applicants who have been denied clearing participant status in ICC in the quarter;

   (e) the maximum and average daily of: open interest, number of transactions and notional value of trades cleared by Clearing Product during the quarter, for each Ontario Clearing Participant;

   (f) the percentage of average daily open interest, number of transactions and the notional value of trades cleared by Clearing Product during the quarter for all Clearing Participants that represents the average daily open interest, total transactions and notional value of trades cleared during the quarter for each Ontario Clearing Participant;

   (g) the average daily open interest, number of transactions and notional value of the Single Name CDS products that reference Canadian entities cleared for both Canadian and Non-Canadian Clearing Participants during the previous quarter;

   (h) the aggregate total margin amount required by ICC ending on the last trading day during the quarter for each Ontario Clearing Participant;

   (i) the portion of the total margin required by ICC ending on the last trading day of the quarter for all Clearing Participants that represents the total margin required during the quarter for each Ontario Clearing Participant;

   (j) the Guaranty Fund contribution, for each Ontario Clearing Participant on the last trading day during the quarter, and its proportion of the total Guaranty Fund contributions;

   (k) a list of Ontario Clearing Participants who have received permission or approval by ICC during the quarter to:

      1) perform client clearing at ICC; or

2) clear at ICC new classes of products that the Ontario Clearing Participant was not otherwise permitted or approved to clear under the terms of its ICC membership;

(l) a summary of risk management analysis related to the adequacy of required margin and the level of the guaranty funds, including but not limited to stress testing and back testing results;

(m) based on information available to ICC, the aggregate notional value and volume of transactions cleared during the quarter by Clearing Participants for and on behalf of clients that are Ontario residents; and, where ICC has subsequently verified the accuracy of such aggregate client clearing information for any previous quarters, any summary that describes the results of such verification including any reconciliation of the information previously reported to the Commission;

(n) to the extent ICC becomes aware of the offering of client clearing to Ontario residents by a Clearing Participant, the identity of such Clearing Participant and its jurisdiction of incorporation (including that of its ultimate parent) that provides such client clearing services to Ontario residents including, where known,

1) the name of each of the Ontario residents receiving such services; and

2) the value and volume of transactions cleared by Clearing Product during the quarter for and on behalf of each Ontario resident;

(o) any other information in relation to an OTC derivative cleared by ICC for Ontario Clearing Participants as may be required by the Commission from time to time in order to carry out the Commission's mandate; and

(p) a copy of the bylaws and rules showing all cumulative changes to the bylaws and rules made during the quarter.

INFORMATION SHARING

8. ICC will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

9. Unless otherwise prohibited under applicable law, ICC will share information relating to regulatory and enforcement matters and otherwise cooperate with other recognized and exempt clearing agencies on such matters, as appropriate.

SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE

10. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of ICC's activities in Ontario, ICC shall submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.

11. For greater certainty, ICC shall file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve 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 Commission's regulation and oversight of ICC's activities in Ontario.

2.2.5 Crystallex International Corporation et al. – s. 144(1)

Headnote

Application by securityholder for a variation of a cease trade order issued by the Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – variation will permit applicants to trade certain securities of the issuer if the trade is a trade to or an acquisition by certain institutional investors provided that the institutional investor receives a copy of the cease trade order, as varied and the institutional investor provides written acknowledgement to the applicants that the securities remain subject to the cease trade order in accordance with its terms following such trade or acquisition.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
CRYSTALLEX INTERNATIONAL CORPORATION
("CRYSTALLEX")

AND

WEST FACE CAPITAL INC.
("WEST FACE")

AND

WEST FACE LONG TERM OPPORTUNITIES GLOBAL MASTER FUND L.P.,
WEST FACE LONG TERM OPPORTUNITIES MASTER FUND L.P., AND
WEST FACE LONG TERM OPPORTUNITIES (USA) LIMITED PARTNERSHIP
(THE "FUNDS" AND, TOGETHER WITH WEST FACE, THE "APPLICANTS")

ORDER
(Section 144(1) of the Act)

WHEREAS the Ontario Securities Commission (the "Commission") issued an order on April 13, 2012, under paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, ordering that trading in the securities of Crystallex, whether direct or indirect, cease temporarily;

AND WHEREAS the Commission issued a further order dated April 25, 2012, pursuant to paragraph 2 of subsection 127(1) ordering that trading in the securities of Crystallex, whether direct or indirect, shall cease until revoked by a further order (the "Cease Trade Order");

AND WHEREAS the Applicants have made an application to the Commission pursuant to section 144(1) of the Act to vary the Cease Trade Order;

AND WHEREAS the Applicants have represented to the Commission that:

1. Cease trade orders with respect to the securities of Crystallex have also been issued by the British Columbia Securities Commission on or about April 16, 2012 (as amended on or about April 18, 2012), the Autorité des marchés financiers of Quebec on or about May 8, 2012 and the Manitoba Securities Commission on or about July 9, 2012.

2. None of Crystallex's securities are currently listed or traded on any recognized exchange in Canada.

3. Crystallex is the subject of a Court-supervised restructuring under the Companies' Creditors Arrangement Act (Canada) and a proceeding under the U.S. Bankruptcy Code.

4. On December 20, 2013, notice that the Applicants have applied for this Order was provided to the Monitor under the Companies' Creditors Arrangement Act proceeding. As of the date of this Order, the Applicants have not received any objection to this Order from the Monitor.

5. Certain information regarding the proceedings involving Crystallex has been filed on SEDAR by Crystallex, including the December 31, 2012 audited annual financial statements and related management's discussion and analysis.

6. To the Applicants' knowledge, Crystallex's securities are not subject to cease trade orders in the United States or in other jurisdictions outside of Canada.

7. The head office of West Face is located in Toronto, Ontario.

8. West Face is registered as a portfolio manager, exempt market dealer and investment fund manager in Ontario, Alberta, and British Columbia and as an exempt market dealer and investment fund manager in Manitoba and Quebec.

9. West Face Long Term Opportunities Global Master Fund L.P. and West Face Long Term Opportunities Master Fund L.P. are Cayman Islands exempted limited partnerships that are advised by West Face.

10. West Face Long Term Opportunities (USA) Limited Partnership is a Delaware, U.S.A. limited partnership that is advised by West Face.

11. The Funds collectively hold $2,676,000 principal amount of senior unsecured notes of Crystallex with a coupon rate of 9.375% and 1,933,750 common share purchase warrants of Crystallex (the "Subject Securities"), all of which were acquired prior to the Cease Trade Order.

12. The Applicants are not insiders or control persons of Crystallex and are not in any way affiliated with Crystallex.

13. West Face expects that the Subject Securities may have value to certain investors interested in investing in securities of issuers in bankruptcy or restructuring proceedings.

14. The Applicants are seeking a variation of the Cease Trade Order under section 144(1) of the Act permitting the Applicants to trade the Subject Securities on a limited basis.

AND UPON the Commission being satisfied that it is not prejudicial to the public interest to vary the Cease Trade Order under section 144(1) of the Act;

IT IS ORDERED that, pursuant to section 144(1) of the Act, the Cease Trade Order be varied by including the following section:

> "Despite this Order, West Face Capital Inc., West Face Long Term Opportunities Global Master Fund L.P., West Face Long Term Opportunities Master Fund L.P. and West Face Long Term Opportunities (USA) Limited Partnership (the "Sellers"), each of which is not, and was not as at the date of this Order, an insider or control person of Crystallex International Corporation, may trade senior unsecured notes of Crystallex International Corporation with a coupon rate of 9.375% and common share purchase warrants of Crystallex (the "Subject Securities") acquired before the date of this Order, if the trade is a trade to or an acquisition by a person or company who is:
>
> (a) registered under the securities legislation of a jurisdiction of Canada as an adviser, investment dealer, mutual fund dealer or exempt market dealer;
>
> (b) an entity organized in a foreign jurisdiction that is analogous to an entity referred to in paragraph (a);
>
> (c) acting on behalf of a managed account managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction; or
>
> (d) an investment fund if one or both of the following apply:
>
> (i) the fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;

(ii) the fund is advised by a person or company authorized to act as an adviser under the securities legislation of a jurisdiction of Canada;

provided that, prior to such trade or acquisition, such person or company:

(e) receives a copy of this Order; and

(f) provides a written acknowledgement to the Sellers that the Subject Securities remain subject to the this Order in accordance with its terms following such trade or acquisition."

DATED this 30th day of December 2013.

"Kathryn Daniels"
Deputy Director, Corporate Finance

2.2.6 Andrea Lee McCarthy 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
ANDREA LEE MCCARTHY, BFM INDUSTRIES INC.,
and LIQUID GOLD INTERNATIONAL CORP.
(aka LIQUID GOLD INTERNATIONAL INC.)

ORDER
(Section 127 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. shall cease and that all trading by Kolt Curry, Mateyak, AHST Ontario, AHST Nevada, McCarthy, Winick and Denver Gardner Inc. shall 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 merits hearing;

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 would 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 "**Respondents**"), the Commission granted an application to sever the matter, as against the 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 October 28 and December 10, 2013, Staff and counsel for McCarthy appeared before the Commission for a hearing on the merits with respect to the Respondents;

AND WHEREAS Staff and counsel for McCarthy made submissions and filed the Affidavit of Andrea Lee McCarthy sworn October 23, 2013 and the "Joint Submission re: Liability of Andrea Lee McCarthy, BFM Industries Inc. and Liquid Gold International Corp. (aka Liquid Gold International Inc.)";

AND WHEREAS following the hearing on the merits with respect to the Respondents, the Commission issued its reasons and decision on January 3, 2014;

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. Staff and the Respondents shall serve and file any written submissions on sanctions and costs by 4:30 p.m. on March 3, 2014;

2. the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, Toronto, Ontario, on March 12, 2014 at 10:00 a.m.; and

3. pursuant to subsections 127(1), (7) and (8) of the Act, the Temporary Order, as amended, shall be extended as against the Respondents until the conclusion of this proceeding;

IT IS FURTHER ORDERED that, upon the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 3rd day of January, 2014.

"James D. Carnwath"

2.2.7 Kevin Warren Zietsoff

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

AND

IN THE MATTER OF
KEVIN WARREN ZIETSOFF

ORDER

WHEREAS on August 19, 2013, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of Kevin Warren Zietsoff ("Zietsoff" or the "Respondent");

AND WHEREAS on August 19, 2013, Staff of the Commission filed a Statement of Allegations;

AND WHEREAS the Respondent entered into a Settlement Agreement dated January 3, 2014, (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated January 3, 2014, setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from the Respondent through their counsel and from Staff of the Commission;

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

IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement is hereby approved;

2. Pursuant to clause 2 of subsection 127(1) of the Act that trading in any securities by Zietsoff shall cease permanently;

3. Pursuant to clause 2.1 of subsection 127(1) of the Act the acquisition of any securities by Zietsoff is permanently prohibited;

4. Pursuant to clause 3 of subsection 127(1) of the Act any or all exemptions contained in Ontario securities law do not apply to Zietsoff permanently;

5. Pursuant to clause 6 of subsection 127(1) of the Act Zietsoff is reprimanded;

6. Pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act Zietsoff shall resign all positions he holds as an officer or director of any issuer, of any registrant or of any investment fund manager;

7. Pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act Zietsoff is permanently prohibited from becoming or acting as an officer or director of any issuer, of any registrant or of any investment fund manager; and,

8. Pursuant to clause 8.5 of subsection 127(1) of the Act Zietsoff is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

DATED at Toronto this 6th day of January, 2014.

"Alan. J. Lenczner"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Sandy Winick 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
SANDY WINICK, ANDREA LEE MCCARTHY, KOLT CURRY, LAURA MATEYAK, GREGORY J. CURRY, AMERICAN HERITAGE STOCK TRANSFER INC., AMERICAN HERITAGE STOCK TRANSFER, INC., BFM INDUSTRIES INC., LIQUID GOLD INTERNATIONAL CORP. (aka LIQUID GOLD INTERNATIONAL INC.) and NANOTECH INDUSTRIES INC.

REASONS AND DECISION ON SANCTIONS AND COSTS
WITH RESPECT TO SANDY WINICK AND GREGORY J. CURRY
(Sections 127 and 127.1 of the Securities Act)

Hearing:	In Writing		
Decision:	December 30, 2013		
Panel:	James D. Carnwath, Q.C.	–	Commissioner and Chair of the Panel
Submissions:	Jonathon Feasby Cameron Watson Harald Marcovici	–	For Staff of the Ontario Securities Commission

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REASONS AND DECISION ON SANCTIONS AND COSTS
WITH RESPECT TO SANDY WINICK AND GREGORY J. CURRY

I. INTRODUCTION

[1] This was a hearing conducted in writing 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 imposing sanctions and costs against Sandy Winick ("**Winick**") and Gregory J. Curry ("**Greg Curry**") (collectively, the "Respondents").

[2] This proceeding arises out of a Notice of Hearing issued by the Commission dated January 27, 2012, pursuant to sections 127 and 127.1 of the *Act*, in relation to a Statement of Allegations, also dated January 27, 2012, filed by Staff of the Commission ("**Staff**") against Winick, Andrea Lee McCarthy ("**McCarthy**"), Kolt Curry, Laura Mateyak ("**Mateyak**"), Greg Curry, American Heritage Stock Transfer Inc. ("**AHST Ontario**"), American Heritage Stock Transfer, Inc. ("**AHST Nevada**"), BFM Industries Inc. ("**BFM**"), Liquid Gold International Corp. (also known as Liquid Gold 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 BFM, AHST Ontario, AHST Nevada, Denver Gardner Inc., which is an investment bank from Singapore ("**Denver Gardner**"), Winick, McCarthy, Kolt Curry and Mateyak. The Temporary Order was extended and amended from time to time. On March 23, 2012, it was extended until the conclusion of the hearing on the merits, which was scheduled to commence on November 12, 2012.

[4] On October 17, 2012, the Commission ordered that, pursuant to Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "*Rules of Procedure*"), the hearing on the merits would proceed as a written hearing. On November 2, 2012, Staff filed an Amended Statement of Allegations in respect of the same parties to the 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 "**McCarthy Respondents**"), the Commission granted Staff's 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 (*Re Sandy Winick et al.* (2013), 36 O.S.C.B. 1065).

[6] On May 16, 2013, the Panel accepted an Agreed Statement of Facts for Kolt Curry, Mateyak, AHST Ontario and AHST Nevada (the "**Curry Respondents**") and found that the Curry Respondents had contravened Ontario securities law and acted contrary to the public interest. At the request of Staff and counsel for Kolt Curry, Mateyak and AHST Ontario, the Commission also ordered that the hearing against the Curry Respondents be severed from the main proceeding in this matter and scheduled a sanctions hearing in respect of the Curry Respondents for August 27, 2013 (*Re Sandy Winick et al.* (2013), 36 O.S.C.B. 5508).

[7] On August 7, 2013, I issued my reasons and decision with respect to Winick and Greg Curry in the continuation of the written hearing on the merits (*Re Winick* (2013), 36 O.S.C.B. 8202 (the "**Merits Decision**")). 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 the Respondents, and extended the Temporary Order against Winick until the conclusion of the proceeding (*Re Sandy Winick et al.* (2013), 36 O.S.C.B. 8192).

[8] These reasons and decision on sanctions and costs include my findings as they relate to the Respondents, being Winick and Greg Curry. Similar to the Merits Decision, I will not be making further analysis or findings with respect to the McCarthy Respondents, the Curry Respondents or Nanotech.

II. BACKGROUND

[9] This matter involves three separate, but related, schemes through which investors purchased or received securities of BFM, Liquid Gold and Nanotech. Staff alleged that Winick engaged in unregistered trading, illegally distributed securities, perpetrated securities fraud on other persons or companies and made statements that a reasonable investor would consider relevant in deciding whether to enter or maintain a trading or advising relationship. Staff alleged that the statements were untrue or omitted information necessary to prevent the statements from being false or misleading. Staff further alleged that Greg Curry, as director and officer of BFM, and Winick, as directing mind and *de facto* director and officer of BFM, Liquid Gold, Nanotech, AHST Ontario and AHST Nevada, authorized, permitted or acquiesced in commission of breaches of Ontario securities law by those respective corporations and therefore Greg Curry and Winick were deemed to also have not complied with Ontario securities law.

[10] Following my review of the parties' written submissions, I made the following findings:

(a) Winick traded in and engaged in or held himself out as engaging in the business of trading in securities of BFM, Liquid Gold and Nanotech without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section was in force at the time the conduct commenced and contrary to subsection 25(1) at the *Act*, as subsequently amended on September 28, 2009, and contrary to the public interest;

(b) Winick distributed securities of BFM, Liquid Gold and 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 subsection 53(1) of the *Act* and contrary to the public interest;

(c) Winick, directly or indirectly, engaged or participated in acts, practices or a course of conduct relating to securities of BFM and Liquid Gold, that he knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to subsection 126.1(b) of the *Act* and contrary to the public interest;

(d) Winick, as *de facto* director and/or officer of BFM, Liquid Gold and Nanotech, did authorize, permit or acquiesce in the non-compliance with Ontario securities law by respective employees, agents or representatives of those companies and Winick is therefore deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*; and

(e) Greg Curry, as director of BFM, did permit or acquiesce in the non-compliance with Ontario securities law by BFM or by the employees, agents or representatives of BFM and Greg Curry is therefore deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*.

(Merits Decision, above at paras. 165 and 166)

[11] To demonstrate service to the Respondents of Staff's written submissions on sanctions and costs, including its bill of costs, Staff has provided the Affidavit of Tia Faerber sworn September 9, 2013 and the Affidavit of Laura Fisher sworn August 26, 2013. The Respondents did not participate in this hearing or make submissions on sanctions and costs. I am satisfied that I may proceed in the absence of the Respondents, in accordance with section 7 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*.

III. THE MERITS DECISION

A. The BFM Scheme

[12] In the Merits Decision, I found that between June 2009 and December 2010, the Respondents, acting on behalf of BFM, raised over $360,000 from at least 28 foreign resident investors through an investment scheme involving the sale of BFM securities (the "**BFM Scheme**"). BFM sold previously unissued securities over the phone to foreign investors through Denver Gardner. I found that Denver Gardner was a fictional company invented by Winick to mislead investors about the identity of the sellers of BFM and Liquid Gold securities (Merits Decision, above at para. 47). Investors were instructed to wire funds not to Denver Gardner, but directly to the bank accounts held by BFM and Liquid Gold.

[13] Although Winick was not formally appointed as a director or officer of BFM, I found that Winick participated in all major business decisions of the company, and I concluded that Winick was the directing mind, the management and a *de facto* director and officer of BFM.

[14] I found that BFM had no legitimate business and that it never had any assets or operations, other than an alleged stock purchase agreement made with a fertilizer company that was later terminated. BFM also did not receive any revenue from any sources apart from the funds raised from the sale of its own securities to investors. Most investor funds of BFM were spent on personal expenditures related entirely to Winick and entities that he controlled (Merits Decision, above at paras. 43, 130 and 131).

[15] Winick directed McCarthy to create the BFM website and directed her as to the use of investor funds deposited into the bank accounts of BFM. The BFM website furthered the deceptive BFM Scheme by creating the appearance that BFM was an operating entity. Winick also directed McCarthy to sign and forward BFM shares to BFM investors and he determined how many shares were to be issued to each investor. I found these acts to be acts in furtherance of trades. The trades of BFM securities were effected through a fictitious entity, Denver Gardner, and demonstrated that Winick was orchestrating a complex trading scheme, which included the issuance of BFM shares.

[16] Greg Curry was the president of BFM and received USD$78,000 directly from Winick and from a company of which Winick's wife was the sole director and officer (Merits Decision, above at para. 61). Greg Curry was Winick's nominee throughout the time BFM was selling securities.

B. The Liquid Gold Scheme

[17] Between June 2009 and November 2010, a total of USD$84,805.62 was raised from an investment scheme involving the sale of Liquid Gold shares to at least four Liquid Gold investors (the "**Liquid Gold Scheme**") (Merits Decision, above at para. 138). In the Merits Decision, I found that Winick used the fictitious company, Denver Gardner, to sell the shares of Liquid Gold, which were previously unissued, and that Winick orchestrated the complex Liquid Gold Scheme. Liquid Gold was an inactive company, did not have a legitimate business and did not have any assets other than cash.

[18] A total of USD$2.6 million was deposited into the Liquid Gold bank accounts, which included the approximately USD$85,000, mentioned above, which came from the sale of Liquid Gold shares to the public. The bulk of the USD$2.6 million was depleted by withdrawals and transfers for purposes unrelated to the alleged business of Liquid Gold, and I found that nearly half of the funds from the Liquid Gold bank accounts, approximately $1,260,500, was accepted by Winick for his personal benefit (Merits Decision, above at paras. 144 and 145). I also found that Winick directed McCarthy to disperse funds for the payment of personal expenses of Winick and his cohorts.

[19] Similar to BFM, Winick was not formally appointed as a director or officer of Liquid Gold, but he participated in the major business decisions of the company for the purposes of the Liquid Gold Scheme. I concluded that Winick was the directing mind and management of Liquid Gold.

C. The Nanotech Letter Scheme

[20] In early 2009, Winick instructed Kolt Curry to send out 10,000 individual letters (the "**Nanotech Letters**") to addresses in Europe, Asia, Africa and Australia, and each letter contained stock purchase warrants for Nanotech (the "**Nanotech Letter Scheme**"). I found that the Nanotech Letter constituted securities under the *Act* and Winick acted in furtherance of trades in such securities.

[21] The Nanotech Letter contained misleading statements, including statements regarding Nanotech's share price, and invited potential investors to exercise warrants enclosed in the letter. Fortunately, there was no evidence that any investor exercised the warrants offered in the Nanotech Letter (Merits Decision, above at para. 81). Although Nanotech was listed as "inactive" and "administratively dissolved" by the Wyoming Secretary of State since March 14, 2009, the Nanotech Letter and the website of Nanotech presented the company as a going concern (Merits Decision, above at paras. 86 and 87).

[22] I found that Winick undertook to distribute Nanotech shares and raise capital by offering Nanotech purchase warrants to members of the public through AHST Ontario and AHST Nevada. I concluded that Winick was the *de facto* director and/or officer of Nanotech; however, I could not conclude that Winick was a *de facto*r director or officer of AHST Ontario or AHST Nevada (Merits Decision, above at paras. 162 and 163). I was also unable to find that Winick made prohibited representations that were contrary to subsection 44(2) of the *Act* (Merits Decision, above at para. 158).

[23] On March 15, 2011, Winick and Greg Curry were arrested in Bangkok, Thailand for operating an illegal telemarketing fraud. Files seized by the Royal Thai Police were copied and provided to the Royal Canadian Mounted Police liaison officer in Bangkok. The documents included over 3,000 addressed copies of the Nanotech Letter, shareholder lists for BFM and Liquid Gold and a host of other documents connecting Winick to the BFM Scheme, the Liquid Gold Scheme and the Nanotech Letter Scheme.

IV. SANCTIONS AND COSTS REQUESTED BY STAFF

[24] Staff submitted that the following sanctions are appropriate and in the public interest:

(a) an order pursuant to clause 2 of subsection 127(1) of the *Act* that trading in any securities by Winick or Greg Curry cease permanently;

(b) an order pursuant to clause 2.1 of subsection 127(1) of the *Act* that the acquisition of any securities by Winick or Greg Curry is prohibited permanently;

(c) 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 Winick or Greg Curry permanently;

(d) an order pursuant to clause 7 of subsection 127(1) of the *Act* that Winick or Greg Curry resign any position that they hold as a director or officer of an issuer;

(e) an order pursuant to clause 8 of subsection 127(1) of the *Act* that Winick and Greg Curry be prohibited permanently from becoming or acting as a director or officer of any issuer;

(f) an order pursuant to clause 8.2 of subsection 127(1) of the *Act* that Winick and Greg Curry be prohibited permanently from becoming or acting as a director or officer of a registrant;

(g) an order pursuant to clause 8.4 of subsection 127(1) of the *Act* that Winick and Greg Curry be prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

(h) an order pursuant to clause 8.5 of subsection 127(1) of the *Act* that Winick and Greg Curry be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(i) an order pursuant to section 37 of the *Act* that Winick and Greg 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.

(j) an order pursuant to clause 6 of subsection 127(1) of the *Act* that Winick and Greg Curry are thereby reprimanded;

(k) an order pursuant to clause 9 of subsection 127(1) of the *Act* that Winick pay an administrative penalty of $1,250,000 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

(l) an order pursuant to clause 9 of subsection 127(1) of the *Act* that Greg Curry pay an administrative penalty of $250,000 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

(m) an order pursuant to clause 10 of subsection 127(1) of the *Act* that Winick disgorge to the Commission a total of CAD$359,200 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

(n) an order pursuant to clause 10 of subsection 127(1) of the *Act* that Greg Curry disgorge to the Commission a total of USD$78,000 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

(o) an order pursuant to subsection 127.1 of the *Act* that Winick pay $279,350 of the costs of the hearing, $50,000 of which shall be payable jointly a severally with Greg Curry; and

(p) an order pursuant to subsection 127.1 of the *Act* that Greg Curry pay $50,000 of the costs of the hearing, jointly and severally with Winick.

[25] As previously mentioned, the Respondents did not participate or provide any submissions in relation to this hearing on sanctions and costs.

V. THE APPLICABLE LAW

A. Approach to the Imposition of Sanctions

[26] In 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. As expressed in the oft-cited decision of *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; we are not prescient, after all.
>
> (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611)

[27] This view was endorsed by the Supreme Court of Canada in the following terms:

> … 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)

[28] In determining the nature and duration of sanctions, the Commission has considered the following factors:

(a) the seriousness of the allegations proved;

(b) the respondents' experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;

(f) any mitigating factors;

(g) whether the violations are isolated or recurrent;

(h) the size of any profit (or loss) avoided from the illegal conduct;

(i) the size of any financial sanction or voluntary payment when considering other factors;

(j) the effect any sanction might have on the livelihood of the respondent;

(k) the restraint any sanction may have on the ability of a respondent to participate without check in the capital markets;

(l) the reputation and prestige of the respondent;

(m) the shame, or financial pain, that any sanction would reasonably cause to the respondent; and

(n) the remorse of the respondent.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 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.))

[29] The Supreme Court of Canada has held that it is appropriate for the Commission to consider general deterrence in crafting sanctions which are designed to preserve the public interest. The court stated 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 ("***Re Cartaway***") at paras. 60 and 64).

