1.1.3 CSA Staff Notice 51-327 – Revised Guidance on Oil and Gas Disclosure

CSA Staff Notice 51-327
Revised *Guidance on Oil and Gas Disclosure*

First published February 27, 2009, revised December 30, 2010, December 29, 2011 and December 4, 2014

December 4, 2014

1. Introduction

This revised Canadian Securities Administrators (CSA or we) Staff Notice (Notice) provides guidance on compliance with aspects of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101).

NI 51-101 applies to reporting issuers that are directly or indirectly engaged in oil and gas activities (Oil and Gas Issuers). Central to the NI 51-101 disclosure regime is mandatory disclosure of prescribed reserves data, which includes estimates of proved reserves and probable reserves and related future net revenues. NI 51-101 also establishes standards for certain non-mandatory disclosure that Oil and Gas Issuers may choose to make regarding oil and gas activities.[1]

When first issued on 27 February 2009 under the title *Oil and Gas Disclosure: Resources Other Than Reserves Data*, this Notice was designed to address observations by CSA staff of issues arising as a result of an increase in non-mandatory disclosure of possible reserves and other resource classes, especially for unconventional resources. This Notice was revised as of 30 December 2010 to address additional issues relating to oil and gas disclosure and to remove guidance on certain issues that we addressed by amendments to NI 51-101.[2] This Notice was again revised as of 29 December 2011 to discuss observations by CSA staff in reviewing disclosure in light of amendments to NI 51-101 in 2010 and to re-emphasize or expand guidance on some issues discussed in previous versions of this Notice.

This Notice is now being revised in connection with the publication of amendments to NI 51-101 on December 4, 2014, the adoption of the detailed guidelines for estimation and classification of bitumen resources (Bitumen Guidelines) into volume 3 of the Canadian Oil and Gas Evaluation Handbook (COGE Handbook) on April 1, 2014, and the adoption of the guidelines for estimation and classification of resources other than reserves (ROTR Guidelines) into section 2 of volume 2 of the COGE Handbook on July 17, 2014.

Context and Cautions

Suggested Wording – We recommend, at various points in this Notice, that non-mandatory disclosure be accompanied by cautionary statements, and we suggest wording that may be helpful. We recommend cautionary statements based on our view that disclosure of resources other than proved and probable reserves may mislead if the disclosure lacks context; we intend the cautionary statements to provide appropriate context. Adequate disclosure will provide explanation and, where appropriate, cautionary information. An Oil and Gas Issuer may use cautionary wording other than what we recommend by this Notice where necessary to provide complete and accurate disclosure.

General Guidance with Examples – We have chosen specific disclosure topics for discussion in this Notice as examples of how general principles apply to specific situations, the topics chosen reflecting recurring concerns arising from observations of CSA staff in reviewing disclosure. This Notice is not a checklist – we intend that Oil and Gas Issuers, and their evaluators and auditors, will use this Notice to guide them in preparing oil and gas disclosure. The themes illustrated in that discussion of professional responsibility and careful choices in formulating disclosure apply also to other topics not mentioned here.

Notes on Terminology

Terminology References – Clarity and consistency in the use of terminology is essential to good disclosure by Oil and Gas Issuers. Important terminological sources include:

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1 See NI 51-101, section 5.9.

2 See CSA Notice of Amendments to National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* and related and consequential amendments, published 15 October 2010.

- COGE Handbook – refer to section 5 of volume 1[3] titled "*Definitions of Resources and Reserves*", notably Figure 5-1, and section 2 of volume 2 of the COGE Handbook; and

- CSA Staff Notice 51-324 *Glossary to NI 51-101 Standards of Disclosure for Oil and Gas Activities* (the CSA Glossary).

Specific Terms – The classification and categorization of resources is a vital aspect of disclosure under NI 51-101. Although there is now broad alignment between the COGE Handbook and the Society for Petroleum Engineers - Petroleum Resource Management System (SPE-PRMS), some differences remain.[4] Terms in this Notice, unless otherwise defined, have the meaning as set out in NI 51-101, which incorporates defined terms from the COGE Handbook (including the latest additions of the Bitumen Guidelines and the ROTR Guidelines). For clarity, NI 51-101 and this Notice use terminology as follows:

category – In colloquial usage, the term "category" includes both "class" and "category". As a result, volume 1 (2nd Edition 2007) and volume 2 (2005) of the COGE Handbook use the terms "class" and "category" interchangeably. The ROTR Guidelines (July 17, 2014) have adopted the usage in the SPE-PRMS (see Figure 2-1 Resources Classification Framework) as follows:

"Class" describes the chance of commerciality (reserves, contingent resources, etc.) as expressed on the vertical axis of the SPE-PRMS matrix.