[30] The Commission has applied *Re Cartaway* and considered "the importance of deterring not only those involved in this matter, but also like-minded people from engaging in similar conduct" (*Re Momentas Corp.* (2007), 30 O.S.C.B. 6475 ("***Re Momentas***") at para. 51). The Commission concluded that:

> [i]n order to promote both general and specific deterrence we found it necessary to impose severe sanctions including permanent cease trade orders, permanent exclusions from exemptions, and a permanent prohibition from acting as an officer or director of a reporting issuer.
>
> (*Re Momentas*, above at para. 52)

B. Application of Factors to the Respondents

[31] I find that the factors below are particularly relevant to my findings in imposing sanctions that are appropriate and proportionate to the circumstances of the Respondents.

1. The Seriousness of the Allegations

[32] The findings in the Merits Decision established serious contraventions of the *Act*, particularly fraud. The Commission has previously held that fraud is "one of the most egregious securities regulatory violations" and is 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, citing *Re Capital Alternatives Inc.* (2007), A.B.A.S.C. 79 at para. 308, citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420).

[33] Winick committed a series of acts including the illegal distribution and unregistered trading of securities. Winick engaged in an ongoing course of deceitful and fraudulent conduct designed to personally enrich himself at the expense of innocent investors. He was assisted by Greg Curry, who carried out various tasks related to BFM's plans to invest in a fertilizer company. During the period he was acting as Winick's nominee, Greg Curry received substantial funds directly from Winick and from companies Winick controlled.

2. The Level of Activity in the Marketplace

[34] The Respondents' activity took place from May 2009 to December 2010. During that period, the Respondents' violations of Ontario securities law were widespread and were contrary to the public interest. The three schemes of the Respondents required multiple bank accounts and involved several companies. The BFM Scheme involved 28 resident foreign investors, the Liquid Gold Scheme involved at least four investors and the Nanotech Letter Scheme involved the Nanotech letter, which was sent to approximately 10,000 addresses internationally.

3. The Profit Made from Illegal Conduct

[35] As previously discussed above in paragraphs 12 and 17, approximately $360,000 was raised from investors in relation to the BFM Scheme. The Liquid Gold Scheme raised a total of USD$84,805.62, which amounts to approximately $93,000 in Canadian dollars, using Staff's proposed exchange rate of 1.1 to convert U.S. dollars to Canadian dollars. The total funds obtained from BFM and Liquid Gold investors therefore amounted to approximately $450,000. I note that a total of approximately USD$2.6 million was deposited into the bank accounts of Liquid Gold.

[36] In the Merits Decision, I found that Winick accepted funds from the bank accounts of BFM and Liquid Gold in the amount of approximately $251,800 and $1,260,500, respectively (Merits Decision, above at paras. 131 and 145). I found that Winick accepted these funds for his personal benefit, including paying his expenses for credit card bills, personal taxes and hydro payments.

[37] In connection to the BFM Scheme, Greg Curry received over USD$78,000 directly from Winick and from a company of which Winick's wife was the sole director and officer.

4. Specific and General Deterrence

[38] The message must be sent to the Respondents and to other like-minded persons that schemes similar to the BFM Scheme, the Liquid Gold Scheme and the Nanotech Letter Scheme will draw severe sanctions. I find appropriate orders against the Respondents should include removing them from the capital markets permanently, imposing significant administrative penalties and ordering the disgorgement of funds obtained from the BFM Scheme and Liquid Gold Scheme. These sanctions will send a message to Winick, Greg Curry and to like-minded individuals that conduct that is similar to the Respondents' misconduct will result in significant sanctions.

[39] Staff seeks disgorgement orders against Winick for the amount of $359,200 and the amount of USD$78,000 from Greg Curry. I find that it is appropriate that the Respondents disgorge the funds that they obtained from their failure to comply with Ontario securities law. Staff has proven, on a balance of probabilities, that the amounts obtained by the Respondents resulted from their non-compliance with Ontario securities law (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Re Limelight***") at para. 53).

[40] I therefore find that that disgorgement orders for the amounts requested by Staff shall be ordered against the Respondents. I order that Greg Curry shall disgorge USD$78,000 on a joint and several basis with Winick. I order that Winick shall disgorge $359,200 obtained as a result of his non-compliance with Ontario securities law, of which USD$78,000 shall be payable with Greg Curry on a joint and several basis.

[41] Staff seeks an administrative penalty of $1,250,000 from Winick, calculated as the total of: $750,000 for his breach of subsection 126.1(b) of the *Act*, $250,000 for his breach of subsection 53(1) of the *Act* and $250,000 for his breach of section 25 of the *Act*. I find this request to be excessive. In this case, the allocation of an administrative penalty to various sections of the *Act* is not helpful and leads to an inappropriate result. The total amounts raised from investors was approximately $450,000,

which I consider to be an amount in the low range of cases involving schemes of this kind. I find that an administrative penalty against Winick of $750,000 is sufficient to meet the requirements of specific and general deterrence.

[42] Staff seeks an administrative penalty of $250,000 against Greg Curry. Further to my reasons outlined above in paragraph 41, I find that the appropriate amount of the administrative penalty against Greg Curry shall be $150,000.

[43] In considering the appropriate sanctions against the Respondents, I have reviewed the following decisions: *Re Al-Tar Energy Corp.* (2011), 34 O.S.C.B. 447; *Re Lehman Cohort Global Group Inc.* (2011), 34 O.S.C.B. 2999; *Re Limelight*, above; *Re Lyndz Pharmaceuticals Inc.* (2012), 35 O.S.C.B. 7357; *Re New Found Freedom Financial* (2013), 36 O.S.C.B. 6758; *Re Richvale Resource Corp.* (2012), 35 O.S.C.B. 10699; *Re Rowan* (2009), 33 O.S.C.B. 91; and *Re Sabourin* (2010), 33 O.S.C.B. 5299 at para. 65.

VI. COSTS

[44] Staff requests a costs order of $279,350 against Winick, of which $50,000 shall be payable with Greg Curry on a joint and several basis. In considering the appropriate costs orders against the Respondents, I have reviewed the factors outlined in Rule 18.2 of the Commission's *Rules of Procedure*. I have also reviewed the decisions listed above at paragraph 43, along with *Re Goldpoint Resources Corp.* (2013), 36 O.S.C.B. 1464.

[45] Staff provided a bill of costs (the "**Bill of Costs**"), which is found as an exhibit to the Affidavit of Laura Fisher sworn on August 26, 2013. I find that the total costs provided in the Bill of Costs is conservative in the circumstances. No costs are claimed for the investigation of this matter or the time spent preparing for and drafting the submissions for the sanctions and costs hearing. Also, no claim is made for disbursements incurred throughout this matter. I note, however, that the Bill of Costs provides for the investigation and hearing costs in connection to three separate matters, and only one of which relates to the Respondents in this matter. Therefore, I do not find it appropriate in the circumstances to order Winick to pay the total hearing costs of all three matters, given that he is a respondent in only one of the three matters.

[46] Neither Winick nor Greg Curry participated in the written hearing on the merits (Merits Decision, above at para. 19). I find that Winick and Greg Curry equally contributed to the costs incurred in this matter. As such, I order a costs order against Winick and Greg Curry for $50,000, which shall be payable on a joint and several basis.

VII. CONCLUSION

[47] For the reasons set out above, I conclude that it is in the public interest to make the orders set out below. In my view, the sanctions imposed will deter the Respondents and other like-minded individuals from engaging in similar misconduct in the capital markets in the future. I find that the sanctions are proportionate to the circumstances and conduct of each Respondent.

[48] I will issue a separate order giving effect to my decision on sanctions and costs as follows:

(a) pursuant to clause 2 of subsection 127(1) of the *Act*, trading in any securities by Winick or Greg Curry shall cease permanently;

(b) pursuant to clause 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Winick or Greg Curry shall be prohibited permanently;

(c) pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law shall not apply to Winick or Greg Curry permanently;

(d) pursuant to clause 6 of subsection 127(1) of the *Act*, Winick and Greg Curry are reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the *Act*, Winick and Greg Curry shall resign any position that they hold as a director or officer of an issuer;

(f) pursuant to clause 8 of subsection 127(1) of the *Act*, Winick and Greg Curry shall be prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) pursuant to clause 8.5 of subsection 127(1) of the *Act*, Winick and Greg Curry shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(h) pursuant to clause 9 of subsection 127(1) of the *Act*, Winick shall pay an administrative penalty of $750,000 for his 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*;

(i) pursuant to clause 9 of subsection 127(1) of the *Act*, that Greg Curry shall pay an administrative penalty of $150,000 for his 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*;

(j) pursuant to clause 10 of subsection 127(1) of the *Act*, Winick shall disgorge to the Commission a total of $359,200 obtained as a result of his non-compliance with Ontario securities law, of which USD$78,000 shall be jointly and severally payable with Greg Curry;

(k) pursuant to clause 10 of subsection 127(1) of the *Act*, Greg Curry shall disgorge to the Commission a total of USD$78,000 obtained as a result of his non-compliance with Ontario securities law, which shall be jointly and severally payable with Winick;

(l) the disgorgement orders referred to in each of subparagraphs 48(j) and (k), above, shall be designated for allocation or for use by the Commission, pursuant to subsection 3.4(2)(b) of the *Act*; and

(m) pursuant to subsection 127.1 of the *Act*, Winick and Greg Curry shall jointly and severally pay $50,000 for the costs incurred in the hearing of this matter.

DATED at Toronto this 30th day of December, 2013.

"James D. Carnwath"

3.1.2 Andrea Lee McCarthy 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
ANDREA LEE MCCARTHY, BFM INDUSTRIES INC., and
LIQUID GOLD INTERNATIONAL CORP. (aka LIQUID GOLD INTERNATIONAL INC.)

REASONS AND DECISION
(Section 127 of the Securities Act)

Hearing:	October 28, 2013 December 10, 2013		
Decision:	January 3, 2014		
Panel:	James D. Carnwath, Q.C.	–	Commissioner and Chair of the Panel
Appearances:	Jonathon Feasby Cameron Watson	–	For Staff of the Commission
Naomi Lutes		–	For Andrea Lee McCarthy
		–	No one appeared for BFM Industries Inc. or Liquid Gold International Corp. (aka Liquid Gold International Inc.)

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REASONS AND DECISION

I. OVERVIEW

A. Introduction

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), to consider whether Andrea Lee McCarthy ("**McCarthy**"), BFM Industries Inc. ("**BFM**") or Liquid Gold Corp. (aka Liquid Gold International Inc.) ("Liquid Gold") (collectively, the "**Respondents**") breached the Act and acted contrary to the public interest.

[2] The original proceeding was commenced by a Notice of Hearing that was issued by the Commission, pursuant to sections 127 and 127.1 of the Act, in connection with a Statement of Allegations filed by Staff of the Commission ("**Staff**") on the same day against Sandy Winick ("**Winick**"), 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, Liquid Gold and Nanotech Industries Inc. ("**Nanotech**"). An Amended Notice of Hearing was issued by the Commission and an Amended Statement of Allegations was filed by Staff against the same parties on November 2, 2012. On March 23, 2012, the Commission set down the dates for the hearing on the merits to commence on November 12, 2012.

[3] This proceeding also involves a temporary cease trade order (the "**Temporary Order**") against AHST Ontario, AHST Nevada, BFM, Denver Gardner Inc. ("**Denver Gardner**"), Winick, McCarthy, Kolt Curry and Mateyak that was first issued on April 1, 2011 and was extended from time to time. On March 23, 2012, the Commission ordered that the Temporary Order, as amended, be extended until the conclusion of the hearing on the merits, and Denver Gardner was removed as a respondent in this matter. The Temporary Order was subsequently amended on October 29, 2012, to allow McCarthy to sell securities in her Registered Retirement Savings Plan, as defined in the *Income Tax Act*, R.S.C. 1985, c. 1, as amended.

[4] On October 17, 2012, following a request from Staff, the hearing on the merits was converted to a written hearing (the "**Written Hearing**"), pursuant to Rule 11.5 of the Commission's Rules of Procedure (2012), 35 O.S.C.B. 10071 (the "***Rules of Procedure***"). Staff subsequently filed evidentiary briefs in the form of affidavits, as well as written submissions on relevant facts and law.

[5] On January 11, 2013, Staff filed a motion, pursuant to Rule 3 of the *Rules of Procedure*, seeking to sever the proceeding against the Respondents. On January 21, 2013, on consent of Staff and counsel for the Respondents, the Commission granted the application to sever the matter as against the Respondents.

[6] The hearing on the merits with respect to the Respondents was held on October 28 and December 10, 2013 (the "**Merits Hearing**"). Staff and counsel for McCarthy attended and made submissions. Staff filed written submissions, which included the Affidavit of Andrea Lee McCarthy, sworn October 23, 2013 (the "**McCarthy Affidavit**"), and the "Joint Submission re: Liability of Andrea Lee McCarthy, BFM Industries Inc. and Liquid Gold International Corp. (aka Liquid Gold International Inc.)" (the "**Joint Submission**"). I accept that the contents in the McCarthy Affidavit to be accurate and true. I also accept that the Joint Submission was entered into and agreed to by Staff and McCarthy.

[7] In a letter dated November 13, 2013 (the "**November 2013 Letter**"), the Secretary to the Commission, on my instructions, requested further submissions from the parties on three issues: (i) notice of the Merits Hearing on BFM and Liquid Gold; (ii) the positions of BFM and Liquid Gold regarding the Joint Submission; and (iii) the directing mind of BFM and Liquid Gold. On November 20, 2013, Staff filed its response in a letter, which reflected the joint position of Staff and counsel for McCarthy. Following the appearance on December 10, 2013, the Secretary to the Commission, once again on my instructions, requested the parties to provide further submissions on the third issue discussed in the November 2013 Letter, along with submissions to support Staff's allegation that the *mens rea* of fraud is established for BFM and Liquid Gold. Staff provided its submissions to this request on December 20, 2013.

[8] BFM and Liquid Gold did not participate in the Merits Hearing or make submissions. Staff filed the Affidavit of Service of Peaches A. Barnaby, sworn on November 30, 2012, as evidence that the Amended Notice of Hearing, the Amended Statement of Allegations and the Commission's order of October 17, 2012, converting the matter into a written hearing, was served on the Respondents. I am satisfied that I may proceed in the absence of BFM and Liquid Gold, in accordance with section 7 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*.

[9] The following reasons and decision include my findings regarding McCarthy, BFM and Liquid Gold. I will not be making any findings regarding the other respondents named in the Amended Notice of Hearing or in the Amended Statement of Allegations, being Kolt Curry, Mateyak, AHST Ontario and AHST Nevada, Winick, Greg Curry and Nanotech.

[10] On May 16, 2013, the Commission severed Kolt Curry, Mateyak, AHST Ontario and AHST Nevada (the "**Curry Respondents**") from the original proceeding. On December 20, 2013, the Commission issued the reasons and decision on sanctions and costs with respect to the Curry Respondents (*Re Kolt Curry et al.* (2013), not yet published). On August 7, 2013, the Commission issued the 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). On December 30, 2013, the Commission issued the reasons and decision on sanctions and costs with respect to Winick and Greg Curry (*Re Winick* (2013), not yet published).

B. The Respondents

(i) McCarthy

[11] In 2003, McCarthy met Winick, who was a business associate of her then-husband. In 2004, McCarthy became romantically involved with Winick and subsequently separated from her husband in 2007. In January 2008, McCarthy left her employment with her former husband. Thereafter, Winick provided financial support for McCarthy and her daughter.

[12] Winick travelled to Thailand in September 2009 to pursue business opportunities and he asked McCarthy to store a number of boxes of documents, which she kept for him in her residence in Stoney Creek, Ontario. McCarthy also stored several boxes of documents for Kolt Curry after he left for Thailand with his wife, Mateyak, and his family. When Winick returned to Ontario for visits or to deal with business matters, he would stay with McCarthy at her residence in Stoney Creek.

[13] McCarthy was later informed that Winick, Greg Curry and others were arrested in Thailand. On March 24, 2011, Staff executed a search warrant at McCarthy's residence in Stoney Creek, where Staff seized, amongst other items, the boxes of documents belonging to Winick and Kolt Curry. Those documents related to Denver Gardner, an investment bank that sold shares in BFM, Liquid Gold and numerous other companies.

[14] McCarthy has never been registered with the Commission in any capacity.

(ii) BFM

[15] At Winick's direction, on November 25, 2008, McCarthy incorporated BFM, pursuant to the laws of Ontario. McCarthy is a director and the President of BFM. Greg Curry is the only other director of the company.

[16] At Winick's direction, McCarthy registered BFM to her home address and created a website for BFM (the "**BFM Website**"). McCarthy listed herself as the administrative and technical contact for the BFM Website.

[17] Also at Winick's direction, McCarthy opened Canadian and U.S. dollar bank accounts for BFM at TD Canada Trust (the "**BFM Accounts**"). McCarthy was listed as the director and sole signatory on these accounts.

[18] The conduct in relation to BFM took place from November 2008 to December 2010. The distribution of BFM securities occurred from June 2009 to December 2010 (the "**BFM Material Time**").

(iii) Liquid Gold

[19] At Winick's request, on May 26, 2009, McCarthy incorporated Liquid Gold, pursuant to the laws of Ontario. McCarthy is the sole director of Liquid Gold.

[20] At Winick's direction, McCarthy opened U.S. and Canadian dollar bank accounts for Liquid Gold at the Bank of Montreal (the "**Liquid Gold Accounts**"). McCarthy and her father were the sole signatories on these accounts.

[21] The McCarthy Affidavit covers the conduct in relation to Liquid Gold, which took place from May 2009 to November 2010. The distribution of Liquid Gold securities occurred from June 2009 to November 2010 (the "**Liquid Gold Material Time**").

II. ISSUES

[22] Staff's allegations and the Joint Submission raise the following issues:

(a) Did the Respondents trade securities, engage in or hold themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the Act, as that section existed prior to September 28, 2009, and contrary to subsection 25(1) of the Act, on or after September 28, 2009, and contrary to the public interest?

(b) Did the Respondents engage in a distribution of BFM of Liquid Gold securities without a preliminary prospectus and a prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirements, contrary to subsection 53(1) of the Act and contrary to the public interest?

(c) Did BFM and Liquid Gold, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities of BFM or Liquid Gold, respectively, that they knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to subsection 126.1(b) of the Act and contrary to the public interest?

(d) Did McCarthy, being a director and/or officer of BFM and Liquid Gold, authorize, permit or acquiesce in the non-compliance of Ontario securities law by BFM, Liquid Gold or by the employees, agents or representatives of BFM or Liquid Gold, and is therefore deemed under section 129.2 also to have contravened Ontario securities law and acted contrary to the public interest?

III. ANALYSIS

A. Subsections 25(1)(a) and 25(1) of the Act

[23] Prior to September 28, 2009, subsection 25(1)(a) of the Act provided that no person or company shall trade in a security unless that person is registered with the Commission as a dealer, or as a salesperson, partner, or officer of a registered dealer:

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

[24] The current subsection 25(1) of the Act came into force on September 28, 2009. Subsection 25(1) of the Act provides that a person or company shall not engage in or hold himself, herself, or itself out as engaging in the business of trading in securities unless the person or company is registered with the Commission:

> **25. Registration – (1) Dealers** – 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.

[25] Based upon McCarthy's admissions contained in the McCarthy Affidavit, I find that the Respondents engaged in unregistered trading in circumstances where no exemptions were available to them. I rely on the following paragraphs in the McCarthy Affidavit:

- During the BFM Material Time, 28 foreign individual investors (the "**BFM Investors**") purchased previously unissued BFM securities through telephone representatives claiming to work for Denver Gardner, a non-existent investment bank purporting to operate out of Singapore, by wiring funds directly to the BFM Accounts (the "**BFM Scheme**") (para. 35);
- The BFM Investors wired money totaling over $360,000 (the "**BFM Investor Funds**") to the BFM Accounts as payment for their purchase of BFM shares (para. 38);
- BFM was never registered with the Commission in any capacity, nor filed a report of exempt distribution with the Commission (para. 6);
- At Winick's direction, McCarthy corresponded with BFM Investors regarding their investments in BFM, including signing and sending out BFM share certificates (para. 36);
- During the Liquid Gold Material Time, Liquid Gold sold previously unissued securities to at least four foreign individual investors (the "**Liquid Gold Investors**") through telephone representatives claiming to work for Denver Gardner (the "**Liquid Gold Scheme**"). The Liquid Gold Investors wired money directly to the Liquid Gold Accounts to pay for their shares (para. 52);

- A total of approximately USD $2.6 million was deposited into the Liquid Gold Accounts. This amount included approximately CAD $85,000 raised through the sale of Liquid Gold shares (the "**Liquid Gold Investor Funds**") (para. 53);

- Liquid Gold was never registered with the Commission in any capacity, nor filed a report of exempt distribution with the Commission (para. 7);

- McCarthy was never registered with the Commission in any capacity; and

- McCarthy effected transfers and withdrawals from the bank accounts of BFM and Liquid Gold under the direction of Winick (paras. 39 and 54).

B. Subsection 53(1) of the Act

[26] Subsection 53(1) of the Act provides:

> **53.(1) Prospectus required** – No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus has been filed and receipts have been issued for them by the Director.

[27] Based upon the following paragraphs in the McCarthy Affidavit, I find that the Respondents engaged in the illegal distribution of BFM and Liquid Gold securities, where no exemptions were available to them:

- During the BFM Material Time, BFM securities were previously unissued. No prospectus or preliminary prospectus was filed with the Commission, nor was a receipt issued for them by the Director in relation to the distribution of BFM securities. BFM has never filed a report of exempt distribution with the Commission (paras. 6 and 35); and

- During the Liquid Gold Material Time, the Liquid Gold securities were previously unissued. No prospectus or preliminary prospectus was filed with the Commission, nor was a receipt issued for them by the Director, in relation to the distribution of Liquid Gold securities. Liquid Gold has never filed a report of exempt distribution with the Commission (paras. 7 and 52).

C. Subsection 126.1(b) of the Act

[28] Section 126.1(b) of the Act reads as follows:

> **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, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,
>
> […]
>
> (b) perpetrates a fraud on any person or company.

[29] Subsection 126.1(b) of the Act was first considered by the Commission in *Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 ("***Re Al-Tar***"). In this decision, the Commission relied upon *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 ("***Anderson***") (leave to appeal to the Supreme Court of Canada denied [2004], S.C.C.A. No. 81 (S.C.C.)) in its discussion on fraud. The fraud provision in the British Columbia *Securities Act* is similar to the Ontario provision. In *Anderson*, the British Columbia Court of Appeal relied on *R. v. Théroux*, [1993] 2 S.C.R. 5 ("***Théroux***"), in which Justice McLachlin (as she then was) summarized the elements of fraud as follows:

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

1. subjective knowledge of the prohibited act; and

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

(*Théroux*, above at para. 27)

[30] Similar to *Re Al-Tar*, previous decisions issued by the Commission have substantially adopted the analysis in *Anderson* and *Théroux* when reviewing the legal test for fraud. The act of fraud is therefore established by a prohibited act and a deprivation caused by the prohibited act. Based upon the McCarthy's admissions in the McCarthy Affidavit, I find that the BFM Scheme and the Liquid Gold Scheme were deceitful, false and caused deprivation to investors. I rely upon the following paragraphs in the McCarthy Affidavit:

(i) BFM

- There were never any board of director meetings or any shareholders meetings. A minute book for BFM was not kept, nor were any bylaws for the company passed. BFM never had any employees (para. 26);

- The BFM Website stated that BFM was a company that "produces White Label High Quality all-natural fresh fish organic liquid fertilizer. BFM Industries manufactures this high quality product to the exact specifications and requirements of our customers." However, BFM never operated any fertilizer manufacturing business or any other business (paras. 28 and 32);

- In an email sent to a BFM Investor, dated August 26, 2009 and drafted by Winick, McCarthy stated that BFM hired Denver Gardner out of Singapore to raise capital and that BFM was "in the process of listing our company on the Frankfurt exchange." In an email dated January 11, 2010, McCarthy advised the same investor, "you will see your shares listed this year." (para. 37);

- The BFM Investor Funds totalled over $360,000 (para. 38);

- As part of McCarthy's role with BFM, she made withdrawals and transfers from the BFM Accounts, under the direction of Winick. The majority of the withdrawals from the BFM Accounts were in cash, transfers to a joint account held by Winick and McCarthy and disbursements in the form of credit card payments for McCarthy, Winick and Winick's spouse. Funds were also transferred to the accounts of Mateyak and Kolt Curry (para. 39);

- The BFM Investor Funds were entirely depleted by these withdrawals and transfers. None of the BFM Investor Funds were disbursed for any legitimate business purpose related to BFM (paras. 40 and 41);

(ii) Liquid Gold

- There were never any board of director meetings or any shareholders meetings. A minute book for Liquid Gold was not kept, nor were any bylaws for the company passed. Liquid Gold never had any employees (para. 48);

- On its website, Liquid Gold said that it was a company specialising in the "recovery of additional hydrocarbons from domestic sources, lessening the United States' dependence on foreign oil" (para. 50);

- As the sole director of the company, it was McCarthy's understanding that Liquid Gold was inactive and "never operated any oil or hydrocarbon recovery business or other business and never had any assets other than cash" (para. 51);

- The Liquid Gold Investor Funds were comingled with funds derived from other sources unrelated to the stated business of Liquid Gold (para. 53);

- McCarthy effected withdrawals and transfers from the Liquid Gold Accounts as and when directed by Winick (para. 54);

- The approximately $85,000 in Liquid Gold Investor Funds was deposited into Liquid Gold's Canadian dollar account (the "**Liquid Gold CAD Account**"). Additional amounts totalling approximately USD $2.5 million were deposited to the Liquid Gold Accounts and co-mingled with the Liquid Gold Investor Funds. McCarthy does not know whether the USD $2.5 million included additional investor funds. The Liquid Gold U.S. dollar account

was funded by a single transfer of approximately USD $1,167,000 from the Liquid Gold CAD Account (para. 55); and

- Over 98% of the total of approximately USD $2.6 million deposited to the Liquid Gold Accounts was depleted by withdrawals and transfers for purposes unrelated to the alleged business of Liquid Gold. This amount included the $85,000 of Liquid Gold Investor Funds (para. 56).

(iii) Mens Rea of Fraud

[31] The mental element of fraud is established by subjective knowledge of the prohibited act and the subjective knowledge that the prohibited act could have as a consequence of another. Previous decisions issued by the Commission have found that for a finding of fraud against a corporate respondent, it is sufficient to show that its directing mind(s) knew or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of subsection 126.(1)(b) of the Act; see, for example, *Re Al-Tar*, above at para. 286.