"Category" describes the range of uncertainty within a class as expressed on the horizontal axis of the SPE-PRMS matrix. For example, within the class of "reserves" are the categories of "proved", "probable" and "possible", and for other classes the estimation categories of "low estimate", "best estimate" and "high case".

In view of the fact that the COGE Handbook (other than ROTR Guidelines) generally uses the term category to mean both "class" and "category", for the purpose of NI 51-101, the term "category" includes, but is not limited to, both the concepts of "class" and "category" as described above.

resources – In colloquial usage, the term "resources" may or may not include reserves volumes. We refer to "resources", consistent with the CSA Glossary, as a general term that may refer to all or a portion of total resources, with "total resources" as equivalent to "total petroleum initially-in-place" as defined in the COGE Handbook.

reserves data – We refer to "reserves data" as defined in NI 51-101 as an estimate of proved reserves and probable reserves and related future net revenue. The phrase "resources other than proved or probable reserves" refers to all other classes of resources as classified in the COGE Handbook, including possible reserves.

2. Responsibility for Disclosure of Oil and Gas Information

All who are involved in Oil and Gas Issuers' disclosure – the issuers themselves, their management and directors, and those individuals or firms who provide professional services to them – should be mindful of both (i) the fundamental objectives of Canadian securities legislation, and (ii) the various sources of requirements, restrictions and standards that may apply to formulating disclosure. To protect investors and foster fair and efficient capital markets, Canadian securities legislation is designed to provide the investing public with timely, useful and reliable information from reporting issuers. Those involved in providing such information should give thought to those key objectives. Such individuals must also take note of applicable rules and requirements of relevant professional associations and applicable requirements and restrictions of Canadian securities legislation, which include but are not entirely limited to NI 51-101, which mandates compliance with the COGE Handbook.

(a) Oil and Gas Issuers – General Standards and Responsibilities

Disclosure relating to oil and gas activities of an Oil and Gas Issuer is subject to the specific requirements and restrictions of NI 51-101, but disclosure requirements are not limited to NI 51-101. Oil and Gas Issuers must make their disclosure within the larger context of Canadian securities legislation and make appropriate use of instructional guides in developing and reporting disclosure.

(i) Canadian Securities Legislation, Generally

Disclosure relating to oil and gas activities is subject not only to the specific requirements and restrictions of NI 51-101 but also to applicable requirements and prohibitions of other elements of Canadian securities

[3] Available on the Alberta Securities Commission website at: http://www.albertasecurities.com/securitiesLaw/Regulatory%20Instruments/5/2232/COGEHs.5DefinitionsofOilandGasResourcesandReserves.pdf

[4] See section 5.1.1 of volume 1 of the COGE Handbook.

legislation. Not every topic of disclosure is discussed specifically in NI 51-101 or elsewhere in Canadian securities legislation. Oil and Gas Issuers must also give attention to the broader purposes, principles and prohibitions of Canadian securities legislation. Following are discussions of a few examples.

A. Misrepresentations or Misleading Statements

Among the broad prohibitions of Canadian securities legislation is the ban on misrepresentations – that is (broadly speaking), false, untrue or misleading statements (or omissions from statements) of facts that are material in the sense of being reasonably likely to significantly affect the market price or value of a security. Such materially misleading disclosure is improper and illegal. All responsible for an Oil and Gas Issuer's disclosure should, therefore, give close attention to its quality, ensuring that it does not – expressly, or by omission – mislead. In assessing the quality and sufficiency of disclosure or proposed disclosure, they should bear in mind not only specific disclosure requirements (if applicable) but also, more broadly, the key purposes of Canadian securities legislation, mentioned above.

The following are examples of disclosure that, in the view of CSA staff, could be materially misleading or untrue:

- disclosure of a contingent resource for which there is no flow test or good analog;
- the results of an evaluation for a reservoir based on a production process that has never been used in that type of reservoir;
- inappropriate analog – that is, use of information that is not truly analogous to the reported reserves;
- disclosure of unconventional resources using a project scenario that is not reasonable with regard to timing or cost and may result in misleading disclosure with respect to the value of a project; and[5]
- disclosure respecting the risked net present value of future net revenue of prospective resources or contingent resources that are not in the development pending project maturity sub-class without including an explanation about the factors considered respecting the chance of commerciality, which includes both chance of discovery and chance of development in the case of prospective resources and chance of development in the case of contingent resources.

Similarly, the following are examples of disclosure that CSA staff consider could be materially misleading or untrue by reason of omissions – failures to state facts that may be required or necessary to be stated to avoid what is stated being misleading:

- disclosure of petroleum initially-in-place (PIIP) without clarifying whether it is discovered or undiscovered;
- disclosure of a contingent resource without providing information as to its economic viability;
- disclosure of a resource of any class or category without adequate disclosure of the associated significant economic factors or significant uncertainties that are specific to the Oil and Gas Issuer that may affect any associated project;
- disclosure of a contingent resource with only general or vague mention of the contingencies – for example, using wording commonly used by other Oil and Gas Issuers that may not fully or accurately describe the contingencies that apply in the particular circumstances; and
- disclosure of a short-term or peak rate for a well test without providing additional disclosure on the test, including that the reported rate is a short-term or peak rate.

[5] Further, it may be misleading for an Oil and Gas Issuer to disclose the result of an evaluation for a project that the Oil and Gas Issuer may not be able, or does not intend, to carry out without disclosing this fact and providing a discussion of how the disclosed value of the project could be realized.

B. Material Changes

As one example of a specific disclosure requirement arising outside NI 51-101, Canadian securities legislation requires prompt public disclosure of any “material change”.[6] A reporting issuer satisfies this important disclosure obligation by issuing and filing a news release and filing a material change report; it is not satisfied merely by including information in an Oil and Gas Issuer's annual statement of reserves data filed under NI 51-101 or issuing a news release alone.

C. Requirements Applicable to Disclosure of Oil and Gas Activities

NI 51-101 imposes standards and restrictions that apply to disclosure of oil and gas activities, whether or not such disclosure is restricted to proved and probable reserves and related future net revenue. That is, an Oil and Gas Issuer must consider whether disclosure of oil and gas activities, in any form, and whether made voluntarily or in response to any specific provision of NI 51-101, adheres to applicable provisions of Part 5 of NI 51-101.

It is not possible to identify in advance for all issuers all potentially sound – or improper – disclosure. Oil and Gas Issuers and those involved in preparing, authorizing and disseminating their disclosure must assess their particular facts and circumstances and make judgements on such matters as materiality, taking into account express legal requirements and restrictions, as well as broader principles and prohibitions. That said, CSA staff believe that the observations and recommendations in this Notice will assist Oil and Gas Issuers and those involved in preparing, authorizing and disseminating their disclosure.

(ii) COGE Handbook and Other Guides

The COGE Handbook is a useful reference for preparing and issuing disclosure required by Canadian securities legislation. It is not, however, an exhaustive guide. Oil and Gas Issuers should bear in mind relevant general principles when formulating disclosure.

When using the COGE Handbook in the preparation and review of information for securities disclosure, Oil and Gas Issuers must interpret it in a manner that is consistent with all applicable Canadian securities legislation including, but not limited to, the principles and specific requirements and restrictions of NI 51-101.

Volume 1 (2nd edition, 2007) and volume 2 (2005) of the COGE Handbook contains general guidance on the evaluation and classification of resources, but the focus is on the evaluation of conventional reserves. For this reason, it has been necessary to supplement this guidance with material on the evaluation of “non-conventional” reserves and resources other than reserves.

The recent addition of the Bitumen Guidelines to volume 3 (2007) of the COGE Handbook addresses the evaluation and classification of the volumes of heavy oil or bitumen existing in, and recoverable from, formations that are suitable for exploitation using in-situ or mining recovery methods. An objective of these guidelines is to ensure that, regardless of the recovery method, the estimate satisfies a single set of classification criteria.

The further addition of the ROTR Guidelines in section 2 of volume 2 of the COGE Handbook address other resources classes. The ROTR Guidelines progress from the estimation of petroleum initially in place, through classification as discovered/undiscovered, identification and characterization of recovery technologies and projects, and to the estimation and economic status of recoverable volumes and description of contingencies and project maturity.