[32] In determining the liability of a corporation, there is no requirement that a directing mind be a director, *de facto* or *de jure*; being a director contributes to a consideration of whether a person is a directing mind, but "it is not determinative of the issue" (*Xanthoudakis v. Ontario Securities Commission*, 2011 ONSC 4685 at para. 63). The Commission has enumerated several factors to determine whether an individual is a *de facto* officer and director of a corporation, including:

(a) appointing nominees as directors;

(b) being responsible for the supervision, direction, control and operations of the company;

(c) negotiating on behalf of the company;

(d) substantially reorganizing and managing the company; and/or

(e) making all significant business decisions.

(*Re IMAGIN Diagnostic Centres Inc.* (2010), 33 O.S.C.B. 7761 at para. 137, citing *Re World Stock Exchange* (2000), 9 A.S.C.S. 658 (Alta. Sec. Comm.) at 18 (Q.L.))

[33] The evidence before me establishes that Winick was the directing mind and the *de facto* officer and director of both BFM and Liquid Gold. I find that the *mens rea* of fraud is established by Winick's subjective knowledge of the prohibited and deceitful acts of BFM and Liquid Gold, and that such acts would cause financial deprivation to investors. I rely on the admissions found in the following paragraphs in the McCarthy Affidavit to make these findings:

- Winick drafted responses to BFM Investor emails that were ultimately sent by McCarthy to these investors (para. 36);
- On August 26, 2009, McCarthy sent an email to a BFM Investor that was drafted by Winick and contained false statements about the company and its securities (para. 37);
- Winick's role with respect to BFM was to operate the company, liaise with government officials and agencies, make business decisions and raise funds for the project (para. 31);
- At Winick's direction, McCarthy incorporated BFM and Liquid Gold and opened the bank accounts of these corporate respondents (paras. 25, 29, 47 and 49);
- At Winick's direction, McCarthy created the BFM Website (para. 27); and
- At Winick's direction, McCarthy effected transfers and withdrawals from the bank accounts of BFM and Liquid Gold (paras. 39 and 54).

[34] The evidence also reveals that transfers were made from the BFM Accounts and the Liquid Gold Accounts to pay for the expenses of Winick, including credit card payments and the expenses of other companies that he controlled.

[35] I therefore find that BFM and Liquid Gold breached subsection 126.1(b) of the Act and acted contrary to the public interest.

D. Section 129.2 of the Act

[36] Lastly, I find that McCarthy, as a director and officer of BFM and Liquid Gold, is deemed to have contravened Ontario securities law, pursuant to section 129.2 of the Act, and acted contrary to the public interest.

[37] As previously mentioned, McCarthy incorporated and registered BFM and Liquid Gold. She opened the BFM Accounts, in which she was the sole signatory, and the Liquid Gold Accounts, in which she was the co-signatory with her father. McCarthy also made withdrawals and transfers from the BFM Accounts and Liquid Gold Accounts. In terms of BFM, she created the BFM website and she engaged in communications with BFM Investors.

IV. CONCLUSION

[38] For the reasons set out above, I find that:

(a) During the BFM Material Time, McCarthy and BFM traded securities, 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 subsection 25(1)(a) of the Act, as that section existed prior to September 28, 2009, and contrary to subsection 25(1) of the Act, on or after September 28, 2009, and contrary to the public interest;

(b) During the Liquid Gold Material Time, McCarthy and Liquid Gold traded securities, 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 subsection 25(1)(a) of the Act, as that section existed prior to September 28, 2009, and contrary to subsection 25(1) of the Act, on or after September 28, 2009, and contrary to the public interest;

(c) During the BFM Material Time, McCarthy and BFM engaged in a distribution of BFM securities without a preliminary prospectus and a prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirements, contrary to subsection 53(1) of the Act and contrary to the public interest;

(d) During the Liquid Gold Material Time, McCarthy and Liquid Gold engaged in a distribution of Liquid Gold securities without a preliminary prospectus and a prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirements, contrary to subsection 53(1) of the Act and contrary to the public interest;

(e) During the BFM Material Time, BFM, directly or indirectly, engaged or participated in acts, practices or courses of conduct relating to securities of BFM that it knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to subsection 126.1(b) of the Act and contrary to the public interest;

(f) During the Liquid Gold Material Time, Liquid Gold, directly or indirectly, engaged or participated in acts, practices or courses of conduct relating to securities of Liquid Gold that it knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to subsection 126.1(b) of the Act and contrary to the public interest; and

(g) McCarthy, being a director and/or officer of BFM and Liquid Gold, authorized, permitted or acquiesced in the non-compliance of Ontario securities law of BFM and Liquid Gold, and is therefore deemed under section 129.2 to have contravened Ontario securities law and acted contrary to the public interest.

[39] I will issue an order dated January 3, 2014, which will set down the date for written submissions and the hearing with respect to sanctions and costs in this matter. The order will also extend the Temporary Order, dated March 23, 2012, as against the Respondents, until the conclusion of this proceeding.

DATED at Toronto this 3rd day of January, 2014.

"James D. Carnwath"

3.1.3 Kevin Warren Zietsoff

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

AND

IN THE MATTER OF
KEVIN WARREN ZIETSOFF

SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and KEVIN WARREN ZIETSOFF

PART I – INTRODUCTION

1. By Notice of Hearing dated August 19, 2013, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Kevin Warren Zietsoff ("Zietsoff" or the "Respondent"). The Notice of Hearing was issued in connection with the allegations set out in the Statement of Allegations of Staff of the Commission ("Staff") dated August 19, 2013.

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Zietsoff.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated August 19, 2013, against Zietsoff (the "Proceeding") in accordance with the terms and conditions set out below. Zietsoff consents to the making of an order in the form attached as Schedule A, based on the Agreed Facts, as defined in this Settlement Agreement.

PART III – BACKGROUND TO THE SETTLEMENT

4. On December 19, 2013, Zietsoff plead guilty to a single count of Fraud Over $5,000, contrary to section 380(1)(a) of the *Criminal Code*, R.S.C. 1985, C-46 (the "Parallel Criminal Proceeding"), based on the same facts that underlie the allegations in this matter. The sentence hearing is scheduled for January 7, 2014.

PART IV – AGREED FACTS

5. Schedule B to this Settlement Agreement is a document entitled "Summary of Facts for Guilty Plea" that was filed as an exhibit in the Ontario Court of Justice on Zietsoff's guilty plea.[1] Through counsel, Zietsoff confirmed that the facts set out in Schedule B were accurate, and the facts were accepted by McLeod J. as the basis for a finding of guilt on the charge of fraud over $5,000. Schedule B is part of this Settlement Agreement and it is specifically intended that the Commission should rely on the whole of the Agreed Facts, including Schedule B, in considering this matter.

6. For this Proceeding, and any other regulatory proceeding commenced by securities regulatory authorities in Canada, Zietsoff agrees with the facts as set out in Part IV of this Settlement Agreement, and as set out in more detail in Schedule B to this Settlement Agreement (collectively the "Agreed Facts"). To the extent Zietsoff does not have direct personal knowledge of the Agreed Facts, Zietsoff believes the Agreed Facts to be true and accurate.

Overview of the Agreed Facts

7. Unless specifically stated to the contrary, the Agreed Facts concern events that took place from January 2006 through December 2012 (the "Material Time").

8. Zietsoff was an Ontario resident during the Material Time.

9. Zietsoff has never been registered with the Ontario Securities Commission in any capacity.

[1] The names of the investors have been removed in the copy attached as Schedule B and replaced with numbers.

10. During the Material Time, Zietsoff issued promissory notes (the "Promissory Notes") to a network of 59 acquaintances, family members and other residents of Ontario and the State of Arizona (the "Investors"), as set out more particularly in Schedule B to this Settlement Agreement.

11. Zietsoff received a total of $15,316,740 from Investors (the "Investor Funds") in exchange for the Promissory Notes.

12. The Promissory Notes were securities as defined in s. 1(1) of the Act and were not previously issued.

13. Zietsoff has never filed a prospectus or a preliminary prospectus with the Commission in relation to the Promissory Notes or any other security, nor did he receive a receipt for any prospectus or preliminary prospectus.

14. The Promissory Note stipulated an annual interest rate (which was often 12%) and typically required a 12-month notice for redemption of the principal amount. Some Investors received monthly cash payments for interest. However, if a Promissory Note was called, the payments stopped and were to accumulate to be discharged with the principal at the end of the 12-month notice period. Investors were encouraged to renew their loans at the end of the year and the old Promissory Notes were replaced with new ones that reflected the increase in value resulting from any unpaid interest. Similarly, new Promissory Notes were issued when an investor provided more capital.

15. The Investors paid funds to the Respondent to purchase Promissory Notes on the basis of false representations, including:

a. that Zietsoff was a successful trader with a proven system,

b. that the Promissory Notes were low risk or risk free,

c. that the Investors would accrue interest on the Investor Funds,

d. that Zietsoff would use the Investor Funds for specific debt, equity or real estate investments; and,

e. that Zietsoff would use the Investor Funds for futures trading using a specific system that he had developed.

16. In fact, Zietsoff was never a successful investor and had a record of consistent and near total trading losses both before and during the Material Time. Zietsoff regularly made risky investments and the funds he paid to Investors as "interest" or as repayment of principal were frequently derived from monies deposited by other Investors. Further, despite promising to do so, Zietsoff often did not use his futures trading system. When he did apply his system it produced consistent losses. Zietsoff disposed of the majority of the Investor Funds on trading losses.

17. When Zietsoff was unable to meet his ongoing obligations in respect of the Promissory Notes he used Investor Funds he had accepted for investment purposes to make "interest" payments to Investors and to repay the principal to other Investors who had exercised their option to call their Promissory Notes.

18. As Zietsoff incurred greater losses and found it more difficult to meet his interest payment obligations under the terms of the Promissory Notes and found it increasingly difficult to repay the principal amount of Promissory Notes that had been called, he induced Investors to stay invested in the Promissory Notes by making further false statements to them, including:

a. that he had Investor Funds invested in the brokerage firm MF Global, which was going through bankruptcy proceedings in 2011;

b. that Investor Funds would be used to short-sell foreclosed properties in Arizona;

c. that he was going to invest the Investor Funds in an arbitrage opportunity involving how the Greek debt was being valued on the cash and futures markets.

d. that he was acting as an intermediary to facilitate loans for businesses operated by his friends using the Investor Funds; and,

e. that he had access to advantageous rates on hedging US currency that he could use to invest the Investor Funds.

19. In fact, Zietsoff did not have Investor Funds tied up in the MF Global bankruptcy, was not engaged in short-selling Arizona real estate, had not invested in Greek debt, was not facilitating business loans to his friends as he described and was not investing in US Currency. He had simply lost the majority of the Investor Funds and was unable to make the payments required of him by the Promissory Notes.

20. The following chart sets out the total Investor Funds Zietsoff received from the sale of the Promissory Notes from 2006 to 2012 on a year by year basis:

Year	New Clients	Amount Borrowed
2006	3	575,000
2007	3	291,500
2008	5	1,386,350
2009	13	4,174,790
2010	14	2,789,500
2011	12	3,508,100
2012	9	2,591,500
Totals	**59**	**15,316,740**

21. Although for the reasons set out in paragraph 292 of Schedule B, it is not possible to perform an absolutely precise accounting of the investor losses in this matter, it is agreed that the following is a generally accurate statement of the total amounts of Investor Funds received and disposed of by the Respondent:

a. Received $15,316,740 in Investor Funds and traded an additional amount in the online accounts of some Investors;

b. Used at least $5,531,764.87 in Investor Funds to pay interest and/or repay principal to the same, or other, Investors;

c. Suffered trading losses of $10,682,559;

d. Lost an additional $1,197,227 trading in the online accounts of Investors; and,

e. Caused net losses to his victims in excess of $10 million.

22. In addition, Zietsoff traded in the online brokerage accounts of some of the Investors and persuaded them to allow him to do so based on the same misrepresentations set out in paragraphs 15 and 18, above. Zietsoff's trading in the Investors' online accounts was occasionally successful, but caused the Investors substantial losses over time, as set out more particularly in Schedule B.

23. The Respondent's acts, solicitations, conduct, or negotiations directly or indirectly in furtherance of the sale or disposition of previously unissued securities were for a business purpose and were undertaken without the benefit of an exemption from either the prospectus or dealer registration requirements under the Act.

PART V – CONDUCT CONTRARY TO THE ACT AND CONTRARY TO THE PUBLIC INTEREST

24. By virtue of the securities-related conduct described in the Agreed Facts, the Respondent admits that:

(a) Throughout the Material Time, Zietsoff engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to section 126.1(b) of the Act;

(b) Throughout the Material Time, Zietsoff engaged in or held himself out as engaging in the business of trading in securities without being registered to do so, in circumstances in which no exemption was available, contrary to s. 25(1)(a) of the Act, as that section existed at the time the conduct commenced, and contrary to s. 25(1) of the Act, as subsequently amended on September 28, 2009; and,

(c) Throughout the Material Time, Zietsoff traded in previously unissued securities without a preliminary prospectus and prospectus having been filed and receipts having been issued for them by the Director, and without an exemption from the prospectus requirement, contrary to section 53(1) of the Act.

25. Zietsoff admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in this Settlement Agreement.

PART VI – RESPONDENT'S POSITION

26. Zietsoff requests that the settlement hearing panel consider the following mitigating circumstances:

(a) The Respondent self-reported his breaches of Ontario securities law as set out in the Agreed Facts and in doing so gave an account that was generally consistent with the accounts of the Investors, as well as with the independent investigation of Staff and the RCMP;

(b) On December 19, 2013, the Respondent plead guilty to a single count of fraud over $5000 in the Parallel Criminal Proceeding.

(c) It is anticipated by both Staff and the Respondent that as part of the Parallel Criminal Proceeding the Respondent will be ordered to pay restitution in the full amount of the funds he received as a result of his fraud, illegal distribution and unregistered trading of securities.

PART VII – TERMS OF SETTLEMENT

27. Zietsoff agrees to the terms of settlement listed below.

28. The Commission will make an order, pursuant to subsection 127(1) of the Act, that:

(a) the Settlement Agreement is approved;

(b) pursuant to clause 2 of subsection 127(1) of the Act that trading in any securities by Zietsoff shall cease permanently;

(c) pursuant to clause 2.1 of subsection 127(1) of the Act the acquisition of any securities by Zietsoff is permanently prohibited;

(d) pursuant to clause 3 of subsection 127(1) of the Act any or all exemptions contained in Ontario securities law do not apply to Zietsoff permanently;

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

(f) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act Zietsoff shall resign all positions he holds as an officer or director of any issuer, of any registrant or of any investment fund manager;

(g) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act Zietsoff is permanently prohibited from becoming or acting as an officer or director of any issuer, of any registrant or of any investment fund manager; and,

(h) pursuant to clause 8.5 of subsection 127(1) of the Act Zietsoff is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

29. Zietsoff undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 28, above.

PART VIII – STAFF COMMITMENT

30. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Zietsoff in relation to the facts set out in Part IV herein, subject to the provisions of paragraphs 31 and 32, below.

31. If this Settlement Agreement is approved by the Commission, and at any subsequent time Zietsoff fails to comply with any of the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Zietsoff based on, but not limited to, the facts set out in the Agreed Facts, as well as the breach of the Settlement Agreement.

32. The Commission remains entitled to bring any proceedings necessary to recover any amounts Zietsoff is ordered to pay as a result of any order imposed pursuant to this Settlement Agreement.

33. If, at any time following the approval of this Settlement Agreement, Zietsoff initiates an appeal of his conviction or sentence in the Parallel Criminal Proceeding, this Settlement Agreement is null and void and Staff reserve the right to bring proceedings under Ontario securities law against Zietsoff based on, but not limited to, the facts set out in the Agreed Facts, as well as the breach of the Settlement Agreement.

34. If, for any reason, Zietsoff is convicted, but a restitution order is not made in the Parallel Criminal Proceeding, as set out above, at paragraph 26(c), Staff may apply to the Commission for a variance of the order arising from this Settlement Agreement and adding such terms as are necessary to require Zietsoff to disgorge the amounts obtained as a result of his non-compliance with Ontario securities law, which amounts shall be determined by the Commission based on the facts as set out in the Agreed Facts.

35. Zietsoff hereby undertakes to consent to an application to vary the order arising from this Settlement Agreement to add a disgorgement order, as set out in paragraph 34, above.

PART IX – PROCEDURE FOR APPROVAL OF SETTLEMENT

36. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Zietsoff for the scheduling of the hearing to consider the Settlement Agreement.

37. Staff and Zietsoff agree that the Agreed Facts, as defined in this Settlement Agreement, will constitute the entirety of the facts to be submitted at the settlement hearing regarding Zietsoff's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

38. If this Settlement Agreement is approved by the Commission, Zietsoff agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

39. If this Settlement Agreement is approved by the Commission, neither Staff nor Zietsoff will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

40. Whether or not this Settlement Agreement is approved by the Commission, Zietsoff agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART X – DISCLOSURE OF SETTLEMENT AGREEMENT

41. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

(a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Zietsoff leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Zietsoff; and

(b) Staff and Zietsoff shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

42. The terms of this Settlement Agreement will be treated as confidential by all parties hereto, but such obligations of confidentiality shall terminate upon commencement of the public hearing. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Zietsoff and Staff or as may be required by law.

PART XI - EXECUTION OF SETTLEMENT AGREEMENT

43. This Settlement Agreement may be signed in one or more counterparts, which together will constitute a binding agreement.

44. A facsimile copy of any signature will be as effective as an original signature.

Dated this 3rd day of January, 2014.

STAFF OF THE ONTARIO SECURITIES COMMISSION

"Karen Manarin"
Deputy Director, Enforcement Branch
Ontario Securities Commission

Signed in the presence of:

"Scott K. Fenton"
Witness:

"Kevin Zietsoff"
Kevin Warren Zietsoff

Dated this 3rd day of January, 2014.

"Schedule A"

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

AND

IN THE MATTER OF
KEVIN WARREN ZIETSOFF

ORDER

WHEREAS on August 19, 2013, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of Kevin Warren Zietsoff ("Zietsoff" or the "Respondent");

AND WHEREAS on August 19, 2013, Staff of the Commission filed a Statement of Allegations;

AND WHEREAS the Respondent entered into a Settlement Agreement dated _____ (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated _____ setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from the Respondent through their counsel and from Staff of the Commission;

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

IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement is hereby approved;

2. Pursuant to clause 2 of subsection 127(1) of the Act that trading in any securities by Zietsoff shall cease permanently;

3. Pursuant to clause 2.1 of subsection 127(1) of the Act the acquisition of any securities by Zietsoff is permanently prohibited;

4. Pursuant to clause 3 of subsection 127(1) of the Act any or all exemptions contained in Ontario securities law do not apply to Zietsoff permanently;

5. Pursuant to clause 6 of subsection 127(1) of the Act Zietsoff is reprimanded;

6. Pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act Zietsoff shall resign all positions he holds as an officer or director of any issuer, of any registrant or of any investment fund manager;

7. Pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act Zietsoff is permanently prohibited from becoming or acting as an officer or director of any issuer, of any registrant or of any investment fund manager; and,

8. Pursuant to clause 8.5 of subsection 127(1) of the Act Zietsoff is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

DATED at Toronto this _____ day of January, 2014.

_____

"Schedule B"

ONTARIO COURT OF JUSTICE (Toronto Region)

BETWEEN:

HER MAJESTY THE QUEEN

-and

KEVIN WARREN ZIETSOFF

SUMMARY OF FACTS FOR GUILTY PLEA

I. Overview

1. The following facts are presented by the Crown upon the plea of guilty by Kevin Warren Zietsoff to a count of fraud over $5,000 in relation to a fraudulent investment scheme he operated in Ontario, Arizona, and elsewhere, between 2006 and 2012.

2. The count covers a variety of dishonest conduct engaged in by Zietsoff to gather funds, retain loans/advances, repay investors, conceal losses and, generally, continue his unsuccessful trading activity.

3. Beginning in 2006, Zietsoff began borrowing and investing other peoples' money to trade futures contracts on different futures exchanges around the world through different brokerage firms throughout Canada and the United States of America. Over time, he presented himself as a successful trader with a "no-risk" investment strategy that paid guaranteed returns. In fact, his gains were significantly and consistently overtaken by losses.

4. The funds were advanced to him through his bank accounts in Canada and the United States of America through various means, including cheques, bank drafts, wire transfers and cash, and were usually fashioned as loans secured by promissory notes with guaranteed rates of return. Delivery and confirmation was done either through email, regular mail, priority mail, telephone or in person. Although the investors' money was often soon lost in trading, Zietsoff frequently assured them that their investments were safe and maintained that illusion by making interest or capital payments, often in cash, from other investors' money.

5. In January of 2013, Zietsoff approached the Royal Canadian Mounted Police ("RCMP") and disclosed his illegal activities. Prior to these disclosures, the RCMP were not aware of Zietsoff's activities. Later, Zietsoff extended his cooperation to the Ontario Securities Commission ("OSC"), which he knew had already received complaints regarding his unlicensed trading. It is calculated that over the course of his scheme, Zietsoff defrauded his investors of $15,316,740, lost over $10,000,000 trading derivatives, and repaid victims at least $5,531,764.87. An unascertainable smaller amount of the funds was used for personal living expenses.

II. The Charge of Fraud

6. Zietsoff is charged with one count of fraud over $5,000 on the public in Canada and the United States of America. The majority of the victims resided in Ontario, and the remaining victims resided in the United States, primarily in Arizona. Although some of the American victims were solicited in the United States, all of Zietsoff's illegal conduct relating to his American-based victims is included in the present charge because Zietsoff orchestrated the illegal scheme from Toronto. This included a variety of acts including meetings in Ontario, telephone calls from Ontario, emailing from Ontario, sending regular mail or priority mail and transferring funds into and out of Canada, where he conducted his trading, usually by means of his computer while in Ontario.

III. The Zietsoffs

7. This section will provide some background on Kevin Zietsoff, his spouse ([name redacted], from whom he is currently separated) and his parents [names redacted]. Although his wife and parents are not charged with any offences arising from this scheme, it will be seen that they were used by Zietsoff, from time to time, to facilitate his fraudulent activity.

8. Given their common surnames, Kevin Zietsoff will be referred to as "Zietsoff" or "the accused", while his spouse and parents will be referred to by their relationship to him.

a. Kevin Warren Zietsoff

9. Zietsoff was born in Orangeville, Ontario on February 11, 1972 and is the second son of his parents. His older brother died in a car accident in 1990, the same year that Kevin began university. Zietsoff graduated from the University of Waterloo in 1995 with an Honours Bachelor of Science degree. By then he was involved, part-time, day-trading in junior mining stocks, which he funded with approximately $2,000 that his parents had invested in his RRSP account.

10. When Zietsoff suffered losses in the Bre-X scandal in 1997, he shifted his attention to futures trading and soon realized substantial profits from the rise in the price of corn following a flood along the Mississippi River. He pursued his interest in day-trading through a series of courses, including computer science courses at the University of Waterloo, private trading courses in North Carolina, and economics courses at York University. In 1995, he worked on converting raw data regarding stock quotations into charts for the purposes of being able to monitor price patterns. He would later tell some of his victims that he had created a unique "positive expectancy system" which would guarantee him profits when trading in futures contracts.

11. Zietsoff married his wife in 2000. Also in 2000, Zietsoff began to renovate and 'flip' homes, which he continued to do for the next ten years in addition to his day-trading. In 2005, he commenced an extra-marital affair with Victim 1, an interior designer who provided contractor contacts on some of his renovations and also became an investor.

12. Zietsoff was not registered with the Ontario Securities Commission ("OSC") to trade in securities or as an investment advisor, or in any other category of registration.

13. On January 29, 2013, Zietsoff's counsel approached members of the Integrated Market Enforcement Team ("IMET") of the RCMP and advised that Zietsoff wished to disclose his fraudulent activity and plead guilty to his offences as soon as practicable. Prior to this time, the RCMP was unaware of the offences and the subject-matter of Zietsoff's conduct. He subsequently submitted to two voluntary interviews with the RCMP and provided them with a written account of his actions as well as his trading records, which, however, were incomplete and not always compiled contemporaneously. The accused advises that he provided all relevant documents that were available to him to disclose.

b. Zietsoff's Spouse

14. Zietsoff's Spouse has an MBA degree and is employed as an Executive Vice President with an information technology firm where she has worked since 1995. She was interviewed by the RCMP. Her marriage to Kevin Zietsoff was strained by 2005 when she learned of his affair with Victim 1, but she did not feel strong enough to leave him as both her parents had recently died. She separated from Zietsoff shortly after he disclosed his fraudulent activity to the police.

15. Zietsoff's spouse states that Zietsoff handled the finances in their marriage and that, through his trading, he lost $300,000 that she held in her RRSP when they got married. Despite a significant income from her employment, she declared bankruptcy in May 2013.

c. Zietsoff's Father

16. Zietsoff's father was an airline pilot with Air Canada until he retired in 1992 after 33 years of service. His retirement was prompted by the death of his eldest son. He has long feared losing Zietsoff, who suffers from Crohn's disease. Mr. Zietsoff was interviewed by the RCMP.

17. Zietsoff's father received a $450,000 cash payout from Air Canada upon his retirement but lost some of that money with two brokers he used in the early 1990s. Although he had little investment knowledge, Zietsoff's father decided to take control of his money and, by 2006, increased his portfolio to $1.5 million by studying how to invest in the stock market.

18. Zietsoff's father states that Zietsoff had limited employment opportunities because of his illness and was therefore interested in supporting himself through trading in the stock market. He supported Kevin in doing so by initially providing him with $5,000 in the early 1990s and then additional funds over time. Eventually, Zietsoff's father relinquished control over all of his investments to the accused through the period of 2003-2011.

19. Shortly after the death of his son, Zietsoff's father immersed himself in building a log house in the Parry Sound area. He sold that house some 15 years later and gave the profits (approx. $500,000) to Zietsoff to invest. Zietsoff's father states that he trusted his son with the money and never looked through the investment statements. Zietsoff paid his parents' bills and provided them with money.

20. Zietsoff's parents sold their log house after they began spending winters in Arizona. Over time they rented houses in Glendale and Scottsdale before purchasing a home in Rio Verde.

21. By the summer of 2012, there were indications that Zietsoff's investments were not doing well. Zietsoff was not able to provide his parents with money when they needed it and he claimed that the funds were tied up in an investment company (MF Global) that was experiencing difficulty (although Zietsoff's father thought his money was in an Interactive Brokers account that he owned but his son controlled). Eventually they abandoned their Rio Verde home because they could not maintain the mortgage payments and they leased a house in the Firerock community in Fountain Hills, Arizona instead. Zietsoff's father also sold his airplane because Zietsoff was not able to meet the loan payments.

22. In July 2012, Zietsoff's parents were no longer able to afford the rent on the Firerock residence so they broke their lease and moved back to Ontario. They have been sued in relation to both the Rio Verde and the Firerock properties.

23. Zietsoff's father denies encouraging his friends in Arizona or Ontario to invest with his son. He estimates that he and his wife lost all of their life savings (approx. $2.5 million) through their son's investment schemes.

24. In January 2013 Zietsoff's parents were living in a condominium in Orillia when Zietsoff visited to inform them that there was no money left and that he was turning himself in to the RCMP. They were forced to leave the condo and Zietsoff's father is currently pursuing employment to supplement his pension.

d. Zietsoff's Mother

25. Zietsoff's mother did not have a brokerage account and did not manage her own investments. She trusted the management of her money, including an RRSP, to her son. Zietsoff's mother operated a property management business until 2011, but no longer has an income.

IV. A General Description of the Fraud

26. Zietsoff employed a number of fraudulent means to obtain and retain funds from his victims. Those techniques evolved over time and were used individually or in combination with each victim as necessary. In general, however, Zietsoff deceived his victims by:

i. representing that he was a successful day-trader when he knew that he was not;

ii. representing that his investment strategy was safe (risk-free) when he knew either that it was not or that he was not following it;

iii. representing that his investment strategy generated positive returns when, in fact, it regularly produced losses;

iv. paying "interest" and/or "principal" to investors with money obtained from other investors (i.e. a Ponzi scheme); and

v. advancing specific misrepresentations about the types of investments that he was making, his ability to access investments and the general operation of his business.

27. As his losses and creditors grew, Zietsoff continued to acquire more investors and continued to engage in risky trading in futures contracts in an effort to cover his financial obligations. Predictably, he continued to sustain substantial losses, rather than gains. The following chart summarizes the number of clients and amount of funds he attracted during the period of the fraud (2006-2012). The chart includes only funds received from investors and does not include trades made in separate accounts in which Zietsoff was given permission to trade in futures contracts.

Year	New Clients	Amount Borrowed
2006	3	575,000
2007	3	291,500
2008	5	1,386,350
2009	13	4,174,790
2010	14	2,789,500
2011	12	3,508,100
2012	9	2,591,500
Totals	**59**	**15,316,740**

28. In the early years, Zietsoff obtained funds from his family and close friends. As time went on, he either sought out or was approached by other investors, often through his family and friends. Thus, although he did solicit some new clients, each was essentially referred to him in some manner. Some, inspired by hearing word of his success, were anxious to be accepted by him.

29. Zietsoff treated the money he received from investors as a personal loan and typically provided his "creditor" with a promissory note. Each promissory note varied, but each typically stipulated an annual rate of return (often 12%) and required a 12-month notice for redemption. Most investors received monthly cash payments for interest but, if a note was called, then the payments stopped and were to accumulate to be discharged with the principal at the end of the 12-month notice period. The loans were often renewed at the end of the year and the old promissory note was replaced with a new one that reflected the increase in value resulting from any unpaid interest. Similarly, new promissory notes were issued when an investor provided more capital.

30. Eventually, all of the money collected from the investors was either lost in speculative futures/derivatives trading, was paid back to other investors as interest or principal, or was used for living expenses.

31. When the funds were exhausted, Zietsoff approached the RCMP. His disclosures to the RCMP are summarized below.

V. Zietsoff's Admission of Guilt

32. Zietsoff attended for voluntary interviews with the RCMP on February 11 and 20, 2013. He also provided the RCMP with a ten-page document outlining the deliberate misrepresentations he made to his victims as well as an estimate of their losses. He also disclosed a variety of banking and accounting records relevant to his conduct. Although Zietsoff's record-keeping was not complete, he states that not all his trading records could be reassembled. When the RCMP compared his disclosures against the information from the victims, they concluded that Zietsoff's estimates were roughly accurate.

33. Zietsoff disclosed that he began trading in the stock market in 1990 with money that his parents had placed in an RRSP for him. When he lost his money in the Bre-X scandal, he switched his focus to the futures market. Over the next two decades his trading was funded with money obtained from his parents, his wife (as of 2000) and his victims. At the same time he took economic and investment trading courses at various institutions and helped to support himself by renovating and selling houses, which eventually ended in 2009 or 2010.

34. It was in 2006 that Zietsoff first took money from people outside his immediate family. The number of people from whom he received funds grew over time but they were all connected to him, directly or indirectly, through family, friends or other clients. Zietsoff acknowledged that each investor trusted him because he was known to them, and because he cultivated that trust.

35. He first borrowed money in 2006 to help with a renovation project that was running over budget. He reached out to friends, including Victim 1, for financial help. The line between his investing and home renovations became blurred and the money he received for each was comingled.

36. Zietsoff explained that he claimed to have developed a "positive expectancy" trading model that would guarantee profitable trading. Gambling, he explained, is a "negative expectancy" system because the odds are devised so that, even though a bettor will win on occasion, over time the bettor will inevitably lose the entirety of the initial bet and winnings. By contrast, his "positive expectancy" model ensured that most of his trades would be profitable while allowing for some losses. Essential to this system, however, was restraint and the avoidance of overly risky trades.

37. Zietsoff maintained that his investment trading strategy, which he demonstrated when enlisting clients, was sound, but that he did not follow it. As time went on and pressure to pay interest to investors increased, he more regularly abandoned his measured (positive expectancy) approach in favour of riskier trades. In effect, he stated that it was as if he was "gambling".

38. It appears that there were at least two significant investment trading decisions that foretold the demise of his operation. Zietsoff stated that he never recovered from the losses he incurred by trying to short-sell gold one year. Later, he took highly leveraged positions short-selling in the bond market in the expectation that interest rates would rise. Although leveraged trading presented the possibility of large profits with a marginal investment, such trading also presented the possibility of large losses. Zietsoff was wrong more often than he was right.

39. To many investors, Zietsoff portrayed himself as successful, when he was not. His actual lifestyle was different from what his investors believed. While they saw him flying across North America delivering large interest payments, in reality, he was being supported by his parents and wife. He stated that he did not use the defrauded funds to live a lavish lifestyle.

40. The money Zietsoff took was received as personal loans, and he repaid the principal in the form of a bank deposit, a bank to bank transfer, a bank draft, a bank wire, or cash. Interest was almost always paid in cash. The explanation for doing so

varies between Zietsoff and his clients, but Zietsoff stated that his clients preferred this method because they did not want to pay tax on the interest payments. Some clients, however, state that Zietsoff claimed that he had already paid tax on the money and, therefore, they did not have to. In any event, by 2011 he was no longer able to meet his obligations and he stopped advancing money to some of his clients. As well, some financial institutions closed his banking accounts because of his excessive cash withdrawals.

41. At the same time, Zietsoff began to invoke a number of deliberate falsehoods to relieve the pressure being applied by his investors and to extract additional funds in an effort to weather the storm. Those misrepresentations included:

- Telling clients that he had money invested in the brokerage firm MF Global, which was going through bankruptcy proceedings in 2011.
- Deceiving clients into believing that their money would be used to short-sell foreclosed properties in Arizona.
- Falsely advising clients that he was going to invest in an arbitrage opportunity involving the valuation of the Greek debt on the money and futures markets.
- Falsely claiming that he was acting as an intermediary to facilitate loans for businesses operated by his friends.
- Falsely telling clients that he had advantageous rates on hedging US currency.

42. Zietsoff estimated that he used other investors' money to pay interest (approximately $1,990,000) and repay principal (approximately $3,550,000) to clients in Canada and the United States. He believes that he lost approximately $10,000,000 in trading. He has asserted that all the money was either lost in bad trades or used to repay clients, but was not diverted to fund a lavish lifestyle for himself. The results of the RCMP's accounting investigation into the use of the funds are consistent with Zietsoff's estimates and will be set out below.

43. Despite his substantial losses, as late as December 2012, Zietsoff continued to attempt to trade his way out of the problem, and raised over $2 million in the final year in an effort to do so. However, when his efforts to borrow $15 million from a friend in Hong Kong failed in late 2012 he ceased trading and contacted the police.

VI. The Victims' Stories

44. Zietsoff's fraud was uniquely tailored to each investor, or group of investors. Although the overall parameters of the scheme remained relatively fixed, each victim or group was told a different combination of falsehoods and/or had his or her money used for various purposes other than what was expected. Accordingly it is necessary to provide a brief summary of each victim's account in a relatively chronological order. The accounts will also be divided by country.

a) The Canadian Victims

- **Victim 1**

45. Victim 1 did not attend for an interview with the RCMP. Her involvement in the fraud is described in Zietsoff's statements and records.

46. Zietsoff explained that he met Victim 1 in 2005 and he commenced an extra-marital affair with her. Victim 1 is an interior designer and she provided Zietsoff with contractor contacts to renovate a house in Port Credit. She loaned Zietsoff $250,000 in the early years of the fraud and invested more later -a total of $1,023,900 according to Zietsoff. She was repaid $425,600 over time, leaving a loss of $598,300.

47. Victim 1 also introduced Zietsoff to a friend (or relative), Victim 2, who also invested money ($50,000). When Zietsoff defaulted on the loan, Victim 1 undertook the repayments out of a sense of responsibility.

48. Zietsoff's wife was upset when she discovered that her husband was having an affair. This was exacerbated by the fact that Zietsoff had borrowed money from Victim 1 and lost it. In 2005-2006, Zietsoff's wife agreed to renovate and sell their house in Port Credit and was led to believe that her husband had repaid Victim 1 from the profits and ended their relationship. In December 2012 Zietsoff disclosed to his wife that his affair with Victim 1 was continuing.

- **Victim 2**

49. Victim 2 was not interviewed by the police. Her involvement in the fraud is described in Zietsoff's statements and records. Zietsoff explained that he was introduced to Victim 2 in 2011 through Victim 1. He told her about short-selling properties

in Scottsdale and that she could contact her bank to wire transfer money to him, for a total of $50,000. Although he initially made interest payments to Victim 2, Victim 1 undertook to do so when he defaulted. Zietsoff claims that Victim 2 is "up to date" although it appears that her capital investment has been lost.

- **Victim 3**

50. Victim 3 is a custom home designer who worked on four home renovation projects with Zietsoff commencing with the Port Credit property in 2007. Victim 3 saw Zietsoff trading on his computer and eventually asked Zietsoff to invest approximately $15,000 for him. Victim 3 later invested additional amounts of $90,000, $50,000 (from a line of credit) and $20,000. Victim 3 withdrew money from his line of credit because Zietsoff convinced him that he could make more money by investing than he would have to pay in interest. The loans were usually secured by promissory notes.

51. At first, Zietsoff indicated that Victim 3 would make 11-12% on his investments, although Zietsoff could not guarantee a return. Later, Zietsoff said he would pay a 13% rate of return because they were friends. According to Victim 3, he and his girlfriend did become friends with Kevin and his wife and they interacted socially. Victim 3 never asked for, or received, interest payments although he did receive some lump sum repayments of capital on occasion, which he estimates to be approximately $30,000.

52. Victim 3 recalls investing some smaller amounts on occasion -$7,000 in December 2009 and $10,000 in December 2010. He contributed a further $15,000 in December 2012 when Zietsoff said he was raising money for a friend who owned a paving company. Because this was a private investment the return was to be 25%. This was the first time that Zietsoff had made any specific representations about how he was investing Victim 3's money. Until then, Victim 3 believed Zietsoff was investing in futures.

53. Earlier in 2012, Zietsoff told Victim 3 that his money was tied up in the MF Global bankruptcy proceedings, and Victim 3's internet searches seemed to confirm his friend's story.

54. According Zietsoff's records, Victim 3 invested a total of $242,350 and was repaid $38,100, resulting in a net loss of $204,250. Victim 3 recounted total loans of $192,000 (although he did not keep track of the smaller amounts he advanced on occasion) and repayments of $30,000, resulting in a loss of approximately $162,000.

55. Victim 3 introduced other investors (i.e. his parents and a friend, Victim 19) to Zietsoff. He has not been able to contact Zietsoff since Christmas 2012.

- **Victim 4 and Victim 5**

56. Victim 4 and Victim 5 invested $35,000 with Zietsoff in February 2010 on the recommendation of their son, Victim 3. They trusted Zietsoff because their son spoke highly of him and would not have given him money otherwise. Although they had not been looking to change their investments, they did so because Zietsoff promised their money would be safe and generate a "quicker and higher return", which was 12%. They received a promissory note in return and chose to leave their "profits" with Zietsoff instead of withdrawing the interest.

57. In December 2012, Zietsoff offered them an opportunity to invest in his friend's paving company. It was described as a "high risk investment" but it was for only six months and would pay a 50% return. Victim 4 had just received a retirement payout and was convinced to invest that $30,000 in the project. Victim 3 invested another $5,000 in the paving venture on their behalf and they reimbursed their son. They did not receive a promissory note for this investment. (In Zietsoff's calculations, this $5,000 is reflected in Victim 3's losses as Zietsoff calculated victims' losses based on from whom he received the investment.)

58. Victim 4 and Victim 5 did not receive any interest or lump sum payments from Zietsoff and therefore suffered a $70,000 loss. Zietsoff's records indicate an investment/loss of $65,000, presumably because he does not account for the $5,000 Victim 3 invested on behalf of his parents (see previous paragraph).

59. Victim 4 and Victim 5 did not refer anyone to Zietsoff, although he encouraged them to do so and promised a 3% finder's fee.

60. Victim 4 and Victim 5 were "devastated" when Victim 3 advised them that the money was lost but were more concerned about their son, who felt responsible for their loss.

- **Victim 6 (Victim 7 and Victim 8)**

61. Victim 6 met Zietsoff through Zietsoff's wife, with whom he has worked for over twenty years. In 2006, Victim 6 withdrew $200,000 from the equity in his house to invest in Zietsoff's home renovation enterprise. He left the money with Zietsoff as they completed three renovation projects, believing that his investment was growing, as evidenced by the ever-increasing

promissory notes. He added an additional $50,000 in 2008, primarily for investing, and when Zietsoff stopped renovating houses all the money was used for trading in the futures market.

62. In 2010, Victim 6 received a small inheritance when his mother passed away and decided to invest $60,000 of that money with Zietsoff, who assured Victim 6 that his trading method prevented losses of more than 10%. The promissory notes given to secure the investments promised returns of 12% or 14%, although he never received any interest payments on the money. At the end of 2010, upon Zietsoff's urging, Victim 6 redeemed his RRSPs and invested an additional $160,000. Zietsoff agreed to pay monthly interest and, over the next year, Victim 6 received $71,588 back, which he needed to pay down his mortgage. He is still paying taxes on the RRSP withdrawal.

63. Victim 6 states that he invested $13,000 with Zietsoff for each of his children (Victim 7 and Victim 8) -$26,000 in total – between February 17, 2010 and August 4, 2010. His son, Victim 8, contributed another $14,500 for himself between April 17, 2011 and January 31, 2012.

64. In March 2012 Victim 6 loaned Zietsoff $50,000 to invest in a housing scheme in Arizona, on the understanding that he would be repaid $55,000 in July 2012.

65. In April 2012 Zietsoff approached Victim 6 seeking additional funds to settle a lawsuit in the United States (he, in fact, settled a lawsuit with Victim 75, as described more fully below). Zietsoff warned that if he lost the lawsuit then he would also lose his ability to trade and his investments would be in jeopardy. Believing that Zietsoff was licensed (which he was not) and that his investment was at risk, Victim 6 advanced a $175,000 interest-free loan on the understanding that it would be repaid in September 2012. This money came from his wife's RRSPs and from the remaining equity in their home.

66. Around this time, Zietsoff explained that his investments were not accessible because they were tied up in the MF Global bankruptcy, but he "swore on a stack of Bibles" that their money was safe. When Victim 6 later discovered that MF Global was repaying investors 72¢ on the dollar he told Zietsoff that he would accept the 28% loss to get his money back, but it never came.

67. In September 2012 Zietsoff told Victim 6 that he could not repay him. Victim 6 has not heard from Zietsoff since early December 2012.

68. According to Victim 6, he advanced a total of $720,000 and received back $71,588, resulting in a loss of $649,412. Victim 8 invested another $14,500, all of which was lost. According to Zietsoff's records, he received $721,000 from Victim 6, $14,500 on behalf of Victim 8 and $13,000 on behalf of Victim 7. He repaid $22,900 to Victim 8, resulting in a total loss of $712,600.

- **Victim 9 and Victim 10**

69. Victim 9 did concrete work on some of Zietsoff's houses. He invested a total of $110,000 with Zietsoff in 2009 and 2011 but, according to Zietsoff, was repaid in full, with interest ($22,134), within 9 months. He was not interviewed by the police. His involvement in the fraud is described in Zietsoff's statements and records.

- **Victim 11 and Victim 12**

70. Victim 11 and Victim 12 declined to be interviewed by the RCMP. Their involvement in the fraud is described in Zietsoff's statements and records. Zietsoff has known Victim 11 and Victim 12 since the 1980s when he flew model airplanes with their nephew and he considers them to be "surrogate parents". When he attended the University of Waterloo he would have dinner at their house on a regular basis. When Victim 11 retired he decided to invest with Zietsoff.

71. According to Zietsoff's records, Victim 11 and Victim 12 invested a total of $134,500 and were repaid $39,029, resulting in a loss of $95,471. As noted above, Victim 11 and Victim 12 did not submit to an interview but did advise the RCMP that they moved to Mexico and have forgiven Zietsoff.

- **Victim 13 and Victim 14**

72. Victim 13 has been friends with Zietsoff since they went to school together in Orangeville in 1988. He and his wife, Victim 14, did not attend to be interviewed by the RCMP and, accordingly, the circumstances of the fraud come from Zietsoff's statements and records.

73. Victim 13 and Victim 14 began investing with Zietsoff in June 2007 on the understanding that the accused's trading model was safe. In 2011, Zietsoff approached Victim 13 with a plan to invest in foreclosed properties in Arizona. It appears that Victim 13 made an investment through his company Victim 16 (see below).

74. According to Zietsoff, Victim 13 and Victim 14 invested a total of $120,000 (excluding the Arizona deal) and were repaid $106,276, resulting in a loss of $13,724.

- **Victim 15**

75. Victim 15 is a friend and business partner of Victim 13. Victim 15 declined to be interviewed by the police and, therefore, the circumstances of the fraud come from Zietsoff's statements and records. Victim 15 approached Zietsoff in 2009 to invest money with him, on the understanding that he was a successful trader. He was also solicited to invest in the Arizona property deal and advanced $100,000 to Zietsoff for that purpose in the Fall of 2011. In fact, the money was never used to invest in foreclosed properties but, instead, was lost on the futures market or was diverted to pay other creditors.

76. According to Zietsoff's records, Victim 15 invested a total of $649,000 and was repaid $567,901, resulting in a loss of $81,099.

- **Victim 16**

77. Victim 16 is the company co-owned by Victim 13 and Victim 15 through which they invested $50,000 in the Arizona property scheme on March 24, 2011. All of the money was either lost in futures trading or was diverted to pay other creditors.

- **Victim 17**

78. Victim 17 is Victim 15's mother. She was not interviewed by the police. Her involvement in the fraud is described in Zietsoff's statements and records. Victim 17 invested a total of $1,145,000 with Zietsoff commencing on August 10, 2009. She received a series of promissory notes carrying annual interest rates ranging from 0% (August 2009) to 72% (June 2011). The records also indicate that Victim 17 was repaid $1,096,517 between August 27, 2009 and March 7, 2012, resulting in a loss of $48,483.

- **Victim 18**

79. Victim 18 was not interviewed by the RCMP. His involvement in the fraud is described in Zietsoff's statements and records. Zietsoff explained that Victim 18 was introduced to him by Victim 15 in the Summer of 2011. Victim 18 decided to invest in the Arizona property scheme which, as explained above, did not exist. Victim 18 lost all of the $15,000 that he invested with Zietsoff.

- **Victim 19 and Victim 20**

80. Victim 19 is a close friend of Zietsoff who introduced a number of investors to the accused. In his statements, Zietsoff described Victim 19 as being one of his "cheerleaders", but not a partner. Victim 19 declined to be interviewed by the RCMP and, accordingly, the following account is taken from Zietsoff's statements and records.

81. Having been friends since 1988, Victim 19 first approached Zietsoff in 2010 to invest money for him. By then he had already introduced other investors to the accused. Zietsoff solicited additional funds from his friend in 2010 and 2012.

82. Victim 19 attended university and became a school teacher. He invested a total of $145,000 and never received any repayment of interest or capital. However, he did facilitate the repayment of funds to some investors by allowing Zietsoff to move the money through Victim 19's personal account. Zietsoff has explained that he did this because he did not want to deal with people when they became angry and also that it was done to allow him to repay amounts to Victim 19's sister and brother-in-law who were involved in a bitter divorce. He also states that he used Victim 19's account on one occasion to receive money from a client.

83. Victim 19 introduced the following investors to Zietsoff: Victim 54; Victim 56; Victim 48; Victim 24, Victim 21, Victim 23 and Victim 23; Victim 27; Victim 28; Victim 42 and Victim 43. Victim 43, in turn, introduced Victim 44 and Victim 45 to Zietsoff. Victim 44 introduced his parents to the accused.

- **Victim 21**

84. Victim 21 first met Zietsoff in high school but became re-acquainted with him in 2008 through their mutual friend, Victim 19. She and Victim 24 are the twin daughters of Victim 22 and Victim 23. Victim 21 provided a statement to the police.

85. Upon Victim 19's recommendation, Victim 21 met with Zietsoff at a restaurant in July 2008. Zietsoff assured her that the trading formula he used was safe and, to Victim 21, he projected an image of success, as evidenced by the Porsche he drove to the meeting. She invested $50,000 at that time and a further $120,000 upon the sale of her house a few months later. She was promised interest of 12% per annum. She received promissory notes in return as well as monthly interest payments in

cash, which varied between $800 and $1,100 per month over the next three and a half years, although Zietsoff's records suggest the range was between $700 and $1,500 each month.

86. Victim 21 asked for a total of $92,000 back when she purchased her current house but Zietsoff was only able to give her lump sums of $67,000 and $10,000 in August 2009.

87. By the Summer of 2009, Victim 21 had introduced Zietsoff to her sister, Victim 24, and her brother-in-law, Victim 25. Earlier, in 2008, she had introduced the accused to her parents, Victim 22 and Victim 23. Their investments are summarized below, and include $50,000 that was advanced to Zietsoff for the benefit of Victim 21, by her parents, in April 2010. This $50,000, and an identical amount advanced on behalf of Victim 24, is included in the losses suffered by Victim 22 and Victim 23.

88. In May 2012, Zietsoff approached Victim 21 for a loan. He explained that he was being sued by an investor in the United States and that if she and her parents did not help then all of their money would be lost. Zietsoff also stated that he needed the loans because his money was tied up in the MF Global bankruptcy proceedings. He said he needed money to help pay for the lawsuit and that he would repay everything when MF Global recovered, which he expected would be June of 2013. He promised to pay her 4% interest until he could repay the loan in June 2013. As a result, Victim 21 advanced a total of $101,000 to Zietsoff; this money was transferred through the accounts of Zietsoff's father ($70,000) and Zietsoff's spouse ($25,000 and $6,000).

89. In September 2012, Zietsoff met with the family at Victim 21's house and assured them that their principal was safe. However, when her parents asked what would happen if they needed money before June 2013 he replied that they were "screwed". Zietsoff denies saying this to the family.

90. In November 2012, Victim 21's parents were contacted by the OSC in relation to its investigation. According to the family, they alerted Zietsoff, who subsequently attended uninvited at Victim 21 and Victim 24's birthday party on December 11, 2012 and instructed them to tell their parents to burn all their documents and to not speak to the OSC. Zietsoff denies ever saying that to the family or anyone else.

91. Victim 21 has not seen Zietsoff since December 16, 2012 when she, her sister and her brother-in-law met with Zietsoff to discuss the state of their investments. At that time, Zietsoff explained that he wanted to repay her parents first and that Victim 21, Victim 24, and Victim 25 were the last people he should reimburse.

92. Victim 21 states that she advanced a total of $271,000 to Zietsoff and received back a maximum of $77,000 in principal and interest of perhaps $42,000 (average of $1,000 per month for 42 months). Her loss was therefore approximately $152,000.

93. According to Zietsoff's records, Victim 21 invested a total of $265,000 and was repaid $96,734, resulting in a loss of $168,266.

- **Victim 22 and Victim 23**

94. Victim 22 and Victim 23 paid off their home and were financially secure retirees with an annual fixed income of $33,000. As a result of their dealings with Zietsoff, they lost all of their savings and equity in their home.

95. Victim 22 and Victim 23 were introduced to Zietsoff in August 2008 by their daughter, Victim 21. They were looking to move their investments from their current broker in the hope of generating better returns that would enable them to take some vacations and leave an inheritance to their daughters. They were attracted by Zietsoff's assurances that he could generate 12% annual returns through a commodities futures trading method that kept their principal safe. The Bernie Madoff scandal was unfolding at the time and Victim 22 specifically asked Zietsoff if he was running a Ponzi scheme. Zietsoff assured him that he was not and that he traded through brokerages in Canada and the United States.

96. Zietsoff spent more and more time with Victim 22 and Victim 23, to the point that Victim 21 and Victim 24 joked that he was "like the son they never had". Victim 22 and Victim 23 came to trust him completely and provided him with the following money, which included inheritances from their parents:

- $50,000 on September 2, 2008
- $35,000 on October 30, 2008
- $35,000 on April 3, 2009
- $60,000 on April 28, 2009
- $175,000 on June 25, 2009
- $37,500 in January, 2010

The April payments included what was left of Victim 23's RRSP, which Zietsoff persuaded her to collapse. The June 25, 2009 payment came from a home equity line of credit that he encouraged them to open and draw down. The advances were secured by promissory notes redeemable on a year's notice.

97. Zietsoff's bank statements reveal the following additional deposits from Victim 22 and Victim 23:

- $40,000 on March 25, 2009
- $35,000 on July 28, 2009

Zietsoff made punctual monthly cash interest payments to Victim 22 and Victim 23 from October 1, 2008 through 2012. Often the amount was less than what they were entitled to because they asked him to add the difference to their principal.