The ROTR Guidelines cover topics that are already addressed to some extent in other sections of the COGE Handbook. There are some differences between the ROTR Guidelines and the guidance in other volumes and sections of the COGE Handbook. Where there is a conflict between the ROTR Guidelines and other parts of the COGE Handbook, the ROTR Guidelines take precedence with respect to the evaluation of resources other than reserves. Those differences may be addressed in future revisions to the COGE Handbook.

(iii) Specific Description Rather than Commonly-used Wording

To avoid misleading disclosure, Oil and Gas Issuers should tailor their disclosure to their particular circumstances. We have observed the use, verbatim, of wording that appears in other issuers’ disclosure. Boilerplate disclosure is unhelpful for an investor; it may also be misleading.

[6] See National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), section 7.1.

As an example, the long standing requirement found in item 5.2 of Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information* (Form 51-101F1) that requires an Oil and Gas Issuer to discuss company-applicable significant factors or uncertainties with respect to reserves data has been extended to other resource categories. Section 5.9 of NI 51-101 and item 6.2.1 of Form 51-101F1 detail these requirements. In order to comply with NI 51-101, the disclosure should clearly address the factors and uncertainties that are specific to the Oil and Gas Issuer's properties and not simply repeat boilerplate discussion or repeat other Oil and Gas Issuers' disclosure.

(iv) Use of NI 51-101 Forms for Other Purposes

Forms 51-101F1, 51-101F2 *Report on [Reserves Data][,][Contingent Resources Data][and][Prospective Resources Data] by Independent Qualified Reserves Evaluator or Auditor* (Form 51-101F2) and 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure* (Form 51-101F3) are intended to be used for annual disclosure of reserves data and other specific information. An Oil and Gas Issuer may use such forms as templates for other disclosure purposes, but those documents that offer additional disclosure should not be identified as "*Form 51-101F1*", "*Form 51-101F2*" or "*Form 51-101F3*", and the headings should be modified to describe the actual contents of the disclosure.

(b) Evaluators and Auditors – General Standards and Responsibilities

An independent qualified reserves evaluator or auditor who signs a report in Form 51-101F2 is representing that the disclosed information is not misleading and that the reserves data and resources data (if disclosed) are free of material misstatement. Therefore, by signing those forms, qualified reserves evaluators and auditors are taking on a professional responsibility that reflects on their individual professionalism and the integrity of their profession. This section provides guidance using, as an example, representations about the net present value of future net revenue of an Oil and Gas Issuer's estimated proved and probable reserves.

(i) Professional Responsibility

One of the requirements of NI 51-101 is that a qualified reserves evaluator or auditor must be a member of a professional organisation as defined in section 1.1 of NI 51-101.[7]

Oil and Gas Issuers and evaluators must be aware of section 4.8 of volume 1 of the COGE Handbook, titled "Independence, Objectivity and Confidentiality". It may, for instance, be inappropriate for an evaluator to provide an evaluation of a project on which the evaluator has also provided significant engineering advice.

(ii) Misrepresentations or Misleading Statements

The guidance regarding misrepresentations or misleading statements discussed above[8] applies equally to a qualified reserves evaluator or auditor who signs a statement in Form 51-102F2. In particular, professionals must represent that evaluated projects of the Oil and Gas Issuer provide a net present value of future net revenue that is not misleading.

The evaluation of oil and gas resources is based on a defined scenario or project.[9] Many unconventional resources are developed through large projects, often with long timelines and a net present value that captures the time-discounted value of expenditures and revenues. A project scenario that is not reasonable with regard to timing or cost could result in misleading disclosure with respect to the value of a project.

An evaluation scenario, whether provided to the evaluator for review by the Oil and Gas Issuer or developed by the evaluator, should be reasonable with regard to timing and cost. Oil and Gas Issuers may consider providing a description of key factors in a major project scenario in order to avoid misleading disclosure.

(iii) Use of COGE Handbook and Other Guides

The guidance provided above in subparagraph 2(a)(ii) of this Notice similarly applies to activities of qualified reserves evaluators and auditors in reviewing Oil and Gas Issuers' disclosure. Technical manuals and

[7] An example of such a professional organisation is the Association of Professional Engineers and Geoscientists of Alberta (APEGA), which recognises the COGE Handbook as the practice standard for oil and gas evaluation. Each evaluator, whether independent or an employee of an Oil and Gas Issuer, must be mindful at all times of obligations imposed on them as an individual member of a professional organization. A particular example of such professional obligation is the adherence to the APEGA Guideline for Ethical Practice. Another example of such a professional organisation is the Association of Professional Engineers and Geoscientists of British Columbia.

[8] See clause 2(a)(i)(A) of this Notice.

[9] See section 5.3.3 of volume 1 of the COGE Handbook.

reference materials are valuable tools, and in some cases required, to aid in developing disclosure. They should be used appropriately in the exercise of fulfilling the general, as well as specific, obligations of Canadian securities legislation.

(iv) Expertise Required to Perform Evaluation

When evaluators or auditors sign a report prepared in accordance with Form 51-101F2 they are representing that they possess the expertise to carry out the evaluation that is being reported. NI 51-101 requires that such professionals possess the professional qualifications and experience appropriate to carry out the required review.[10] In addition to the NI 51-101 requirements that evaluators and auditors be qualified professionals, obligations and standards of their profession will apply.[11]

As an example, where an evaluator assigns a net present value or confirms a net present value that has been assigned on the basis of such things as a novel recovery technology or upgrading, the evaluator must be certain as a professional that they possess adequate qualifications and experience to make that professional judgement.

3. Specific Disclosure Topics

The following discussion topics should not be viewed or treated as an exhaustive list of potential issues related to oil and gas disclosure. The following serve as examples that incorporate some of the general concepts discussed in section 2 above.

(a) Disclosure of Well-Flow Test Results

Disclosure of well-flow test results can have a significant effect on the market price or value of an Oil and Gas Issuer. Additional information is often necessary in order to avoid misleading readers with such disclosure.[12] Disclosing the results of short-term tests, “rates up to”, or short-term peak rates as daily rates, for example, would be misleading without additional explanation.

Oil and Gas Issuers should include information about all of the following when disclosing well-flow test results:

- the geological formation(s) for which test results are being disclosed;
- the type of test (examples include wireline, drillstem testing (DST), or production test);
- duration of the test;
- average rate of oil- or gas-flow during the test;
- recovered fluid types and volumes (reporting the recovery of load fluid without stating that it is load fluid would be regarded as misleading);
- significant production or pressure decline during the test;
- if a pressure transient analysis or well-test interpretation has not been carried out, a cautionary statement should be made to the effect that the data should be considered to be preliminary until such analysis or interpretation has been done; and
- a cautionary statement that the test results are not necessarily indicative of long-term performance or of ultimate recovery.

In addition to the disclosure of the above information on a well-flow test, further disclosure may be necessary to avoid being misleading to readers, especially when high initial decline rates or a short production life are anticipated. Such additional disclosure could include expected duration of production.

Canadian securities legislation requires an Oil and Gas Issuer to make timely disclosure – notably when the result of a test and its implications could amount to a material change.

[10] See the definitions of “qualified reserves auditor” and “qualified reserves evaluator” in section 1.1 of NI 51-101

[11] For example, Rule 2 of the Guideline for Ethical Practice of APEGA states, “Professional engineers and geoscientists shall undertake only work that they are competent to perform by virtue of their training and experience.”

[12] See subparagraph 2(a)(i)(A) of this Notice.

(b) Classification to Most Specific Class and Category of Reserves and of Resources Other than Reserves

Section 5.3 of Companion Policy 51-101 *Standards of Disclosure for Oil and Gas Activities* (51-101CP) contemplates as "exceptional circumstances" a situation in which an Oil and Gas Issuer is unable to classify a discovered resource into one of the sub-categories of discovered resources. The guidance in 51-101CP originally reflected established mining practice, which requires a pre-feasibility or a feasibility study before reserves are assigned to mining operations. In that case, the recovery technology is well established but commerciality requires confirmation. The applicability of "exceptional circumstances" for recovery of hydrocarbons by means other than mining would be limited to situations in which it is not possible to define a project[13] for the recovery of a resource from a petroleum accumulation. Subsection 5.16(3) of NI 51-101 provides for this by allowing the disclosure of discovered PIIP without disclosure of reserves or contingent resources. However, subsection 5.16(3) of NI 51-101 only applies when the Oil and Gas Issuer cannot disclose the more specific class, and is not an option that may be exercised to avoid disclosure of the most specific class and category, including the fact that the resources are currently unrecoverable, when the information is or can be made available.