98. Victim 22 and Victim 23 gave their daughter, Victim 24, lump sums of $40,000 and $30,000 in March and April 2011 to allow her to invest in Zietsoff's Arizona property scheme. (The $70,000 is included in the losses suffered by Victim 24.) Zietsoff states that the money came from Victim 22 and Victim 23. They invested a further $40,000 in that venture themselves on August 22, 2011, and another $45,200 on November 23, 2011, on the understanding that they would receive a 15% return every three months, which would be rolled over with the principal into the next transaction. The August 22, 2011 funds were wired to Kevin Zietsoff's HSBC account and the November 23, 2011 funds were transferred to Zietsoff's father's TD CanadaTrust account.

99. It was also in November 2011 when Zietsoff came to their home, while Victim 24 was visiting, and claimed that the company he had been dealing with, MF Global, was in bankruptcy proceedings. He stated that he had been through a similar situation in 2002 and had recovered all of his money within four weeks. However, he was now being sued by an American investor (Victim 75) and he needed some money immediately to settle the lawsuit. If he failed to do so then he would have to declare bankruptcy and all their money would be lost.

100. Believing they had no other option, Victim 22 and Victim 23 agreed to place another mortgage on their home to obtain cash for Zietsoff. When their bank would not advance the funds based on their limited pension, Zietsoff found a mortgage broker in Guelph who agreed to the financing provided Zietsoff's wife co-signed the mortgage. Zietsoff's wife did so, albeit reluctantly according to Victim 22 and Victim 23. This generated $270,000 which they provided to Zietsoff, again through his father's account, in May 2012. The mortgage was for a year and came due in May 2013.

101. In September 2012, they met Zietsoff at Victim 21's house and were informed that he had not recovered his money. When they asked what would happen if they needed money he replied, "You are fucked". (Zietsoff denies saying this).

102. They spoke with Zietsoff for the last time in December 2012 after being contacted by the OSC. He told them that he was going to repay Victim 24 and Victim 25 first but that he would reimburse them in a year's time. He also discouraged them from talking to the OSC and instructed them to burn their promissory notes as they were worthless. (Zietsoff denies saying this).

103. According to Victim 22 and Victim 23, they invested a total of $822,700 and received back $85,000, resulting in a loss of $737,700. Zietsoff's records indicate a slightly lesser investment of $785,200 and repayments of $117,720, resulting in a loss of $667,480.

- **Victim 24, Victim 25, and Victim 26**

104. Zietsoff visited Victim 24 and her husband, Victim 25, at their home to describe his trading system to them. Arriving in his Porsche, Zietsoff appeared to be as successful as he claimed. He explained that he never invested more than 3-4% of his total portfolio and withdrew his funds from the market at the end of each day. This ensured that everyone's money was protected. As well, each investor received a promissory note carrying an annual return of 12%.

105. Victim 24 and Victim 25 invested $155,000 and $100,000, respectively, in the Spring and Summer of 2010. In doing so, Victim 24 cashed out her RRSPs because Zietsoff promised a much better return. For the next year, Victim 25 received monthly interest payments of $1,000 while Victim 24 left her promised interest to accumulate. Victim 24 invested a total of $70,000 in March and April 2010, which money she received from her parents, in addition to $10,000 of her own that she advanced on March 1, 2010. In December 2010 she invested a further $5,912 on behalf of their daughter, Victim 26.

106. In January 2011, Victim 24 invested a further $17,500 and Victim 25 a further $95,000 in Zietsoff's Arizona housing scheme. The accused promised that the money would be repaid in three months with 10% interest. However, when the investments matured, Zietsoff claimed that the project would now take a year but that their interest would roll-over every three months, for a total of 40% per annum. They received new promissory notes to ease their discomfort. Victim 24 also advanced an additional $51,000 on February 28, 2011.

107. In April 2011, Victim 21, Victim 22, Victim 23, Victim 24, and Victim 25 combined to invest an additional $56,500 in the Arizona housing scheme upon Zietsoff's promise of a 15% return. He again offered 15% to Victim 24 before she agreed to withdraw $70,000 from her home equity to invest in the Fall of 2011.

108. They received a panicked call from Zietsoff in April 2012 in which he pleaded for more money to help save his business. He said "something went bad" and he needed hundreds of thousands of dollars. Victim 24 advanced $10,000 for 30 days but received only $5,000 back at the end of the month. By the Summer of 2012, Zietsoff was telling them that his money was tied up in the MF Global bankruptcy proceedings.

109. By December 2012 Victim 25 was threatening to go to the police if he was not repaid. Zietsoff responded that he would buy them out on February 1, 2013 but they might receive only 80% of their investment.

110. Victim 24 invested $319,412 and received $5,000 back, resulting in a loss of $314,412. Victim 25 invested $195,000 and $56,500 (on behalf of the family) and received monthly interest payments of approximately $12,000, resulting in a total investment of $251,500 and a loss of $239,500.

111. According to Zietsoff's records, Victim 24 advanced a total of $207,500 and was repaid $13,188, resulting in a loss of $194,312. Victim 25 is said to have advanced a total of $256,600 and was repaid $31,000, resulting in a loss of $225,500.

- **Victim 27 and Victim 28**

112. Victim 27 met Zietsoff through Victim 19. At the time, Victim 27 was married to Victim 28, who is the sister of Victim 19's wife. Victim 27 and Victim 28 have since divorced and, as part of their separation, Victim 27 agreed to take the $200,000 promissory note securing their investment with Zietsoff instead of his half interest in the matrimonial home. That promissory note is now worthless.

113. Victim 27 and Victim 28 were looking to invest some money when they were introduced to Zietsoff in 2008. He was presented to them as a successful investor from a wealthy family, an image that was consistent with his arrival at their home in a Porsche. He promised them a safe investment in his commodities futures trading venture and offered an annual return of 12%.

114. Victim 27 and Victim 28 invested $200,000 in October 2008 but separated soon thereafter. In February 2010 it was agreed that Victim 28 would receive the $2,000 monthly cash interest payments from Zietsoff for child support. Those payments were transferred back to Victim 27 as part of the divorce agreement in June 2012, after which he received four monthly cash payments before Zietsoff defaulted in October. Zietsoff explained that his money was frozen in the MF Global bankruptcy proceedings. Victim 27 received a $2,000 lump sum in December 2012 but has had no further dealings with Zietsoff since then.

115. According to Zietsoff's records, Victim 27 and Victim 28 received payments of $89,500, resulting in a loss of $110,500.

- **Victim 29 (Victim 30)**

116. Victim 29 has worked with Zietsoff's wife since 1991. They became friends and when he learned that her husband was investing for high net-worth clients he asked her for advice on where he should invest his money. Zietsoff's wife suggested Zietsoff, who then met with Victim 29 to explain why his trading system was safe and profitable. He guaranteed a 3% annual return but indicated that he would pay 12% because he was doing so well. Victim 29 agreed to invest $300,000 in April 2008, but declined Zietsoff's advice to cash in his RRSPs to invest more.

117. Zietsoff made the monthly interest payments for the first two years and repaid $100,000 of the capital upon request in 2009. However, by 2011 Victim 29 was having difficulty reaching Zietsoff and eventually gave his one-year notice that he wanted to withdraw the remaining $200,000. Zietsoff assured him that the money was safe and that he would receive the principal and interest in a year.

118. Zietsoff brought his wife to a meeting with Victim 29 in May 2012, although until then he had insisted that his wife not be involved in their communications. He explained to Victim 29 that the brokerage firm where his money was kept had gone bankrupt and that he was in need of money to settle a lawsuit in the United States. These circumstances made it difficult for him to repay his clients but he did return $50,000 of the principal to Victim 29.

119. Zietsoff went on to explain that he has different circles of investors and that the closest circles would get their money first. The inner circle was his family and close friends. Victim 29 was told that he was in the second circle.

120. Victim 29's last communication with Zietsoff was an email the accused sent him in September 2012 stating that he had no more money to give.

121. According to Zietsoff's records, Victim 29 was repaid $234,000 in principal and interest, resulting in a loss of $66,000. Victim 29 acknowledges receiving $150,000 in principal and an unascertained amount of interest which was paid in cash and bank drafts.

- **Victim 31 (Victim 32) and Parents (Victim 33 and Victim 34)**

122. Victim 31 and Zietsoff met at the University of Waterloo and became friends. Victim 31 was not interviewed by the police but Zietsoff admitted that he borrowed a total of $240,000 from Victim 31, and his company, Victim 32, beginning in 2009 on the basis of deliberate falsehoods about his trading record. It appears that Victim 31 was repaid $150,000 of his principal and, according to Zietsoff's ledger, an additional $12,800 in interest. As a result, Victim 31 lost $77,200.

- **Victim 35 and Victim 36**

123. Victim 35 is Victim 31's business partner. Victim 36 is his spouse. Victim 35 invested $230,000 with Zietsoff on December 12, 2009 at 12% per annum following Zietsoff's misrepresentations regarding the profitability of his trading. He was not interviewed by the RCMP. His involvement in the fraud is recorded in Zietsoff's documents, which indicate that Victim 35 received interest payments totalling $32,425 from January 31, 2010 until December 17, 2011, resulting in a loss of $197,575.

- **Victim 37 and Victim 38**

124. Victim 37 was working as a teenager at the airport in Parry Sound when he first met Zietsoff's father in the 1990s. He became a helicopter pilot but had a crash in 2007 that left him in a wheelchair. He reconnected with Zietsoff's father and mother at a fish fry in his honour in Parry Sound in the Summer of 2009. From his conversations with Zietsoff's parents and other guests at the fundraiser, including the Victim 52 and Victim 53 (see below), Victim 37 got the impression that Zietsoff was doing well investing money. Victim 37 was looking for a means to provide for his family and took Zietsoff's phone number from Zietsoff's father.

125. Victim 37 soon called Zietsoff and arranged a meeting at which the accused explained his futures trading system. He assured Victim 37 that his system was low risk because he invested his entire portfolio for only a brief period of time, aimed to make only .1-.2% on each trade and he won 75-80% of his trades. Zietsoff claimed that most of his clients received a 910% annual return but that he would guarantee Victim 37 12%. He would receive an extra 1% for referring each additional investor.

126. Zietsoff advised Victim 37 to take out a line of credit to fund his investment. Victim 37 did so and provided the accused with $50,000 in October 2009 and an additional $25,000 in December 2009. He chose to not receive interest payments but to add that money to his principal instead.

127. In July 2011, Victim 37 met with Kevin and his wife and was invited by the accused to invest in a Greek debt scheme that would generate a 22% return. (Zietsoff denies his wife was involved in this conversation.) Zietsoff misled Victim 37 that the investment was a hedge against the default of Greece. According to Victim 37, he was told that the investment was insured so that if Greece went bankrupt then he would be paid his money immediately. Zietsoff warned Victim 37 not to tell others about this opportunity. (Zietsoff denies saying this.) Victim 37 agreed to invest $40,000 on July 19, 2012 and a further $75,000 on August 29, 2012, which he drew from his line of credit and from his Worker's Compensation award.

128. When Victim 37 purchased a new vehicle in 2012 he asked Zietsoff to return $500 each month for the payments. The accused made only three payments, which prompted Victim 37 to call his loan. Zietsoff replied that Victim 37 would now receive only 12% on his investment. Three weeks later, Zietsoff called to say that his money was tied up in the MF Global bankruptcy proceedings and that he was being sued in the United States. Zietsoff then asked Victim 37 to draw money from his credit cards to assist him to settle the lawsuit and did so, according to Victim 37, in a forceful manner. Victim 37 refused to advance more money to the accused and has not received any back.

129. Victim 37 recounts investing a total of $190,000 and receiving $1,000-$1,500 back, resulting in a loss of $188,500 or $189,000. Zietsoff's records suggest that he returned only $1,000 and that Victim 37 therefore lost $189,000.

- **Victim 39**

130. Victim 39 hired Zietsoff's mother to manage a strip mall she owns in Orangeville. She decided to invest $270,000 at a 9% per annum rate of return on October 31, 2009. Victim 39 made another investment of $100,000 on December 7, 2010 and gave Zietsoff a further $160,000 on August 8, 2011 when he required money to deal with some problems in the United States. Zietsoff promised that her money was safe and provided her with promissory notes.

131. Victim 39 relied on the monthly interest payments she received, which amounted to $4,056 in 2009, $24,300 in 2010 and $36,400 in 2011. Her son, Victim 40, also invested with Zietsoff (see below).

132. In 2011, Victim 39 called her promissory notes but was told that Zietsoff could not pay her back because of the MF Global bankruptcy. He said that she could expect to eventually receive 60% of her capital.

133. On June 28, 2012, Victim 39 drew on her line of credit to provide Zietsoff with another $50,000 when he was desperate to raise money to deal with an American lawsuit. In December 2012, Zietsoff offered her 50% of her investment if she took the money immediately and 100% if she waited three years instead. She chose to wait.

134. The money she gave to Zietsoff was all of her life savings, except for some RRSPs which she refused to collapse despite the accused's advice to do so.

135. Victim 39 provided a total of $580,000 to Zietsoff and received back $64,756, resulting in a loss of $515,244. Zietsoff's records indicate that he repaid only $56,575, which would increase the loss to $523,425.

- **Victim 40 (Victim 41)**

136. Victim 40 was not interviewed by the police. He is Victim 39's son. His involvement in the fraud is described in Zietsoff's statements and records. According to Zietsoff, Victim 40 invested $50,000 in 2011 based on misrepresentations about the accused's trading. He lost the entirety of his investment.

- **Victim 42 and Victim 43**

137. Victim 42 and Victim 43 are teachers and friends of Victim 19. They learned about Zietsoff at a party Victim 19 hosted. Some guests were talking about how Zietsoff had made a lot of money investing for his parents. This prompted them to meet with Zietsoff at their house and he described how he traded in commodities and futures.

138. Zietsoff explained that he only invested his profits, that he was in and out of his trades quickly, and that while he made only small profits they were significant over time because he was successful in 75-80% of his trades. He promoted his trading method as being relatively safe and not very volatile. He added that he made average returns of 16-20%, which was why he could offer 12% per annum interest rates in his promissory notes.

139. Victim 42 and Victim 43 agreed to invest $60,000 in the Fall of 2009 followed by an additional $40,000. Zietsoff delivered the monthly interest payments in person for the first year. In August 2010, Victim 42 and Victim 43 invested another $60,000 at a rate of 14% per annum, which Zietsoff explained he could afford because he was paying his American investors only 10%.

140. Zietsoff later approached them with an opportunity to invest in a housing venture in Arizona, which would pay a 20% return. In April 2012 they advanced $40,000 for that project. It then became increasingly difficult to reach the accused.

141. In September 2012, Zietsoff told them that he had been sick and was therefore not accessible. He added that he was being sued in Arizona and that his money was tied up in the MF Global bankruptcy proceedings, from which he expected to receive only 40% of his investment. By October 2012 he called looking for $100,000 to address the lawsuit in Arizona. Victim 42 and Victim 43 did not provide any more money and never saw the accused again after November 2012.

142. Victim 42 and Victim 43 state that they invested a total of $200,000 and received back an unascertained amount of interest. According to Zietsoff's records, Victim 42 and Victim 43 invested a total of $199,800 and received interest payments of $41,432, resulting in a loss of $158,368.

- **Victim 44 and Victim 45**

143. Victim 44 met Zietsoff at a party being hosted by their mutual friends, Victim 42 and Victim 43. Victim 44 declined to be interviewed by the police and the following brief summary is taken from Zietsoff's statements and records.

144. Zietsoff advised Victim 44 to invest with him by misrepresenting the profitability of his trading and the Arizona property scheme. He later lied about not being able to repay Victim 44 because his money was frozen in the MF Global bankruptcy proceedings.

145. Victim 44 invested a total of $320,000 commencing in February 1, 2010. He was repaid $234,267, resulting in a loss of $85,733. Zietsoff also traded on Victim 44's online brokerage

account as "[first name of Victim 44 redacted]", in an attempt to earn back the money that had been lost. Instead, he lost more money, which Zietsoff estimates to be $500,000 in total. Some of this money may have belonged to Victim 44's parents.

- **Victim 46**

146. Victim 44 introduced his friend, Victim 46, to Zietsoff in the Summer of 2010. Victim 46 declined to be interviewed by the RCMP and the following brief summary is taken from Zietsoff's statements and records.

147. Victim 46 contacted Zietsoff and they met at Victim 44's house. Zietsoff advised Victim 46 to invest $100,000 based on Zietsoff's misrepresentations about the profitability of his trading and later falsely claimed that the money could not be repaid because of the MF Global proceedings.

148. According to Zietsoff, Victim 46 was repaid $20,000, resulting in a loss of $80,000.

- **Victim 47**

149. Victim 47 was not interviewed by the police. Her involvement in the fraud is described in Zietsoff's statements and records. She was introduced to Zietsoff in 2011 by her brother-in-law, Victim 44. Zietsoff acknowledges lying to her about the profitability of his trading, the Arizona property scheme and the MF Global proceedings. Victim 47 lost all of the $90,000 that she invested with Zietsoff.

- **Victim 48**

150. Victim 48 is a waitress and a former professional wrestler living in Midland. Victim 19 was her promoter and travelled with her to wrestling matches. During one trip to Northern Ontario, Victim 46 asked Victim 19, whom she trusted "more than anyone in the world", for investment advice. Victim 19 suggested that she meet Zietsoff.

151. It took Victim 48 a few months to decide to give money to the accused. He promised her a 12% annual return and used his laptop to show her how he would use her money to trade currencies. He explained that she could bequeath the promissory note in her Will and could recover the investment from his parents if he died. (Zietsoff denies saying this).

152. In May 2010, Victim 48 gave Zietsoff $100,000, which was her life savings, in exchange for a promissory note with a 12% interest rate. She withdrew an additional $15,000 from a line of credit to invest at a rate of 15%. The funds were deposited into Zietsoff's bank account. The promissory note was renewed in May 2011 and Victim 48 invested another $10,000 from her line of credit on October 5, 2011. The October investment was for the Arizona housing scheme, carried a return of 24% per annum and was a branch to branch transfer at ScotiaBank.

153. Victim 48 misunderstood the nature of the one-year call on the note and was upset to learn that she could not withdraw her money to purchase a house in May 2012. She immediately called the loan for repayment in May 2013. Victim 48 says that she never received any money back from Zietsoff and, instead, left her interest with him to accumulate. Zietsoff has produced a "Payment Receipt" signed by Victim 48 and indicating that she was repaid $17,500 in May 2011. Victim 48 acknowledges signing the receipt but states that she was told that it was a paper exercise designed to account for accumulated interest that was added to another promissory note. (Zietsoff denies saying this, and states that cash was paid.)

154. Zietsoff called in October 2012 to solicit additional funds for the Arizona housing project but Victim 48 did not advance any more money.

155. Victim 48 claims to have lost all of the $125,000 that she invested. According to Zietsoff's records she was repaid $17,500 and therefore lost $107,500.

- **Victim 49**

156. Victim 49 was introduced to Zietsoff by Victim 3 in 2010. He was not interviewed by the police but Zietsoff states that he invested $15,000 and was repaid $12,664, resulting in a loss of $2,336. Victim 49 was to advance money on the belief that Zietsoff was a successful trader and/or that Zietsoff was raising money for his friends' businesses.

- **Victim 50 and Victim 51**

157. Victim 50 and his wife, Victim 51, did not attend to be interviewed by the RCMP and, accordingly, the brief description of their involvement in the fraud comes from Zietsoff's statements and records.

158. Zietsoff states that he met Victim 50 in 2009 or 2010 when they were seated beside each other on a flight from Phoenix to Toronto. Victim 50 was being transferred to Toronto for work and the two men became friends. Zietsoff lied to Victim 50 about the profitability of his trading and, later, about raising funds for private businesses owned by his friends. Victim 50 advanced a total of $570,000 to the accused, beginning in March 2010, and received back $200,120, resulting in a loss of $369,880. Victim 50 was told that the money was frozen in the MF Global bankruptcy proceedings.

- **Victim 52**

159. Victim 52 met Zietsoff's parents when he moved to Parry Sound in 2000. He is an aircraft and nuclear welder who also did contracting work on the houses that the accused was renovating. When he had some money to invest in 2003, Zietsoff's father advised him to open an online trading account and let Zietsoff's father trade in it on his behalf. Victim 52 did so and found the arrangement to be profitable.

160. Eventually, the accused suggested that Victim 52 invest his money with him instead. He promised a 12% annual return and assured Victim 52 that it was risk-free. On July 20, 2010, Victim 52 advanced $100,000 to the accused but asked for it back shortly thereafter as he was in need of money. Zietsoff replied that the whole amount could not be repaid as it was invested and, instead, ended up returning only $30,000, resulting in a loss of $70,000.

161. Zietsoff acknowledges that he deliberately misled Victim 52 about his trading and about not being able to repay him because the money was frozen in the MF Global bankruptcy proceedings. He agrees that he received $100,000 from Victim 52 and repaid only $30,000.

- **Victim 53**

162. Victim 53 is married to Victim 11 and 12's nephew (name removed). Like Victim 11 and 12, Victim 53 and her husband have known Zietsoff since he was a child building model airplanes in their home in Parry Sound. Her husband is an aircraft mechanic and knows Zietsoff's father through their mutual interest in aviation.

163. Victim 53 was involved in a car accident for which she received a lump sum insurance settlement. After paying some bills she was left with approximately $350,000, part of which she used to purchase a cottage. She planned to invest the remaining $100,000 to provide for her ongoing therapy.

164. Victim 53 felt comfortable investing with the accused because she had known him all his life and she was aware of others, including Zietsoff's parents and Victim 11 and 12, who had placed their money with him and appeared to be doing well. As well, he visited the Victim 53's house and explained that his strategy was safe because he only invested small amounts, thereby ensuring that he never risked losing much. As well, he assured her that if he died his Will would ensure that his parents would distribute back the funds of the investors. Because Zietsoff described the investments as low risk, Victim 53 decided to borrow additional funds from her line of credit to invest. Although she was reluctant to do so, Victim 53 borrowed $60,000 and invested a total of $160,000 on September 15, 2010 at a rate of 13% per annum.

165. Zietsoff made the first two interest payments on time but the third was late. In total, she recalls receiving $30,500 from the accused. She states that some of the payments were made in cash, by either Kevin or Zietsoff's father, and some were deposited directly into her account. She states that Zietsoff told her that he had paid the taxes on the money. (Zietsoff denies saying this.) Victim 53 also states that Zietsoff's mother claimed to be Kevin's secretary and prepared receipts for her to sign when she received interest payments. Zietsoff's father denies delivering money to Victim 53 and states that Zietsoff's mother was not Kevin's secretary, although she did draft receipts for Victim 53 to sign.

166. Victim 53 called her loan in March 2011 but by the Spring of 2012 she heard from Victim 52 that Zietsoff had gone bankrupt. When she contacted the accused she was told that his money was frozen in the MF Global proceedings and that he could pay her 73% of her investment now, or 90% if she waited longer. She chose to wait. In August 2012 she received a telephone call from Zietsoff warning that it was taking him longer to sort things out but that she would receive her money by January 2013. He did not meet that deadline.

167. Victim 53 states that she lost $129,500. Zietsoff agrees that she invested $160,000 but states that she was repaid $40,300, resulting in a loss of $119,700.

- **Victim 54 and Victim 55**

168. Victim 54 and Victim 55 are married. They have a young daughter. Victim 55 is a store manager. Victim 54 is a teacher, and a friend and former colleague of Victim 19. Victim 54 met Zietsoff around 1998, when they were both part of Victim 19's wedding party.

169. In late 2010, Victim 19 suggested that Victim 54 consider investing with Zietsoff. Victim 54 knew several of Zietsoff's clients – Victim 19, Victim 13, Victim 42, and Victim 43 -who appeared to be doing well. Victim 54 asked Victim 19 to put him in touch with Zietsoff.

170. In January 2011, Zietsoff visited Victim 54 and Victim 55 at their home. He explained and demonstrated his computerized trading strategy. He guaranteed a 12% return. Victim 55 did not want to invest but eventually acquiesced to Victim 54's desire to do so. On January 20, 2011, they invested $50,000 with Zietsoff.

171. On May 8, 2011, Zietsoff visited Victim 54 and Victim 55 at their home. He told them about short-selling properties in Arizona. He guaranteed a 40% return. When Victim 55 expressed skepticism, Zietsoff noted that the interest was sufficient to replace her income. Victim 54 and Victim 55 invested $200,000 in this venture.

172. In February 2012, Zietsoff visited Victim 54 at home. He asked for $50,000, explaining that he needed the money to avoid losing a home that he was flipping in Arizona. He promised to repay Victim 54 in 90 days, at 90% interest. Victim 54 gave him $49,000, but called in his investments. Zietsoff said he would repay them by November 2012.

173. Zietsoff missed that deadline. He visited Victim 54 at home and asked for an extension. Around Christmas 2012, Zietsoff told Victim 54 that he could only repay a percentage.

174. Zietsoff made sporadic interest payments, in cash, in varying amounts. Victim 54 and Victim 55 say they received no more than $25,000. Zietsoff asserts that he paid $59,000.

175. In summary, Victim 54 and Victim 55 invested $299,000 with Zietsoff, and received between $25,000 and $59,000 in interest payments. Their total loss is between $240,000 and $274,000.

- **Victim 56**

176. Victim 56 was not interviewed by the RCMP. His involvement in the fraud is described in Zietsoff's statements and records. Victim 56 and Victim 19 were friends through their mutual interest in mixed martial arts. Zietsoff explained that Victim 19 introduced him to Victim 56 several years ago.

177. In 2011, Victim 56 invested $50,000 with Zietsoff. Zietsoff guaranteed a 40% return. Victim 56 gave his 12-month notice for redemption on the same day. In the following year, Zietsoff made regular interest payments.

178. Zietsoff did not repay Victim 56 when the note came due. Victim 56 told Zietsoff that he would sue. They negotiated a payment schedule in July 2012. Zietsoff paid Victim 56 in full on October 9, 2012.

179. In summary, Victim 56 invested $50,000 with Zietsoff. Zietsoff repaid that principal, and paid Victim 56 a further $20,000 in interest.

- **Victim 57**

180. Victim 57 lived in Parry Sound near Zietsoff's parents. Victim 57 did odd jobs for Zietsoff's father. Victim 57 and his wife knew Victim 52, Victim 64, and Victim 53 and her husband.

181. In September 2011, Victim 57 heard that Zietsoff was investing for Victim 52 and Victim 53 and her husband. Zietsoff's parents were in town visiting Victim 64. Zietsoff's father met with Victim 57 and mentioned that Zietsoff was a successful investor and could guarantee a 12% return. Victim 57 gave $20,000 to Zietsoff's father for Zietsoff to invest. Victim 57's only interaction with Zietsoff was a phone call in which he confirmed his name and address. The accused acknowledges that he never received the money and, instead, it remained with Zietsoff's father to offset money owed to him by Zietsoff.