If Oil and Gas Issuers can develop projects using several recovery processes but no decision has been made among them, one or more of such possible processes may be reflected in an evaluation as the basis of disclosure, and the results disclosed in an appropriate class (most likely contingent resources) with relevant discussion.

The definition of discovered PIIP includes the following statement: "the recoverable portion of discovered petroleum initially-in-place includes production, reserves, and contingent resources; the remainder is unrecoverable". Therefore, any volume for which a project cannot be defined and evaluated for classification of production, reserves, contingent resources or, in the case of undiscovered PIIP, prospective resources, at the evaluation date*,* is by definition, unrecoverable at the time of the evaluation.

Oil and Gas Issuers with volumes currently classified as unrecoverable but who are developing recovery projects, possibly at an experimental level, may describe their activities in the disclosure, provided it is accompanied by a discussion of significant positive and negative factors. [14]

(c) Stand-Alone Possible Reserves

Stand-alone possible reserves are possible reserves that are assigned to a property for which no proved or probable reserves volumes have been assigned. We think it is potentially misleading to disclose possible reserves on a stand-alone basis. Situations in which it might be appropriate to disclose possible reserves on a stand-alone basis are rare, but could include any one or more of the following:

- project economics are such that no proved or probable reserves can be assigned, but on a proved + probable + possible reserves basis the project is economically viable, and a development decision has been made (e.g., adding compression, expanding facilities, offshore development of a structure delineated mainly with seismic with only limited well control);

- only minor expenditure is required to develop the possible reserves and development is likely to proceed in the near future (e.g., behind-pipe zones in a well which has proved or probable reserves in another interval);

- possible reserves may be assigned to that part of an accumulation for which an Oil and Gas Issuer has the rights when proved or probable reserves have been assigned to adjacent parts of the same accumulation for which the Oil and Gas Issuer does not have rights.

In all of these situations, there should be an intention to develop the stand-alone possible reserves within a reasonable time.

In these situations, an Oil and Gas Issuer that includes material stand-alone possible reserves in its disclosure should also disclose the fact that such reserves are classified as stand-alone possible reserves, provide a clear proximate explanation as to why the possible reserves have been disclosed on a stand-alone basis and also include the cautionary statement required by subparagraph 5.2 (1) (a) (v) of NI 51-101 regarding possible reserves.

[13] For this purpose, a project is a program of work that can be evaluated to demonstrate its commercial viability using established technology or technology under development (refer to subparagraph 3(d)(vi)(C) of this Notice). The level of detail in a project and the sophistication of an evaluation will generally increase from prospective, to contingent resources, to reserves.

[14] See subparagraph 5.9(2)(d)(iii) of NI 51-101.

(d) Aggregation of Resource Estimates for Several Properties

Oil and Gas Issuers may aggregate volumes of the same class, but not of different classes.

Current guidance on the aggregation of resource estimates is provided in subsection 5.2(4) of 51-101CP, titled "Probabilistic and Deterministic Evaluation Methods" and in sections 5.5.3, 9.6 of volume 1 and in section 4.4 of volume 2 of the COGE Handbook. Although the general principles discussed in those publications are relevant to the aggregation of all resource classes, the guidance in 51-101CP and the COGE Handbook was written primarily to address the aggregation of reserves data (i.e., of proved and of proved + probable reserves). Section 2.8 of volume 2 of the COGE Handbook provides specific guidance on the aggregation of estimates of contingent resources and of estimates of prospective resources. Below we provide additional guidance on the public disclosure of aggregated estimates that include resources other than reserves data.

(i) Probabilistic Aggregation of Resource Estimates for Several Properties

Guidance found in subsection 5.2(4) of 51-101CP on the probabilistic aggregation of reserves titled "Probabilistic and Deterministic Evaluation Methods" and in section 5.5.3 of volume 1 of the COGE Handbook, titled "Aggregation of Reserves Estimates" is also applicable to disclosure of estimates of resources other than reserves data. Although section 2.8.1 of volume 2 of the COGE Handbook discourages aggregating probabilistically above the field or property level, the authors suggest that where "aggregations are externally disclosed there must be an explanation of the methods and assumptions employed."