182. Victim 57 had mentioned to Zietsoff's father that he had a GIC coming due in 2012. In October 2012, Zietsoff's father was back in town and raised the idea of Victim 57 investing the proceeds from the GIC with Zietsoff. Victim 57 declined.

183. Victim 57 never received any money back from Kevin or Zietsoff's father and has therefore lost his entire investment of $20,000

- **Victim 58 and Victim 59**

184. Victim 58 and Victim 59 are married. They are Canadian citizens who spent their winters in Arizona. Victim 58 is a retired Air Canada pilot and a former colleague of Victim 69 (see below, "The American Victims"), with whom he remained good friends. Victim 58 did not know Zietsoff's father during his time at Air Canada but was introduced to him in Arizona by Victim 69.

185. In 2008, Victim 69 told Victim 58 that he was investing with Zietsoff. Victim 58 was skeptical but his opinion changed when Zietsoff made regular interest payments to Victim 69 despite the economic downturn.

186. In November 2011, Victim 58 met Zietsoff at a party. He approached Zietsoff and expressed interest in investing with him. They spoke at length. Soon thereafter, Zietsoff visited the Victim 58 and Victim 59 at their home. He explained and demonstrated his computerized trading strategy. He guaranteed a 12% return.

187. On December 6 and 7, 2011, Victim 58 and Victim 59 cashed in their investments to advance $150,000 to Zietsoff.

188. On January 12 and 13, 2012, Victim 58 and Victim 59 invested another $150,000 with Zietsoff. They cashed in their RRSPs to obtain this money. Zietsoff explained that the interest payments would more than compensate for the associated tax penalty.

189. On January 26, 2012, Victim 58 and Victim 59 invested another $50,000 with Zietsoff. They drew this money from a line of credit on their home. Zietsoff advised them that they should be using the equity in their home to earn money.

190. Around this time, Zietsoff convinced Victim 58 and Victim 59 that they could now afford to rent a nicer house in Arizona. Accordingly, they agreed to sell their condo and invested the proceeds ($150,000) with Zietsoff when the sale closed on May 25, 2012. They planned to use the investment income to rent a new home when they returned to Arizona the next Fall.

191. In the meantime, Zietsoff suggested that they get a new appraisal on the home they had been building for more than a decade in the Gravenhurst area. Victim 59 was adamantly opposed to borrowing more money against their home but agreed to the appraisal to learn what the property was worth. While the condo sale was closing in Arizona, Zietsoff was calling Victim 58 and Victim 59 to inquire about the equity in their home in Ontario. He learned that the bank was willing to approve a $650,000 line of credit on the property.

192. Soon thereafter, Zietsoff attended at their residence and proposed that they draw on their line of credit to increase their investment with him. He brought an interest payment with him. Victim 59 was still opposed to the idea. Zietsoff then told them that he was dropping his small investors and focussing on high net-worth individuals, including a multi-millionaire from Florida. Accordingly, unless they gave him more money he was going to call their promissory note and drop them as clients. Pursuant to the terms of the note, this would mean that they would not receive their principal or interest payments for a full year. Having sold their condo and without the interest income, they would have no place to live in Arizona the coming year. They therefore asked Zietsoff if he was giving them an ultimatum. He replied, “Yes, I guess I am.” (Zietsoff denies saying this.)

193. Victim 58 and Victim 59 capitulated and that same day, May 28, 2012, the three of them travelled by boat back to shore and Victim 58 and Victim 59 drove to a bank in Huntsville to wire $400,000 from the line of credit to Zietsoff’s bank account. It then became increasingly difficult to get in touch with the accused.

194. Zietsoff stopped paying interest after delivering a $9,000 payment on June 28, 2012. In July 2012, Zietsoff told Victim 59 that he had mononucleosis and was too ill to work. In August 2012, Victim 69 and Victim 73 contacted Victim 59. They said they were having problems with Zietsoff. Victim 58 was away and Victim 59 could not reach Zietsoff. She panicked. She drove to his Yorkville address in Toronto, only to learn that he had moved. She called Zietsoff again. This time he answered and agreed to meet at a coffee shop. Zietsoff explained that the Arizona investors’ money was tied up by the MF Global bankruptcy. He assured her that their money was elsewhere and safe.

195. Victim 59 relayed this information to Victim 69 and Victim 73, who were still skeptical. At Victim 59’s request, Victim 58 returned home. They attended unannounced at Zietsoff and his wife’s new residence, where Zietsoff repeated his explanations and assurances.

196. Zietsoff called Victim 59 several times afterwards to reassure her. On August 24, 2012, he sent them $9,000. He sent two more payments of $9,000 on November 5 and 9, 2012 and Victim 58 and Victim 59 have not heard from him since.

197. In summary, Victim 58 and Victim 59 invested $900,000 with Zietsoff. According to his records, Zietsoff paid them approximately $44,299 in interest, resulting in a loss of $855,701.

- **Victim 60**

198. Victim 60 met Zietsoff in the late 1990s when the accused was looking for a house in Waterloo. Victim 60 was his real estate agent and they became good friends.

199. Victim 60 and Zietsoff stayed in touch after Zietsoff moved to Toronto. They drifted apart after Victim 60 got married and had children. In 2010, Victim 60 and his wife divorced. In 2011, Zietsoff reconnected with Victim 60, who lamented that the divorce had cost him a lot of money. Zietsoff offered to help and explained that he was investing for his parents and his parents’ friends. His portfolio was worth over $10 million. He was short-selling properties in Arizona and each transaction would close within six months.

200. Victim 60 had set aside $100,000 to pay his taxes, which were due in April 2012. Zietsoff suggested that Victim 60 invest with him in the interim. He would repay Victim 60 in March 2012. On September 22, 2011, Victim 60 invested $50,000 with Zietsoff. In early October, he invested another $50,000.

201. Zietsoff did not repay Victim 60 in March 2012. He made sporadic repayments, which stopped in the summer. When Victim 60 could not reach Zietsoff, he called Zietsoff’s wife immediately called Victim 60 and told him not to contact Zietsoff’s

wife. He said that his investment brokerage had gone bankrupt but that Victim 60 would be compensated. They settled on a repayment plan, with which Zietsoff did not comply.

202. Victim 60 states that he invested $100,000 and was repaid $25,000, resulting in a loss of $75,000. Zietsoff believes that he repaid only $15,000, which increases the loss to $85,000.

- **Victim 61**

203. Victim 61 was not interviewed by police. His involvement in the fraud is described in Zietsoff's statements and records. Zietsoff explained that Victim 61 had a cottage in Parry Sound near Zietsoff's parents. In 2011, Victim 61 invested $50,000 based on Zietsoff's misrepresentations about his profitable trading. Victim 61 did not suffer a loss as Zietsoff repaid all of the principal and a further $1,750 in interest.

- **Victim 62**

204. Victim 62 was not interviewed by police. He is an Anglican priest who was friends with Zietsoff and Zietsoff's late brother. The following brief summary is taken from Zietsoff's statements and records.

205. Zietsoff approached Victim 62 in the Summer of 2012. Zietsoff said that he was being sued in Arizona, and that he had lost money in the MF Global bankruptcy. Based on these representations, Victim 62 gave Zietsoff $50,000 to assist him overcome his difficulties. He has not been repaid.

- **Victim 63**

206. The RCMP did not interview Victim 63 but did review a statement that he provided to the Halton Regional Police Service. In addition, Zietsoff explained that he and Victim 63 raced motorcycles together in the early 1990s. In 2012, Victim 63 invested $30,000 in the Arizona property scheme. Zietsoff paid him $1,000 in interest. The total loss is $29,000.

- **Victim 64 (Victim 65)**

207. Victim 64 was not interviewed by police. His involvement in the fraud is described in Zietsoff's statements and records. Victim 64 was Zietsoff's parents' next-door neighbour in Parry Sound. According to Zietsoff, in 2012, he advised Victim 64 to loan him money on the basis of misrepresentations about his profitable trading. Victim 64 lost the entirety of his $50,000 investment.

- **Victim 66**

208. Victim 66 declined to be interviewed by police. Her involvement in the fraud is described in Zietsoff's statements and records. Zietsoff explained that Victim 19 arranged a double-date with Victim 66 and Zietsoff in 2011. The accused approached her in 2012 to invest in the Arizona property scheme, and she agreed to do so by forwarding $18,000 through Victim 19's bank account. Zietsoff repaid $1,000, resulting in a loss of $17,000.

- **Victim 67 and Victim 68**

209. Victim 67 is a Canadian citizen who spends his winters in Fountain Hills, Arizona. Victim 67 was working in his driveway in January 2012 when a new neighbour, Zietsoff's father, noticed the Ontario licence plates on Victim 67's car and stopped to introduce himself. The conversation included a discussion about how successful Kevin Zietsoff was as an investor. It was the only time that Victim 67 met Zietsoff's father but within a few weeks Zietsoff attended at Victim 67's residence in Arizona. (Zietsoff denies meeting Victim 67 within a few weeks, but has not indicated when they did first meet.)

210. When Zietsoff first appeared in February 2012, Victim 67 was preparing for his second date with Victim 68, who is an American citizen. The conversation was therefore brief but they met more frequently over the next few months.

211. In March 2012, Victim 67 showed Zietsoff his investment portfolio. Zietsoff claimed that he could do better. He provided Victim 67 with a list of other investors in Arizona as references. In June 2012, Victim 67 agreed to let Zietsoff trade $10,000 on his behalf for two weeks.

212. Victim 67 opened an Interactive Brokers account on June 29, 2012 and deposited $10,000 with the intention of letting Zietsoff trade in the account on his behalf. Interactive Brokers called Victim 67 a few days later to ask if he had trading knowledge. When Victim 67 said that Zietsoff was trading his account Interactive Brokers closed the account and returned the $10,000 to Victim 67. Zietsoff had earned $900 dollars and Victim 67 received a cheque from Interactive Brokers for that amount in early 2013.

213. Victim 67 and Victim 68 had become friends with Zietsoff and his wife. The couples spent the July 4th long weekend together at Victim 67's home in Carrying Place, Ontario. On July 6, 2012, with the four of them around a table, Zietsoff explained his computerized investment strategy in detail. Zietsoff assured Victim 67 and Victim 68 that he invested only a small portion of the portfolio and cashed out at the end of each day. His goal was to make only 1-2% each day and there was little risk. Kevin assured them that they were not going to run off with the money like Bernie Madoff. Victim 67 and Victim 68 were to split the profits.

214. Sometime after that conversation, Zietsoff and Victim 67 went to the bank. Victim 67 withdrew his savings of $909,000 and tried to transfer the money to a TransAct Futures trading account in Chicago. However, the funds were returned on Friday, July 20, 2012 because TransAct could not find the destination account. Victim 67 became afraid and told Zietsoff that he had changed his mind. Zietsoff immediately drove from Toronto to Carrying Place and implored Victim 67 to follow through with the investment. Victim 67 acquiesced and accompanied Zietsoff to the bank where, on Zietsoff's instructions, the $909,000 was converted to $896,184.56 US and wired to the brokerage, AMP Trading account in Victim 67's name in Chicago, Illinois. It was still Friday.

215. On Monday, July 23, 2012, AMP phoned Victim 67 to ask if he understood the risks of making leveraged trades of such magnitude. Victim 67 was not aware of the details of the trades and said that Zietsoff was trading in the account pursuant to a power of attorney. When Victim 67 could not reach Zietsoff by telephone he closed the account on AMP's recommendation. Zietsoff had lost $795,917.45 US and AMP returned the remaining $100,267.11 US to Victim 67.

216. Victim 67 confronted Zietsoff, who accepted responsibility for the losses. Zietsoff claimed that his mother had suffered a mild heart attack and he had inadvertently left the account open. He would repay Victim 67, so long as Victim 67 re-invested the remaining $100,000. Zietsoff gave Victim 67 a promissory note dated July 27, 2012, apparently co-signed by Zietsoff's wife. Zietsoff asserts that he forged his wife's signature. Relying on this note, Victim 67 sent Zietsoff the $100,000.

217. The note was for $1,250,000, which was comprised of the original $909,000 plus $91,000 as a bonus and 25% interest. As it was due on January 15, 2013, Victim 67 stood to receive a 37.5% gain on his initial investment within six months.

218. In October 2012, Zietsoff contacted Victim 67 and Victim 68 about a Greek debt hedging opportunity. He guaranteed a 24% return on a $100,000 investment, repayable in March 2013. Victim 67 was not interested but Victim 68 was. On October 29, 2012, Victim 68 gave Zietsoff $10,000 and Victim 67 loaned Victim 68 $33,000, which she gave to Zietsoff on November 8, 2012. (Zietsoff recalls receiving the $33,000 US through a wire transfer into his Bank of Montreal account from Victim 67 on November 8, 2012.) On November 5, 2012, Victim 67 sent Zietsoff $57,000 to bridge Victim 68's investment until December 15, 2012. Victim 68 repaid Victim 67 the $33,000 when she cashed in her investments on November 13, 2012. Zietsoff was to return the $57,000 to Victim 67 on December 15, 2012, after which Zietsoff would bridge the loan until Victim 68 received the proceeds from the sale of her home in New Mexico.

219. Zietsoff did not return the $57,000 to Victim 67 on December 15, 2012 and Victim 68 has undertaken to reimburse that amount to her boyfriend. On December 19, 2012, Victim 67 called Zietsoff's references, including Victim 69, and learned of the difficulties they were having with Zietsoff.

220. Nevertheless, Zietsoff, Victim 67 and Victim 68 met in Toronto on January 9, 2013 and the accused assured them that their money was safe. Six days later, Zietsoff defaulted on the $1,250,000 promissory note payable to Victim 67 and similarly failed to honour the $124,000 promissory note payable to Victim 68 on March 15, 2013.

221. In summary, Victim 67 says that his total loss was $895,917 US, which is essentially the conversion of the $909,000 CDN he transferred to the AMP Trading account. Zietsoff asserts that they agreed to split the losses and profits, such that he owes Victim 67 only $190,000. (Zietsoff maintains that he is not aware of how the RCMP calculated the $190,000, but acknowledges receiving $100,000 US on July 27, 2012, $57,000 US on November 5, 2012 and $33,000 on November 8, 2012.)

222. Victim 68 says that she lost $100,000. Zietsoff asserts that he owes Victim 68 $10,000. This discrepancy is due to Zietsoff attributing the $33,000 and $57,000 payments to Victim 67.

b. The American Victims

- **Victim 69 and Victim 70**

223. Victim 69 is a 76-year-old retired Air Canada pilot and his wife, Victim 70, is a 65-yearold retired Air Canada flight attendant. Victim 69 met Zietsoff's father in 1961, when they were cadets at the Royal Canadian Air Force Officer Candidate School. They both joined Air Canada after completing a tour of duty. Victim 70 met Zietsoff's father in 1969 and flew with him regularly.

224. Victim 69 and Victim 70 moved to Arizona after they retired. In 2004, Zietsoff's father called Victim 69 and stated that he and Zietsoff's mother had decided to spend their winters in Arizona. Zietsoff's father sought Victim 69's advice on where to live and the two families became close friends after Zietsoff's parents moved to the area.

225. To Victim 69 and Victim 70, Zietsoff's parents enjoyed a lifestyle that bespoke wealth. Zietsoff's father had a single engine aircraft which he and Victim 69 regularly flew together. Zietsoff's parents encouraged Victim 69 and Victim 70 to invest with Zietsoff, who they described as a successful investor. They said that Zietsoff required a minimum $500,000 investment, but might make an exception for Victim 69 and Victim 70. Zietsoff denies that Zietsoff's parents encouraged them to invest or that a minimum was required. Zietsoff's father similarly states that he did not encourage Victim 69 and Victim 70 to invest with his son (although he did mention that the accused managed his money and could get 12% returns on investments for them) and, instead, asserts that Victim 69 learned about Zietsoff's trading because they (Victim 69 and Kevin) spent time together when the accused was in Arizona.

226. By 2006, Zietsoff's parents had introduced Zietsoff to Victim 69 and Victim 70. Zietsoff visited their home and demonstrated his computerized trading strategy. He said that he had a portfolio worth about $14 million and that he could do his "own thing" because he was not registered with the OSC. (Zietsoff denies ever saying this.) On February 9, 2006, Zietsoff received $150,000 in his TD Canada Trust account on behalf of Victim 69 and Victim 70. This initial investment was advanced in the form of a loan to Zietsoff's father and is recorded as such in a promissory note signed by Victim 69 and Victim 70 and Zietsoff's father on February 8, 2006. That note was renewed on February 9, 2007 and again on March 17, 2008, with Zietsoff's father again signing as the "borrower". Zietsoff's father indicates that his son wanted to proceed in this manner because it would be easiest for Victim 69 to pay Zietsoff's father and then have the accused transfer the money to his account. On May 26, 2009, Victim 69 and Victim 70 invested another $100,000 US. At this point, the initial "loan" to Zietsoff's father was voided and all the investments were then subsumed in promissory notes issued by the accused.

227. On March 26, 2010, Victim 69 and Victim 70 invested a further $250,000 with Zietsoff. They were reluctant to part with these funds but did so because Zietsoff offered his home on the Kingsway as collateral, although Zietsoff sold that home a few months later.

228. On June 22, 2011, Zietsoff asked Victim 69 to loan him $100,000 for 6 weeks. He offered $7,500 interest. Zietsoff said he needed the money to purchase a maturing Greek bond. Zietsoff persisted and Victim 69 and Victim 70 eventually relented.

229. In the Spring of 2012, Victim 69 requested the return of $250,000. Zietsoff said that he could not repay Victim 69 at that time, claiming that the money was tied up in the MF Global bankruptcy. He admitted that he had lost money but assured Victim 69 and Victim 70 that their investment was safe.

230. Zietsoff did not pay interest in the first year. Zietsoff asserts all interest for year one was paid on March 10, 2009 in the form of a TD CanadaTrust draft for $20,790 US and deposited to Victim 69 and Victim 70's Royal Bank of Canada account. He told Victim 69 that this was an oversight and made regular interest payments from 2007 until early 2012. In mid-2012, Victim 69 gave Zietsoff notice that he wished to redeem his investments.

231. Zietsoff offered Victim 69 a 2% commission for referrals. Victim 69 declined but did introduce Zietsoff to Victim 73 and Victim 74. Zietsoff also used Victim 69's name as a reference for prospective clients, such as Victim 67.

232. In summary, Victim 69 and Victim 70 invested $600,000 with Zietsoff. They received $208,165 in interest. Their total loss was $391,835. Zietsoff agrees that Victim 69 and Victim 70 invested $600,000 but recalls repaying only $190,165 in interest, resulting in a loss of $409,835.

- **Victim 71 (Victim 72)**

233. Victim 71 is an elderly gentleman who lives in Rio Verde, Arizona. In 2006, Zietsoff's parents moved into a home across the street. Victim 71 considered Zietsoff's father to be his best friend. Sometime in 2008, Zietsoff's father introduced his son to Victim 71.

234. Victim 71 had retired after 40 years with Detroit Edison ("DTE"), a utility company. His retirement savings consisted of a DTE savings and stock ownership plan. In 2008, DTE stock was performing poorly. Zietsoff's father told Victim 71 that Zietsoff was a successful investor.

235. Zietsoff visited Victim 71 at his home. He gave a general explanation of his investment strategy, of which Victim 71 understood very little. When Zietsoff assured him that there was no risk, Victim 71 cashed in his DTE stock and invested the proceeds with Zietsoff, with a guaranteed 9% return. There was a two-year notice period for redemption.

236. In approximately 2011, Victim 71 loaned Zietsoff $50,000 to go to Las Vegas. Zietsoff promised to repay him upon his return. He later persuaded Victim 71 to combine that money with his existing investments. (Zietsoff denies borrowing money to

go to Las Vegas.) Victim 71 recalls investing a total of about $1,200,000. Zietsoff says that Victim 71 invested a total of $1,220,000.

237. Victim 71 stated that in 2012, Zietsoff's parents often visited Victim 71 while he was undergoing chemotherapy treatment for colon cancer. They asked him to cash out his bonds and stocks and invest the money with Zietsoff. They said that Victim 71 would lose all of his investments if he did not do so. Zietsoff made similar pleas. He stated that Zietsoff cried in front of Victim 71. Zietsoff told Victim 71 that the person with whom he invested had embezzled his money. (Zietsoff denies the facts in this paragraph.)

238. Victim 71 felt pressured, but did not provide further funds. He told (name removed), his neighbour and caregiver, about these interactions. He brought Victim 71 to an attorney, Chester Yon, who filed a complaint with the Arizona Corporations Commission ("ACC") on Victim 71's behalf. The accused and his father received letters, dated April 17, 2012, from Mr. Yon expressing concern that Zietsoff had defrauded Victim 71 of $1.2 million and demanding payment immediately.

239. Throughout the years, Zietsoff made regular interest payments to Victim 71, which were often paid in cash by Zietsoff's father or Zietsoff. The accused recalls making sporadic cash payments to Victim 71 himself when he was visiting Arizona and acknowledges that six other payments were made to Victim 71 through a joint bank account at Johnson Bank with Zietsoff's father. Zietsoff asserts that he repaid $255,280 in interest. In June 2012, Zietsoff sent Victim 71 two $25,000 bank drafts. Victim 71 estimates that Zietsoff paid him approximately $200,000 in total.

240. In summary, Victim 71 asserts that he invested $1,200,000, and was repaid approximately $200,000, for a total loss of $1,000,000. Zietsoff asserts that Victim 71 invested $1,220,000, and that he repaid $305,280, for a total loss of $914,720.

- **Victim 73 and Victim 74**

241. Victim 73 and Victim 74 are married. They are close friends with Victim 69 and Victim 70. Victim 73 is a retired school teacher and Victim 74 is a nurse.

242. In 2008, Victim 74 was coming out of active army duty. They were living in Hawaii but moved to Arizona. They had excess funds from the sale of their Hawaii home and Victim 73 suggested that they invest it with Zietsoff.

243. Victim 69 introduced Victim 73 to Zietsoff's father, who connected him with the accused. Victim 73 and the accused had several telephone conversations before they eventually met at the Victim 69 and Victim 70's home. Zietsoff denies being introduced to Victim 73 and Victim 74 through Zietsoff's father, who also denies making the introduction. Zietsoff recalls that the introductions were done through Victim 69. Zietsoff asserts he never spoke with either Victim 73 or Victim 74, until the meeting that Victim 69 set up at his home in Fountain Hills. Zietsoff explained his computerized trading strategy. He said that his minimum investment was $500,000, but that he would make an exception for them. Victim 73 considered Zietsoff to be a friend and they spent time together when Zietsoff was in town. Victim 73 and Victim 74 recall that during one visit, Zietsoff's wife told them that she and Zietsoff were philanthropists who invested other people's money to help them out. (Zietsoff denies this statement about his wife.)

244. In 2009, Victim 73 liquidated his Individual Retirement Account. In January they invested $50,000 with Zietsoff, repayable in 90 days, with a guaranteed 12% annual return. In March 2009, they invested $250,000 and then a further $40,000 in April 2009. The latter money was drawn from a line of credit against their home. Victim 74 was reluctant to invest this money but Zietsoff explained that the 12% return he guaranteed would amply offset the 3% interest on the line of credit. In May 2009, they invested a further $50,000.

245. In May 2011, Zietsoff offered a substantial return on an investment in a Toronto paving company. Victim 73 declined but he later invested $20,000 in a mixed martial arts venture that promised a 35% annual return.

246. In October 2011, Zietsoff told Victim 73 that his money was tied up in the MF Global bankruptcy proceedings. At the start of 2012, Victim 73 asked Zietsoff for monthly payments of $2,000, to offset interest on the line of credit. Zietsoff gave Victim 73 $4,000 in February 2012, but almost immediately persuaded him to re-invest that money.

247. In March 2012, Zietsoff told Victim 73 about the potential Victim 75 and Victim 76 lawsuit (described below). He called Victim 73 and Victim 74 and blamed them for his troubles as they had introduced Victim 75 to him. He pleaded with them to cash in Victim 74's retirement savings, sell their vehicle, and invest that money. He said, "If I'm fucked, you're fucked." (Zietsoff denies saying this to Victim 73 and Victim 74). They did not acquiesce to this request.

248. In August 2012, Victim 73 and Victim 74 called their loans. Zietsoff agreed to repay them in installments. In the Fall of 2012, Victim 73 asked Zietsoff for $10,000. Zietsoff sent Victim 73 a cashier's cheque for $2,500 in November 2012.

249. Zietsoff had offered Victim 73 a commission for referrals. Victim 73 declined the commission but did introduce the accused to Victim 82 and to Victim 75 and Victim 76.

250. In summary, Victim 73 and Victim 74 gave Zietsoff $414,000. They say that Zietsoff paid less than $30,000 in interest, resulting in a loss of $384,000. Zietsoff asserts that he paid them $64,620 in interest, for a total loss of $349,380.

- **Victim 75 and Victim 76**

251. Victim 75 and Victim 76 live in Fargo, North Dakota. They requested, through the ACC, that they not be interviewed by the police. Victim 75 is a retired painter. Zietsoff explained that Victim 75 and Victim 73 are lifelong friends. Victim 73 introduced Zietsoff to Victim 75 via a Skype call made from Victim 73 and Victim 74's home in Arizona.

252. Victim 75 decided to invest with Zietsoff. Zietsoff visited Victim 75 and Victim 76 at their home, and reviewed their investment portfolios and assets. Victim 75 liquidated his Individual Retirement Account to invest with Zietsoff. Zietsoff promised a 20% return to compensate for the associated tax penalty. Victim 75 was not a sophisticated investor and did not ask a lot of questions before investing $410,000 with Zietsoff.

253. Two weeks before Victim 75 had to make a tax payment, he asked Zietsoff to return about $82,000. The funds were not immediately accessible to Zietsoff. Victim 75 was dissatisfied, retained counsel and, in a letter to Zietsoff, threatened to sue Zietsoff civilly. The matter was settled out of court without any lawsuit being commenced. Zietsoff claims that he paid Victim 75 in full, both principal and interest, in May 2012.

254. In summary, Victim 75 invested $410,000 with Zietsoff. Zietsoff repaid that principal, and a further $74,903 in interest.

- **Victim 77**

255. Victim 77 was not interviewed by the police. His involvement in the fraud is described in Zietsoff's statements and records. Zietsoff explained that Victim 77 was Victim 73's business partner. In 2009, Victim 77 invested $45,990 and received interest payments of $6,800, resulting in a loss of $39,190.

- **Victim 78 and Victim 79**

256. Neither Victim 78 nor his partner, Victim 79, were interviewed by the RCMP. Their involvement in the fraud is described in Zietsoff's statements and records. Zietsoff explained that Victim 78 and Victim 77 were friends. According to Zietsoff's records, Victim 78 invested $150,000 in 2009 and was repaid $49,917 in interest, resulting in a loss to Victim 78 and Victim 79 of $100,083.

- **Victim 80**

257. Victim 80 was not able to meet with the RCMP. Her involvement in the fraud is described in Zietsoff's statements and records. Zietsoff explained that she was friends with Victim 50's wife, Victim 51. According to Zietsoff's records, Victim 80 invested $53,500 in September 2010 and was repaid $2,500 in interest, resulting in a loss of $51,000.

- **Victim 81**

258. Victim 81 is also a friend of Victim 51. They had been neighbours in Arizona. When Victim 81 came to visit in June 2012, Victim 51 told her about the great returns they were getting from Zietsoff. At Victim 81's request, Victim 51 introduced her to Zietsoff.

259. Zietsoff came to Victim 50 and Victim 51's apartment and then they went to Zietsoff's Yorkville condominium, where he demonstrated his computerized trading system. Victim 81 showed Zietsoff her investment portfolio. Zietsoff claimed that he could do better and guaranteed a 12% annual return. He told her to fire her broker, liquidate her investments and let him trade on her behalf. According to Victim 81, Zietsoff said that he would pay her monthly interest in cash so that she would not have to pay taxes, but she insisted that she wanted to pay the taxes. (Zietsoff denies saying she would not have to pay taxes.)

260. Zietsoff persuaded Victim 81 to transfer her Individual Retirement Account to Interactive Brokers so he could trade for her. Interactive Brokers would not accept the transfer because of the nature of some of the investments, which were worth $750,000.

261. However, Victim 81 agreed to transfer $100,000 directly into Zietsoff's Chase Bank chequing account as a personal loan to allow Zietsoff to trade online on her behalf. They spoke on the phone on Monday morning and she asked for her money back. He told her that he had already invested the money, but could repay her in 90 days. It appears that, in fact, Zietsoff had not invested all of Victim 81's money.

262. Zietsoff did not forward the first interest payment that was due on July 9, 2012. In response to her messages, Zietsoff left a voicemail message claiming that he had mononucleosis and could not work. He did forward $1,000 on July 13, 2012.

263. On August 9, 2012, he transferred $1,030 into Victim 81's chequing account. She reminded him by text message that the balance was due on September 9, 2012. On October 12, 2012, Victim 81 followed up by e-mail to Zietsoff, copying his wife and Zietsoff's father. In November 2012, Zietsoff transferred $3,015 into her account.

264. In summary, Victim 81 invested $100,000 with Zietsoff. She claims that she lost $95,015 while Zietsoff states that the loss is slightly less, $94,955. The difference may be attributable to banking fees associated with the wire transfers.

- **Victim 82 and Victim 83**

265. Victim 82 and Victim 83 are married and live in Brentwood, Tennessee. Victim 82 met Zietsoff through his friend, Victim 73. Victim 82 was a record label executive at Walt Disney and received a significant payout when the label closed in 2010. Victim 73 suggested that Victim 82 consider investing with Zietsoff.

266. In the Summer of 2010, Zietsoff visited Herring at his home in Tennessee. He demonstrated his computerized trading strategy and assured Victim 82 that he invested only a small amount of his portfolio at a time and cashed out at the end of every day. Victim 82 was intrigued, but did not invest at that time. After further discussions, Victim 82 invested $200,000 with Zietsoff on September 27, 2010 and a further $200,000 in November 2010. The promissory notes carried 12% per annum returns.

267. On March 1, 2011, Zietsoff offered Victim 82 a 10% return on an investment in a Toronto paving company. Victim 82 invested $100,000, repayable in 90 days. Zietsoff paid Victim 82 the interest on the due date. Zietsoff offered him the option of combining the principal with his existing investments, with a guaranteed return of 14.4% per annum. Victim 82 accepted.

268. Zietsoff and Victim 82 became friends but by February 2012 Zietsoff was difficult to reach. Victim 82 understood that Zietsoff was ill. Eventually, Zietsoff told Victim 82 that his money was tied up in the MF Global bankruptcy. They agreed on a repayment plan, with which Zietsoff did not comply.

269. Zietsoff made interest payments for the first couple months. Victim 82 says he received between $70,000 and $72,000 in interest.

270. Zietsoff offered Victim 82 a commission if he would help him recruit new clients. Victim 82 declined.

271. In summary, Victim 82 and Victim 83 invested $500,000 with Zietsoff and believe that they received between $70,000 and $72,000 in interest, resulting in a loss between $428,000 and $430,000. According to Zietsoff's statements and documents, he paid $72,000 in interest, for a total loss to Victim 82 and Victim 83 of $428,000.

- **Victim 84 and Victim 85**

272. Victim 84 and Victim 85 are married and live in Scottsdale, Arizona. Victim 84 met Zietsoff's father in 2011 at the Deer Valley Airport where they both had hangars.

273. They became friends and Zietsoff's father told Victim 84 that he invested all his money with his son, who he described as a successful investor. Zietsoff's father introduced Victim 84 to Zietsoff in the Summer of 2011. Victim 84 and Zietsoff met a few times over the following months and Victim 84 was intrigued by the computerized trading strategy that the accused showed him. However, he did not invest at that time.

274. Zietsoff eventually told Victim 84 that he wanted to buy his father a high-performance aircraft as a birthday gift. Victim 84 went with Zietsoff to see the aircraft. Zietsoff proposed that Victim 84 partner in the purchase. Victim 84 declined because the airplane was too expensive but he recommended Zietsoff to Victim 86.

275. Victim 84 and Victim 85 ultimately invested $150,000 with Zietsoff on November 23, 2011 at an annual rate of 24%. Zietsoff brought them four interest payments of $3,000 in cash. He continued to ask Victim 84 for more money but Victim 84 declined.

276. In summary, Victim 84 and Victim 85 invested $150,000 with Zietsoff and received $12,000 in interest payments, resulting in a loss to them of $138,000.

- **Victim 86 and Victim 87**

277. Victim 86 and Victim 87 are married and live in Scottsdale, Arizona. Victim 86 is an investment banker specializing in mergers and acquisitions. Zietsoff was recommended to him by his good friend and neighbour, Victim 84.

278. In March 2012, Victim 86 spoke to Zietsoff on the phone. Zietsoff said he needed $150,000 to purchase an aircraft for his father's 70th birthday. Victim 86 loaned him $125,000 at 25% per annum, payable in 90 days. He demanded that Zietsoff's wife co-sign the promissory note. Zietsoff asserts that he forged his wife's signature.

279. Zietsoff visited Victim 86 multiple times at the beginning of April 2012. He explained and demonstrated his computerized trading strategy and claimed that his portfolio was worth over $10 million. He discussed several of his clients, including Victim 73. Victim 86 gradually disclosed to Zietsoff the extent of his liquid assets. Zietsoff asked Victim 86 to invest $450,000, with a guaranteed annual return of 20% but Victim 86 declined.

280. Zietsoff then proposed that Victim 86 invest $225,000 for a guaranteed 19.2% return, put the other $225,000 into his Interactive Brokers account, and permit Zietsoff to trade in that account. Zietsoff assured Victim 86 that he would adhere to the trading strategy they had discussed. Victim 86 agreed to this arrangement. He gave Zietsoff another $100,000 to supplement the original $125,000. He put $225,000 into his Interactive Brokers account and gave Zietsoff access.

281. Soon thereafter, Victim 86 learned that Zietsoff was taking a highly leveraged position in the online account. Zietsoff had lost $80,000 over two days and the total loss was $119,000. Victim 86 froze the account. Zietsoff promised to repay the $119,000 by July 1, 2012, which he did. Zietsoff also made interest payments to Victim 86 from Zietsoff's wife's bank account, and signed an agreement stipulating the manner in which he would trade in the future.

282. Zietsoff asked for permission to trade in the online account again and assured Victim 86 that he had taken a high-risk position only once. Victim 86 relented, unfroze the account, and again gave Ziestoff access. Zietsoff proceeded to lose all the money in the account. In August 2012, Victim 86 sued both Zietsoff and Zietsoff's wife. In September 2012, Victim 86 and Zietsoff agreed on a repayment plan, with which Zietsoff did not comply. His last payment was in December 2012.

283. Victim 86 says that he invested $450,000 with Zietsoff and was repaid $239,849, resulting in a loss of $210,151. Zietsoff claims that he and Victim 86 had an agreement about the trading losses in the Interactive Brokers account, such that he owed Victim 86 only $225,000. Zietsoff asserts that he repaid that principal, and a further $14,604 in interest.

- **Victim 88**

284. Victim 88 is a swimming pool contractor. He did work for Zietsoff's father in January 2012 when Zietsoff's parents were living in the Firerock community in Fountain Hills, Arizona.

285. Victim 88 noticed multiple computers on Zietsoff's desk. He asked about Zietsoff's father's occupation. Zietsoff's father explained that the computers belonged to Zietsoff, and that Zietsoff was a successful investor. Zietsoff's father said that all his money was invested with his son.

286. Victim 88 returned to the house on a later date to install a heating pump. He met Zietsoff, who explained his computerized trading strategy and mentioned that Victim 69 was one of his clients. Victim 88 contacted Victim 69 through a mutual friend and was told that Victim 69 had been investing with Zietsoff for years without any problems.

287. Victim 88 felt confident enough to give Zietsoff $100,000, repayable in 90 days, with a guaranteed 24% annual return. Zietsoff also offered Victim 88 a 36% return on a Greek bond. Zietsoff explained that another client, who was going through a divorce, needed someone to buy out his interest. Victim 88 gave Zietsoff another $100,000 for that venture.

288. By the end of May 2012, Zietsoff had paid Victim 88 $10,000 interest. Zietsoff then became difficult to reach and explained that he had Crohn's disease and was too ill to work. Victim 88 asked for his principal back. He was willing to forfeit the interest. In August 2012 Zietsoff assured Victim 88 that he would be repaid. He was not.

289. Victim 88 invested $200,000 and was repaid $10,000, resulting in a loss of $190,000.

- **Other Potential Victims**

290. Zietsoff asserts that he traded in the online accounts of Potential Victim 89 (Naples, Florida) and Potential Victim 90 (Denver, Colorado) and may have lost approximately $24,000 and $15,000, respectively, through high-risk trading. The accused will ask the court to take these circumstances into consideration pursuant to s. 725(1)(c) of the Criminal Code. The Crown will consider any additional details offered by the accused and provide the court with its position at the sentencing hearing.

VII. Summary

291. The investigation by the RCMP and the OSC disclosed that Zietsoff obtained funds from over 50 individuals and couples, domiciled in both Canada and the United States, through his fraudulent activities. The overwhelming majority of

Zietsoff's victims lost money, while a few received back their money and a smaller number received back more money than they advanced to the accused.

292. Given the passage of time, the unavailability of complete and accurate trading and banking records for all transactions, the refusal of some victims to speak to the RCMP, or the RCMP's inability to interview them, in some instances conflicting and fragile memories and, in other instances, disagreement over how to calculate investments and losses, it is not possible to calculate the net losses to the victims with absolute precision. However, the RCMP's review of the most reliable records and recollections, together with the statements of the victims and Zietsoff's voluntary disclosures reveals that, during the duration of the fraud, Zietsoff:

i. received $15,316,740 from his investors/victims and traded an additional amount in the online accounts of some of them;

ii. used $5,506,765 in investors' money to pay interest and/or repay principal to the same, or other, investors;

iii. suffered trading losses of $10,682,559;

iv. lost an additional $1,197,227 trading in the online accounts of investors; and

v. caused net losses to his victims in excess of $10 million.

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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
Golden Phoenix Minerals, Inc.	18 Dec 13	30 Dec 13	30 Dec 13	
Reef Resources Ltd.	10 Dec 13	23 Dec 13		24 Dec 13
Mirabela Nickel Limited	02 Dec 13	13 Dec 13	13 Dec 13	27 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

THERE ARE NO NEW ITEMS FOR THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
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 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
12/03/2013	12	1236 Mearns Manager LP - Limited Partnership Interest	225,568.00	N/A
12/03/2013	12	1735 RUTLAND MANAGER LP - Limited Liability Interest	396,758.01	0.00
12/03/2013	13	1804 Rundbert Manager LP - Limited Partnership Interest	260,542.71	N/A
12/04/2013	1	4198832 Canada Inc. - Common Shares	0.00	400,000.00
12/13/2013	4	Abengoa Finance, S.A.U. - Notes	25,533,950.00	4.00
11/30/2013	45	ACM Commercial Mortgage Fund - Units	18,852,502.72	168,935.59
10/01/2012 to 09/30/2013	5	Acuity Canadian Core Equity Pooled Fund - Units	11,373,971.35	1,161,266.69
10/01/2012 to 09/30/2013	4	Acuity Pooled Canadian Balanced Fund - Units	1,932,624.94	101,384.46
10/01/2012 to 09/30/2013	7	Acuity Pooled Canadian Equity Fund - Units	9,726,808.87	475,693.38
10/01/2012 to 09/30/2013	10	Acuity Pooled Canadian Snall Cap Fund - Units	10,834,397.85	541,290.84
10/01/2012 to 09/30/2013	11	Acuity Pooled Conservative Asset Allocation Fund - Units	733,221.97	42,493.44
10/01/2012 to 09/30/2013	54	Acuity Pooled Corporate Bond Fund - Units	4,499,834.21	436,121.25
10/01/2012 to 09/30/2013	88	Acuity Pooled Diversified Income Fund - Units	14,495,645.45	813,516.48
10/01/2012 to 09/30/2013	2	Acuity Pooled EAFE Fund - Units	7,461.20	943.19
10/01/2012 to 09/30/2013	87	Acuity Pooled Fixed Income Fund - Units	28,129,560.26	1,724,883.80
10/01/2012 to 09/30/2013	3	Acuity Pooled Growth and Income Fund - Units	166,184.40	17,082.65
10/01/2012 to 09/30/2013	116	Acuity Pooled High Income Fund - Units	9,484,546.34	593,862.21
10/01/2012 to 09/30/2013	8	Acuity Pooled Pure Canadian Equity Fund - Units	3,827,747.63	246,813.53
10/01/2012 to 09/30/2013	3	Acuity Pooled Social Value Canadian Equity Fund - Units	120.50	7.33

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
10/01/2012 to 09/30/2013	6	AGF Emerging Markets Pooled Fund - Units	31,355,078.14	3,315,529.14
10/01/2012 to 09/30/2013	11	AGF Global Core Equity Pooled Fund - Units	32,117,168.46	2,528,077.59
12/17/2013	1	Altas Mara Co-Nvest Limited - Common Shares	1,061,000.00	1,000,000.00
12/12/2013	1	Altice Financing S.A. - Note	10,641,000.00	1.00
12/16/2013	42	AnalytixInsight Inc. - Units	1,750,000.00	5,468,750.00
12/17/2013	5	ARAMARK Holdings Corporation - Notes	5,856,720.00	276,000.00
12/04/2013	3	Armistice Resources Corp. - Common Shares	0.00	50,000,000.00
12/05/2013	8	ATK Oilfield Transportation Inc. - Common Shares	6,905,000.00	3,454,500.00
11/15/2013	1	Augustine Ventures Inc. - Common Shares	7,500.00	250,000.00
11/20/2013	14	Aurin Biotech Inc. - Common Shares	1,927,739.00	1,993,239.00
12/16/2013	3	Autohome Inc. - Common Shares	305,575.30	17,000.00
12/11/2013	1	Axela Inc. - Debenture	500,000.00	1.00
12/20/2013	1	Bank of Montreal - Notes	2,000,000.00	N/A
12/12/2013	1	Barclays Bank PLC - Note	158,737.50	1.00
11/29/2013	1	Barclays Bank PLC - Note	150,000.00	1.00
12/06/2013 to 12/10/2013	11	Barclays Bank PLC - Note	1,848,875.00	N/A
11/12/2013 to 11/27/2013	8	Bassett Financial Corporation - Units	525,000.00	5,250.00
12/18/2013	1	Beacon Trust - Note	1,523,000.00	1.00
11/15/2013	3	Beverage Packaging Holdings IIS.A. and Beverage Packaging Holdings II Issuer Inc. - Notes	784,350.00	N/A
12/10/2013	4	Beverage Packaging Holdings (Luxembourg) II S.A. and Beverage Packaging Holdings II Issuer Inc. - Notes	5,577,075.00	N/A
12/05/2013	2	Blue Hill CLO, Ltd. - Notes	63,828,000.00	60,000.00
11/21/2013 to 11/27/2013	14	BNP Paribas Arbitrage SNC - Certificates	2,945,480.00	2,950,000.00
12/13/2013	4	BNP Paribas Arbitrage SNC - Certificates	700,000.00	4.00
12/11/2013	1	BNP Paribas Arbitrage SNC - Certificates	84,803.92	900.00
12/09/2013	15	Brandenburg Energy Corp. - Common Shares	330,000.00	6,600,000.00
11/21/2013	4	C Level III Inc. - Receipts	508,000.00	2,540,000.00
12/10/2013	5	CANADIAN OIL RECOVERY & REMEDIATION ENTERPRISES LTD. - Units	329,999.94	2,444,444.00
12/19/2013	2	Canoe Mining Ventures Corp. - Common Shares	40,000.00	200,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
11/01/2013	14	Capital Direct 1 Income Trust - Trust Units	261,850.00	26,185.00
12/12/2013	22	Cardero Resource Corp. - Common Shares	515,138.72	3,217,617.00
12/20/2013	1	Caribou King Resources Ltd. - Flow-Through Units	250,000.00	5,000,000.00
12/18/2013 to 12/23/2013	13	Carlisle Goldfields Limited - Flow-Through Units	517,500.00	10,350,000.00
12/09/2013	3	CASTLE RESOURCES INC. - Common Shares	499,999.92	7,142,856.00
11/30/2013	196	Centurion Apartment Real Estate Investment Trust - Units	21,072,539.79	1,807,250.37
11/18/2013	1	Century Iron Mines Corporation - Common Shares	1,500,000.00	3,000,000.00
12/16/2013	2	Churchhill Downs Incorporated - Notes	6,346,200.00	6,000.00
11/15/2013	10	Colombian Minerals Corporation - Units	1,015,000.00	3,383,333.00
11/26/2013	28	Corvus Gold Inc. - Common Shares	5,230,000.00	5,230,000.00
12/11/2013	10	Credit Suisse Group AG - Notes	21,200,000.00	20,000.00
12/05/2013	14	DealNet Capital Corp. - Debentures	421,000.00	421.00
12/16/2013	5	DealNet Capital Corp. - Debentures	51,000.00	51.00
11/29/2013	13	Digital Shelf Space Corp. - Units	200,000.00	2,500,000.00
11/26/2013	15	East Coast Energy Inc. - Units	548,650.40	N/A
11/27/2013	18	Eastmain Resources Inc. - Units	5,131,250.00	13,537,500.00
11/06/2012 to 10/28/2013	5.2	Emerging Markets Value Portfolio - Common Shares	43,826,630.57	1,514,710.72
11/25/2013	59	Equicapita Income L.P. - Units	638.15	638,135.00
12/19/2013	3	EQUIGENESIS 2013 PREFERRED INVESTMENT LP - Units	1,216,375.00	37.00
11/21/2013	10	Fairmont Resources Inc. - Common Shares	264,500.00	5,290,000.00
12/18/2013 to 12/20/2013	22	FanXchange Limited - Common Shares	9,362,500.00	156,250.00
12/06/2013	5	FERRUM AMERICAS MINING INC. - Common Shares	1,118,627.00	7,732,847.00
11/20/2013	1	Fifth Third Bancorp - Notes	5,208,399.25	N/A
11/20/2013	2	Fifth Third Bank - Notes	69,489,250.00	N/A
11/20/2013	1	Fifth Third Bank - Notes	5,221,142.15	N/A
12/10/2013 to 12/18/2013	16	FLASHSTOCK TECHNOLOGY INC. - Preferred Shares	813,941.90	511,327.00
12/02/2013 to 12/11/2013	21	Foremost Mortgage Trust - Mortgage	2,059,081.00	2,059,081.00
12/10/2013	14	Forest Laboratories, Inc. - Notes	104,222,253.00	98,110.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
12/13/2013	2	Gemoscan Canada, Inc. - Common Shares	163,583.46	1,817,594.00
12/13/2013	2	GEMOSCAN CANADA, INC. - Common Shares	8,260.00	91,778.00
12/03/2013	4	Geomega Resources Inc. - Flow-Through Units	530,995.00	3,123,500.00
12/03/2013	2	Geomega Resources Inc. - Units	52,480.00	328,000.00
12/20/2013	39	Gimus Resources Inc. - Common Shares	5,750,000.00	45,000,000.00
11/30/2013	97	Gingko Mortgage Investment Corporation - Preferred Shares	446,380.45	39,638.05
12/23/2013	1	Glen Eagle Resources Inc. - Common Shares	199,999.98	1,111,111.00
12/23/2013	1	Glen Eagle Resources Inc. - Flow-Through Shares	400,000.00	2,000,000.00
12/05/2013	2	GLOBAL SEAFARMS CORPORATION - Common Shares	316,100.07	3,512,223.00
12/06/2013	18	GOLD ROYALTIES CORPORATION - Units	784,000.00	1,960,000.00
12/05/2013	11	GOLDEN BRIDGE MINING CORPORATION - Flow-Through Shares	340,900.00	174,000.00
12/11/2013 to 12/20/2013	14	Goldeye Explorations Limited - Flow-Through Units	465,319.96	4,230,182.00
12/11/2013 to 12/20/2013	2	Goldeye Explorations Limited - Units	60,000.00	600,000.00
12/11/2013	5	Grafoid Inc. - Common Shares	337,500.00	675,000.00
11/29/2013	7	Grand River Ironsands Incorporated - Common Shares	120,164.00	42,224.00
12/13/2013	9	Grande West Transportation Group Inc. - Common Shares	300,000.00	600,000.00
12/10/2013	1	GT Advanced Technologies Inc. - Notes	1,062,300.00	1,000.00
11/20/2013	3	Guardly Corp. - Preferred Shares	950,000.00	284,462.00
12/05/2013	14	H2O INNOVATION INC. - Common Shares	7,929,999.34	34,478,258.00
12/18/2013 to 12/31/2013	17	Harte Gold Corp. - Units	453,620.00	1,400,000.00
10/30/2013	95	High North Resources Ltd. - Common Shares	5,229,815.00	14,666,256.00
12/17/2013	2	Hilton Worldwide Holdings Inc. - Common Shares	127,320.00	6,000.00
12/17/2013	1	Hilton Worldwide Holdings Inc. - Common Shares	106,100.00	5,000.00
12/04/2013	6	HudBay Minerals Inc. - Notes	5,080,600.00	4,750,000.00
12/13/2013	31	iFabric Copr. - Units	1,629,000.00	407,250.00
01/17/2013 to 06/13/2013	23	Imagistx Inc. - Preferred Shares	11,356,816.00	11,356,816.00
12/10/2013	2	inMotive Inc. - Preferred Shares	1,000,000.00	165,000.00
12/19/2013	2	InPlay Oil Corp. - Common Shares	50,000.00	50,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
12/03/2013	20	Instituntional Mortgage Securities Canada Inc. - Certificates	339,697,671.86	N/A
12/05/2013	4	International Enexco Limited - Flow-Through Units	750,000.00	2,343,750.00
12/17/2013	5	Jaguar Land Rover Automotive plc - Notes	11,671,000.00	11,000.00
12/05/2013	2	Johnson & Johnson - Notes	23,352,292.93	N/A
12/19/2013 to 12/23/2013	11	Jourdan Resources Inc. - Units	187,000.00	18,700.00
12/13/2013	17	Khalkos Exploration Inc. - Units	76,854.61	1,097,923.00
12/02/2013	2	KingSett Canadian Real Estate Income Fund LP - Units	500,000.00	375.57
12/09/2013	27	Kinwest 2008 Energy Inc. - Common Shares	802,609.45	560,325.00
11/19/2013 to 11/21/2013	21	KV Mortgage Fund Inc. - Preferred Shares	833,692.00	N/A
12/01/2013	3	LifePoint Hospitals, Inc. - Notes	21,198,000.00	20,000.00
12/05/2013	12	Loyalist Group Limited - Debentures	5,250,000.00	5,250.00
11/27/2013	3	Mady Brookdale 2013 Inc. - Loan Agreements	125,000.00	3.00
12/23/2013	20	Magor Corporation - Units	1,200,000.00	1,200.00
11/26/2013	41	Marquee Energy Ltd. - Common Shares	8,194,475.00	8,660,500.00
12/12/2013	1	Mazorro Resources Inc. - Common Shares	75,000.00	1,500,000.00
12/05/2013	3	mDialog Corporation - Debentures	350,000.00	7,700,000.00
12/23/2013	6	Melkior Resources Inc. - Units	40,000.00	616,667.00
10/31/2013	72	METGAS INDUSTRIAL LTD. - Common Shares	1,702,950.00	11,353,000.00
12/06/2013	6	Microsoft Corporation - Notes	60,477,090.00	N/A
12/04/2013 to 12/05/2013	7	MONTANA GOLD MINING COMPANY - Units	182,500.00	3,650,000.00
12/10/2013	7	Morgan Stanley - Notes	169,968,000.00	7.00
11/30/2013	1	Mortgage Fund One - Units	4,500,000.00	1,528.73
11/29/2013	2	Mylan Inc. - Notes	5,279,828.26	4,000.00
11/27/2013	4	Namex Explorations Inc. - Common Shares	159,198.00	3,183,960.00
11/01/2013 to 11/21/2013	4	New Haven Mortgage Income Fund (1) Inc. - Common Shares	396,962.00	N/A
11/29/2013	6	New Klondike Exploration Ltd. - Units	54,000.00	1,080,000.00
11/27/2013	1	Nightingale Informatix Corporation - Note	2,500,000.00	1.00
12/18/2013	3	Nimble Storage, Inc. - Common Shares	67,063.50	3,000.00
12/13/2013	8	Noram Ventures Inc. - Common Shares	186,999.95	1,143,333.00
11/25/2013	19	NuLegacy Gold Corporation - Units	367,500.00	3,675,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
11/27/2013	21	OYSTER OIL AND GAS LTD. - Warrants	1,204,964.25	0.00
12/03/2013	1	Pacific Rubiales Energy Corp. - Note	15,961,500.00	1.00
11/29/2013	47	Pediapharm Inc. - Receipts	6,376,490.40	21,254,968.00
12/19/2013	5	Peregrine Diamonds Ltd. - Common Shares	2,825,044.30	4,346,222.00
03/12/2013	24	Pistol Bay Mining Inc. - Flow-Through Units	345,600.00	2,995,000.00
12/09/2013	10	PJX Resources Inc. - Flow-Through Units	489,500.00	485,000.00
12/17/2013	16	Prestige Brands, Inc. - Notes	24,381,780.00	22,980.00
12/19/2013	93	Prestigious Life Settlements Partnership 1 - Units	19,437,000.00	220,700.00
12/17/2013	7	Prestigious Properties Kings Castles RRSP Inc. - Units	205,000.00	4,100.00
11/21/2013	2	ProAssurance Corporation - Notes	1,575,900.00	1,500,000.00
12/11/2013	2	Proofpoint, Inc. - Notes	1,325,000.00	1,250.00
12/05/2013 to 12/13/2013	3	Quantum Leap Mortgage Investments Fund - Units	122,554.40	12,140.00
12/02/2013 to 12/11/2013	76	qWEST 2013 OIL & GAS EXPLORATION AND DEVELOPMENTN FLOW-THROUGH LIMITED PARTNERSHIP - Units	1,739,200.00	173,920.00
12/06/2013	6	Rapier Gold Inc. - Non Flow-Through Shares	221,535.05	3,708,231.00
11/21/2013	24	Redstone Capital Corporation - Bonds	519,500.00	N/A
11/20/2013	11	Redstone Investment Corporation - Notes	255,000.00	N/A
11/30/2013	36	Redstone Investment Corporation - Notes	1,648,000.00	N/A
12/06/2013	13	Rockefeller Hughes Corporation - Units	1,593,990.00	8,855,500.00
12/02/2013	3	ROI CAPITAL - N/A	1,002,581.07	1,002,581.00
11/19/2013	2	ROI Capital - Units	5,000.00	5,000.00
12/03/2013	2	ROI CAPITAL - Units	100,000.00	100,000.00
11/29/2013	2	ROI CAPITAL - Units	23,523.30	23,523.30
12/02/2013	3	ROI CAPITAL - Units	904,493.00	904,493.00
12/20/2013	1	Roundy's Supermarkets, Inc. - Notes	311,667.90	3,000.00
12/12/2013	1	Royal Bank of Canada - Notes	2,660,250.00	25,000.00
12/12/2013	8	SAGUARO RESOURCES LTD. - Common Shares	72,999,982.00	33,181,810.00
12/20/2013	1	San Gold Corporation - Common Shares	183,750.00	1,750,000.00
12/16/2013	5	Search Minerals Inc. - Units	364,775.70	5,211,082.00
12/11/2013	1	Sector Re V Ltd. Series 3 Class D - Notes	5,303,500.00	5,000.00
10/22/2013	10	SHOPIFY INC. - Preferred Shares	35,993,996.06	3,443,221.00
11/26/2013	8	Shopify Inc. - Preferred Shares	36,914,497.00	3,443,221.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
12/10/2013	12	SHOP.CA Network Inc. - Common Shares	3,420,000.00	6,840,000.00
12/10/2013 to 12/18/2013	63	SIF Solar Energy Income & Growth Fund - Units	1,235,600.00	12,356.00
10/21/2013	6	Silver Bear Resources Inc. - Units	3,182,338.77	24,478,760.00
11/19/2013 to 11/28/2013	2	Sinclair-Cockburn Mortgage Investment Corporation - Common Shares	588,410.89	588,411.00
03/04/2013	2	SJC Offshore Capital Finance Fund II L.P. - Limited Partnership Interest	967,974.46	N/A
12/01/2013	1	Skyline Retail Real Estate Investment Trust - Units	3,400,000.00	340,000,000.00
10/22/2013	45	Slyce Inc. - Debentures	1,185,500.00	1,185,500.00
12/06/2013	26	SOLUTIONS4C02 INC,. - Units	1,887,699.00	6,292,330.00
12/12/2013	38	Spectra7 Microsystems Inc. - Common Shares	3,361,279.90	6,111,418.00
12/05/2013	9	Starbucks Corporation - Notes	48,402,900.00	45,500.00
12/09/2013	4	Starrex Mining Corporation Ltd. - Common Shares	1,134,826.00	4,539,304.00
12/13/2013	39	STEM CELL THERAPEUTICS CORPORATION - Units	33,000,000.00	79,247,693.00
12/06/2013	2	STRIA CAPITAL INC. - Common Shares	274,999.80	916,666.00
12/02/2013	9	Tango Gold Mines Incorporated - Common Shares	950,000.00	19,000,000.00
12/02/2013	21	TEMBO GOLD CORP, - Units	5,900,200.10	59,002,001.00
09/17/2013	158	TG Property Investments Inc. - Debentures	2,019,000.00	N/A
12/17/2013	3	The BLP 2013 Partnership - Limited Partnership Units	1,470,000.00	14.00
12/17/2013	4	The JDW 2013 Partnership - Limited Partnership Units	1,680,000.00	16.00
12/01/2013	2	The Toronto United Church Council - Notes	336,688.32	336,688.32
11/21/2013	1	Tic Talking Holdings Inc. - Units	250,000.00	500,000.00
12/10/2013	7	Timbercreek Asset Management Inc. - Debentures	16,000,000.00	16,000.00
12/23/2013	1	Timbercreek Four Quadrant Global Real Estat Partners - Units	200,000.00	16,339.00
12/12/2013	11	Timbercreek Four Quadrant Global Real Estate Partners - Units	1,073,560.00	87,702.00
11/29/2013	5	Timbercreek U.S. Multi-Residential Opportunity Fund #1 - Notes	3,589,940.00	5.00
11/27/2013 to 11/29/2013	4	TimePlay Inc. - Units	750,000.00	3,571.00
12/13/2013	13	Tonare Energy, LLC - Debentures	1,125,000.00	1,125,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
12/12/2013	1	Trade MAPS I Limited - Notes	21,828,000.00	20,000.00
12/04/2013	13	TREEGENIEC GOLD CORPORATION - Units	80,000.00	800,000.00
11/18/2013	5	Trend Financial Corp. - Common Shares	1,751,967.00	69,142.00
12/15/2013	1	Tri Origin Exploration Ltd. - Note	100,000.00	1.00
12/17/2013	2	Trulia, Inc. - Notes	8,488,000.00	8,000.00
12/02/2013 to 12/06/2013	17	UBS AG, Jersey Branch - Certificates	4,529,886.75	17.00
11/13/2013 to 11/22/2013	32	UBS AG, Jersey Branch - Certificates	9,544,539.00	32.00
12/09/2013 to 12/13/2013	13	UBS AG, Jersey Branch - Notes	4,391,708.04	13.00
11/29/2013	2	UBS AG, London Branch - Notes	450,000.00	450,000.00
11/26/2013 to 11/29/2013	2	UBS AG, Zurich - Certificates	259,773.95	2.00
12/12/2013	3	Ultra Petroleum Corp. - Notes	5,844,037.20	3.00
12/09/2013	1	United Hydrocarbon International Corp. - Debentures	9,700,000.00	9,700,000.00
08/01/2013	1	United Hydrocarbon International Corp. - Debentures	14,900,000.00	14,900,000.00
09/06/2013	1	United Hydrocarbon International Corp. - Debentures	5,000,000.00	5,000,000.00
06/06/2013	2	United Hydrocarbon International Corp. - Debentures	39,927,363.00	39,927,363.00
06/17/2013	1	United Hydrocarbon International Corp. - Debentures	5,000,000.00	5,000,000.00
06/28/2013	1	United Hydrocarbon International Corp. - Debentures	1,900,000.00	1,900,000.00
12/05/2013	7	URBANIMMERSIVE TECHNOLOGIES INC. - Common Shares	1,000,000.00	4,350,000.00
12/10/2013	1	US Ecology, Inc. - Common Shares	180,200.00	5,000.00
11/13/2012 to 10/30/2013	1	U.S. Core Equity 2 Portfolio - Common Shares	2,513,189.37	180,096.50
11/05/2013	1	Vantage Oncoloyg, LLC and Vantage Oncology Finance Co. - Note	542,940.48	1.00
12/02/2013	7	Vast Exploration Inc. - Common Shares	800,000.05	11,431,259.00
11/04/2013	1	Vena Solutions International Inc. - Common Shares	37,500.80	405,414.00
11/04/2013	1	Vena Solutions International Inc. - Debentures	150,000.00	150.00
11/04/2013	1	Vena Solutions International Inc. - Options	0.00	20,270.00
12/02/2013	9	VeroLube Inc. - Units	3,120,000.00	7,800,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
12/19/2013	5	Villabar Woodland Ridge Limited Partnership - Limited Partnership Units	790,024.00	5.00
11/15/2013	3	Vital Alert Communication Inc. - Preferred Shares	360,000.00	7,200,000.00
12/12/2013	33	Walton CA Tuscan Hills Investment Corporation - Common Shares	1,015,760.00	101,576.00
12/23/2013	10	Walton CA Tuscan Hills Investment Corporation - Common Shares	229,000.00	22,900.00
12/05/2013	36	walton ca tuscan hills investment corporation - N/A	850,560.00	85,056.00
11/28/2013	39	Walton CA Tuscan Hills LP - Common Shares	762,690.00	76,269.00
11/21/2013	11	Walton CA Tuscan Hills LP - Limited Partnership Units	646,475.36	61,840.00
11/28/2013	16	Walton CA Tuscan Hills LP - Limited Partnership Units	1,116,275.69	105,758.00
12/12/2013	16	Walton CA Tuscan Hills LP - Limited Partnership Units	1,356,425.42	128,146.00
12/05/2013	12	WALTON CA TUSCAN HILLS LP - Units	1,711,020.30	160,073.00
12/12/2013	45	Walton Georgia Land Acquisition Investment Corporation - Common Shares	1,427,870.00	146,242.00
12/23/2013	24	Walton Georgia Land Acquisition Investment Corporation - Common Shares	440,550.00	44,055.00
12/05/2013	19	WALTON GEORGIA LAND ACQUISITION LP - Limited Partnership Units	1,101,437.32	103,044.00
12/23/2013	17	Walton Georgia Land Acquisition LP - Limited Partnership Units	1,337,680.39	125,592.00
12/12/2013	21	Walton Georgia Land Acquisition LP - Limited Partnership Units	1,945,194.87	183,769.00
11/28/2013	9	Walton Income 8 Investment Corporation - Bonds	380,000.00	375,500.00
12/12/2013	11	Walton Income 8 Investment Corporation - Common Shares	288,000.00	1,100.00
12/12/2013	34	Walton Income 9 Investment Corporation - Common Shares	1,644,000.00	3,400.00
12/23/2013	22	Walton Income 9 Investment Corporation - Common Shares	1,806,500.00	2,200.00
12/23/2013	9	Walton U.S. Land Acquisition LP 1 - Limited Partnership Units	709,495.06	66,613.00
12/02/2013	1	York Investment Limited - Common Shares	1,063,400.00	1,063,400.00
12/09/2013	37	ZADAR VENTURES LTD. - Common Shares	933,000.00	4,664,500.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
BMO Discount Bond Index ETF
BMO Equal Weight US Banks Index ETF
BMO European Equity Hedged to CAD Index ETF
BMO MSCI EAFE Index ETF
BMO Short-Term US IG Corporate Bond Hedged to CAD Index ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 20, 2013
NP 11-202 Receipt dated December 24, 2013
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
BMO Asset Management Inc.
Project #2150284

Issuer Name:
BMO Floating Rate High Yield ETF
BMO US High Dividend Covered Call ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 20, 2013
NP 11-202 Receipt dated December 24, 2013
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
BMO Asset Management Inc.
Project #2150290

Issuer Name:
Cliffside Capital Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated December 30, 2013
NP 11-202 Receipt dated December 30, 2013
Offering Price and Description:
MINIMUM OFFERING: $500,000 - 5,000,000 Common Shares
MAXIMUM OFFERING: $1,000,000 -10,000,000 Common Shares
PRICE: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Promoter(s):
-
Project #2151368

Issuer Name:
Exemplar Performance Fund
Exemplar Real Assets Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses * dated December 24, 2013
NP 11-202 Receipt dated December 31, 2013
Offering Price and Description:
Series A, Series L, Series F and Series I Units
Underwriter(s) or Distributor(s):
BluMont Capital Corporation
Promoter(s):
BluMont Capital Corporation
Project #2151507

Issuer Name:
First Trust Global DividendSeeker Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 30, 2013
NP 11-202 Receipt dated December 30, 2013
Offering Price and Description:
Maximum: $ * - * Class A Units and/or Class F Unit
Price: $10.00 per Unit
Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
GMP Securities L.P.
Raymond James Ltd.
Canaccord Genuity Corp.
Burgeonvest Bick Securities Limited
Desjardins Securities Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated
Promoter(s):
BMO Nesbitt Burns Inc.
Project #2151116

Issuer Name:
Front Street Tactical Equity Class
Front Street Value Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated December 24, 2013
NP 11-202 Receipt dated December 24, 2013
Offering Price and Description:
Series A, Series B, Series F and Series X Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Front Street Capital 2004
Project #2150608

Issuer Name:
Uranium Energy Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary MJDS Prospectus dated December 27, 2013
NP 11-202 Receipt dated December 27, 2013
Offering Price and Description:
$100,000,000.00
Common Shares
Debt Securities
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2150871

Issuer Name:
RBC Canadian Short-Term Income Fund
RBC Balanced Fund
RBC Canadian Dividend Fund
(Series A units)
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated December 20, 2013 to the Simplified Prospectuses and Annual Information Form dated June 27, 2013
NP 11-202 Receipt dated December 31, 2013
Offering Price and Description:
Series A units
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Royal Mutual Funds Inc.
RBC Direct Investing Inc.
RBC Dominion Securities Inc.
RBC Global Asset Management Inc.
Royal Mutual Funds Inc./RBC Direct Investing Inc.
Royal Mutual Funds Inc.
RBC Dominion Securities Inc.
Royal Mutual Funds Inc./RBD Direct Investing Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #2061942

Issuer Name:
RBC Canadian Dividend Class
(Series A and Advisor Series mutual fund shares)
Principal Regulator - Ontario
Type and Date:
Amendment dated December 20, 2013 to the Simplified Prospectus and Annual Information Form dated October 18, 2013
NP 11-202 Receipt dated December 31, 2013
Offering Price and Description:
Series A and Advisor Series mutual fund shares
Underwriter(s) or Distributor(s):
RBC Direct Investing Inc.
Promoter(s):
RBC DIRECT INVESTING INC.
Project #2112600

Issuer Name:
DHX Media Ltd.
Principal Regulator - Nova Scotia
Type and Date:
Final Short Form Prospectus dated December 30, 2013
NP 11-202 Receipt dated December 30, 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:
Exemplar Leaders Fund (Series A and Series F units)
Exemplar Global Infrastructure Fund (Series A, Series F and Series I units)
Exemplar Yield Fund (Series A, Series L, Series F and Series I units)
Exemplar Timber Fund (Series A, Series L, Series F and Series I units)
Exemplar Global Agriculture Fund (Series A, Series L, Series F and Series I units)
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectus and Annual Information Form dated December 11, 2013 (the amended prospectus) amending and restating the Simplified Prospectus and Annual Information Form of dated June 28, 2013, as amended by Amendment No. 1 dated September 26, 2013.
NP 11-202 Receipt dated December 30, 2013
Offering Price and Description:
Series A, L, F and I units
Underwriter(s) or Distributor(s):
BluMont Capital Corporation
BluMont Capital
Promoter(s):
BluMont Capital Corporation
Project #2050329

Issuer Name:
Fidelity American Value Fund
Fidelity Global Opportunities Fund
Fidelity Overseas Fund
(Series A, Series B, Series F, Series O, Series F5, Series F8, Series T5, Series T8, Series S5 and
Series S8 units)Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 20, 2013 to the Simplified Prospectus and Annual Information Form dated October 30, 2013
NP 11-202 Receipt dated December 30, 2013
Offering Price and Description:
Series A, Series B, Series F and Series O units and Series F5, Series F8, Series T5, Series T8, Series S5 and Series S8 units
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Fidelity Investments Canadaz ULC
Fidelity Investments Canada Limited
Fidelity Investments Canada ULC
Promoter(s):
FIDELITY INVESTMENTS CANADA ULC
Project #2112406

Issuer Name:
Lysander Balanced Fund
Lysander Bond Fund
Lysander Corporate Value Bond Fund
Lysander Equity Fund
Lysander Short Term and Floating Rate Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 20, 2013
NP 11-202 Receipt dated December 24, 2013
Offering Price and Description:
Series A, Series F and Series O Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2134424

Issuer Name:
Manulife Canadian Bond Plus Fund
Manulife Emerging Markets Equity Fund
Manulife Global Natural Resources Fund
(Advisor Series, Series F and Series I Securities)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 13, 2013 to the Simplified Prospectuses dated August 1, 2013
NP 11-202 Receipt dated December 24, 2013
Offering Price and Description:
Advisor Series, Series F and Series I Securities @ Net Asset Value
Underwriter(s) or Distributor(s):
Manulife Asset Management Limited
Promoter(s):
Manulife Asset Management Limited
Project #2075524

Issuer Name:
Advisor Series, Series F, Series FT6, Series I, Series IT and Series T6 Securities (Unless
Otherwise Indicated) of:
Manulife U.S. Dividend Registered Fund
(available in Advisor Series, Series F and Series I only)
Manulife U.S. Dollar Strategic Balanced Yield Fund
Manulife U.S. Dollar U.S. All Cap Equity Fund
Manulife U.S. Monthly High Income Fund
Manulife U.S. Dividend Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 18, 2013
NP 11-202 Receipt dated December 24, 2013
Offering Price and Description:
ADVISOR SERIES, SERIES F, SERIES FT6, SERIESI, SERIES IT AND SERIES T6 SECURITIES
Underwriter(s) or Distributor(s):
Manulife Asset Management Limited
Promoter(s):
Manulife Asset Management Limited
Project #2130912

Issuer Name:
Marquest Mutual Funds Inc. - Explorer Series Fund
(A/Rollover Series, A/Regular Series, F
Series and I Series)
Marquest Mutual Funds Inc. - Energy Series Fund
(A/Rollover Series, A/Regular Series, F
Series and I Series)
Marquest Mutual Funds Inc. - Canadian Flex Series Fund
(A/Regular Series, Low Load/DSC
Series, F Series and I Series)
Marquest Mutual Funds Inc. - Resource Flex Series Fund
(A/Regular Series, Low Load/DSC
Series, F Series and I Series)
Marquest Mutual Funds Inc. - Flex Dividend and Income Growth Series Fund (A/Regular Series,
Low Load/DSC Series, F Series and I Series)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 30, 2013
NP 11-202 Receipt dated December 30, 2013
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2139657

Issuer Name:
Templeton Global Bond Fund (Hedged)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated December 19, 2013 to the Simplified Prospectus and Annual Information Form dated August 13, 2013
NP 11-202 Receipt dated December 31, 2013
Offering Price and Description:
Series A, F, I and O units
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Promoter(s):
Franklin Templeton Investments Corp.
Project #2082628

Issuer Name:
The Lonsdale Tactical Balanced Portfolio
The Lonsdale Tactical Growth Portfolio
The Lonsdale Tactical Yield Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 20, 2013 to the Simplified Prospectuses and Annual Information Form dated December 9, 2013
NP 11-202 Receipt dated December 24, 2013
Offering Price and Description:
Mutual Fund Units
Underwriter(s) or Distributor(s):
Newport Private Wealth Inc.
Promoter(s):
Newport Private Wealth Inc.
Project #2112282

Issuer Name:
Uranium Energy Corp.
Principal Regulator - British Columbia
Type and Date:
Amendment #1 dated January 2, 2014 to the MJDS Prospectus dated February 9, 2011
NP 11-202 Receipt dated January 3, 2014
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1788636

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	Bromleigh Investment Management Inc.	Portfolio Manager	December 27, 2013
Consent to Suspension (Pending Surrender)	Camlin Asset Management Ltd.	Portfolio Manager and Exempt Market Dealer	December 27, 2013
Consent to Suspension (Pending Surrender)	Nova Bancorp Securities Ltd.	Exempt Market Dealer	December 30, 2013
Amalgamation	Horizons ETFs Management (Canada) Inc. and Horizons Investment Management Inc. To Form: Horizons ETFs Management (Canada) Inc.	Exempt market Dealer, Portfolio Manager, Investment Fund Manager and Commodity Trading Manager and Commodity Trading Adviser	December 30, 2013
Consent to Suspension (Pending Surrender)	Garrison Hill Capital Management Inc.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	December 30, 2013
Consent to Suspension (Pending Surrender)	Selective Asset Management Inc.	Portfolio Manager	December 30, 2013
New Registration	HGC Investment Management Inc.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	December 31, 2013
Consent to Suspension (Pending Surrender)	Radiant Investment Management Ltd.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	December 31, 2013
Consent to Suspension (Pending Surrender)	GRS Partners Capital Management Inc.	Portfolio Manager	December 31, 2013

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	Transition Financial Advisors Group, Inc.	Portfolio Manager	December 31, 2013
Consent to Suspension (Pending Surrender)	YUL Capital Inc.	Portfolio Manager and Exempt Market Dealer	December 31, 2013
Amalgamation	CIBC Asset Management Inc., CIBC Global Asset Management Inc. and CIBC Private Investment Counsel Inc. To Form: CIBC Asset Management Inc.	Investment Fund Manager, Portfolio Manager and Commodity Trading Manager	January 1, 2014
Change in Registration Category	Genus Capital Management Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	January 2, 2014
New Registration	GreensKeeper Asset Management Inc.	Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	January 2, 2014

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.3 Clearing Agencies

13.3.1 ICE Clear Credit LLC – Notice of Commission Order – Application for Exemptive Relief

ICE CLEAR CREDIT LLC (ICC)

APPLICATION FOR EXEMPTIVE RELIEF

NOTICE OF COMMISSION ORDER

On December 18, 2013, the Commission issued an order under section 147 of the *Securities Act* (Ontario) (Act) exempting LCH from the requirement in subsection 21.2(0.1) of the Act to be recognized as a clearing agency (Order), subject to terms and conditions as set out in the Order.

The Commission published ICC's application and draft exemption order for comment on October 24, 2013 on the OSC website at http://www.osc.gov.on.ca/documents/en/Marketplaces/ice-credit_20131008_app-exemption-recognition.pdf and at (2013) 36 OSCB 10403. A comment letter was received from the Montreal Exchange, a subsidiary of the TMX Group Limited. A copy of the comment letter is posted at www.osc.gov.on.ca. We summarize below the main comments and Staff's responses to them. In issuing the Order, only one non-substantive change was made to the draft order published for comment which defines the acronym DCO as a Derivatives Clearing Organisation in paragraph #3 of ICC's representations.

A copy of the Order is published in Chapter 2 of this Bulletin.

Comment	Response
The commenter's principal concern is that the Commission, in evaluating applications for exemptive relief, may grant more deference to foreign regulators than it grants to other Canadian provincial regulators and than foreign regulators (e.g. U.S. regulators) grant to domestic regulators in clearing agency oversight. The commenter suggests that this absence of reciprocity between Canadian and U.S. regulators creates an unlevel playing field between clearing agencies from the two countries resulting in barriers to growth and increased costs. Consequently, it suggests that the Commission should add reciprocity to its criteria as outlined in OSC Staff Notice 24-702 Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies (**Notice 24-702**).	As noted in OSC Staff Notice 24-072 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*, we are prepared to exempt a clearing agency if it does not pose significant risk to Ontario capital markets and is subject to an appropriate regulatory and oversight regime in another jurisdiction by its home regulator(s). During the review process of an application for clearing agency recognition or exemption from the recognition requirement, the OSC staff would assess the oversight regime in the home jurisdiction of the applicant and do not differentiate between non-Canadian and other Canadian provincial regulatory regimes. The existence of different regulatory regimes is acknowledged in the recent CPSS-IOSCO's *Principles for financial market infrastructures* that requires authorities to cooperate with each other in promoting the safety and efficiency of financial market infrastructures (FMIs). Our approach to recognition or exemption of a domestic clearing agency is consistent with our approach to recognition or exemption of foreign-based clearing agencies. It is based largely on whether the clearing agency poses significant risk to the Ontario capital markets. Consequently, the concept of reciprocity is not a relevant factor in deciding whether to recognize or exempt a clearing agency. However, staff will tailor the terms and conditions of recognition or exemption to recognize comparable oversight by a foreign regulator or another Canadian regulator, in order to minimize the potential duplication of regulatory effort and burden on a clearing agency.

The commenter is of the view that it does not seem reasonable for the Commission to grant exemptive relief to ICC on the basis of ICC's regulatory status while hesitating to provide the same exemptive relief to a Canadian clearing agency regulated by another provincial securities regulator.	The Commission has issued orders in the past exempting ICE Clear Canada and the Natural Gas Exchange Inc., (a subsidiary of TMX Group Limited), two Canadian clearing agencies, from the requirement to be recognised as clearing agencies. The exemptions are based on our view that they do not pose systemic risk to Ontario and based on our reliance on their primary regulators, the Manitoba Securities Commission and Alberta Securities Commission, respectively. This approach that is applied to Canadian clearing agencies is consistent with our approach to ICC and other foreign exempted clearing agencies.
The commenter seeks further clarity as to why the OSC approved an interim clearing exemption order for ICC with limited terms and conditions and allowed ICC to operate close to one year without a full regulatory review.	We note that this is referring to the fact that the Commission issued an interim exemption order for ICC so it can carry on business in Ontario while staff would complete a more detailed full review of the entity. The process is consistent to the past applications received from foreign clearing agencies and one Canadian clearing agency.

Chapter 25

Other Information

25.1 Approvals

25.1.1 BKC Capital Inc. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

October 11, 2013

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000
Commerce Court West
Toronto, Ontario
M5L 1A9

Attention: Michael W. Sharp

Dear Sirs/Mesdames:

Re: BKC Capital Inc. (the "Applicant")

Application under Clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) (the "LTCA") for Approval of Appointment as Trustee

Application No. 2013/0409

Further to your application dated June 28, 2013 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of the Bentall Kennedy Canadian Real Estate Plus Pooled Fund (the "Fund") and any other future mutual fund trusts that the Applicant may establish and manage from time to time, will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of the Fund and any future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to an exemption from the prospectus requirement.

Yours truly,

"Edward P. Kerwin"
Commissioner

"S.B. Kavanagh"
Commissioner

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