(ii) Arithmetic Aggregation of Resource Estimates for Several Properties

Proved, proved + probable and proved + probable + possible reserves estimates and high, best, and low estimates of other resource classes are measures of the probability that actual remaining recovered quantities will exceed the disclosed volumes. Disclosure of the arithmetic sum of low estimates or high estimates of multiple properties may be misleading.

Proved + probable reserves, and best estimates of other resource classes, are generally considered to be approximations to a mean estimate[15] and, as such, their summation provides meaningful information and may be disclosed without misleading readers.

However, when other estimates are aggregated (e.g., multiple estimates of proved + probable + possible reserves or multiple high estimates of other resource classes) statistical principles indicate that the resulting sums will lie beyond a reasonable range of expected actual outcomes and, therefore, will potentially mislead readers.

Accordingly, where an Oil and Gas Issuer discloses an arithmetic aggregation of several proved + probable + possible reserves estimates or of several high estimates of other resource classes, the Oil and Gas Issuer should consider (in addition to applying the guidance set out in subsection 5.2(4) of 51-101CP) accompanying the disclosure with a clear cautionary statement to the following effect:

> This volume is an arithmetic sum of multiple estimates of [identify reserves or resource classes], which statistical principles indicate may be misleading as to volumes that may actually be recovered. Readers should give attention to the estimates of individual classes of [reserves or resources] and appreciate the differing probabilities of recovery associated with each class as explained [indicate where disclosed and explained].

[15] This will not always be the case, especially for estimates made for frontier areas or for unconventional hydrocarbons. The implications of this should be considered when adding estimates of this nature.

Example: Arithmetic Aggregation

Reserves in Bcf	Proved (circa P90)	Proved + Probable (circa P50)	Proved + Probable + Possible (circa P10)
Property 1	10	20	50
Property 2	12	18	30
Property 3	5	12	25
Property 4	25	40	75
Property 5	32	50	80
Total	84	140	260

Probability of getting:

More than	84 Bcf	>> 90% (much greater than 90%)
About	140 Bcf	≈ 50% (equal likelihood of getting more or less)
More than	260 Bcf	<< 10% (much less than 10%)

That is, the probability that the combined production from all properties will exceed 260 Bcf is much lower (perhaps 1%) than the criterion for proved + probable + possible reserves (i.e., a 10% probability of recovering a greater volume). Conversely, the probability that actual production will exceed 84 Bcf is considerably greater (perhaps 98%).

This example uses P90, P50, and P10 criteria, but the same argument applies for any estimates that are greater or less than a mean, whether they have been determined using deterministic or probabilistic methods.

(e) Use of the Term "Best Estimate"

The term "best estimate" is defined in Appendix A of volume 1 of the COGE Handbook with respect to entity-level estimates as follows:

> … the value derived by an evaluator using deterministic methods that best represents the expected outcome with no optimism or conservatism... If probabilistic methods are used, there should be at least a 50 percent probability (P_{50}) that the quantities actually recovered will equal or exceed the best estimate.

The term "best estimate" should not be used to describe the results of arithmetic or probabilistic aggregation of resource estimates, unless these are risked in the aggregation process in such a manner that the aggregated value is strictly in accord with the definition of "best estimate" (refer to section 5.3.5 of volume 1 of the COGE Handbook, titled "Uncertainty Categories").

Questions

Please refer questions to any of the following:

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1.2 Notices of Hearing

1.2.1 7997698 Canada Inc.et al. – ss. 127(7), 127(8)

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

AND

IN THE MATTER OF
7997698 CANADA INC.,
carrying on business as INTERNATIONAL LEGAL AND ACCOUNTING SERVICES INC.,
WORLD INCUBATION CENTRE, or WIC (ON), JOHN LEE also known as CHIN LEE, and
MARY HUANG also known as NING-SHENG MARY HUANG

NOTICE OF HEARING
(Subsections 127(7) and (8) of the Securities Act)

WHEREAS on November 21, 2014, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary Order"), pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O., c. S.5., as amended (the "Act"), ordering the following:

(a) that all trading in any securities by 7997698 Canada Inc., carrying on business as International Legal and Accounting Services Inc., World Incubation Centre, or WIC (ON) ("7997698"), John Lee also known as Chin Lee ("Lee"), and Mary Huang also known as Ning-Sheng Mary Huang ("Huang") shall cease; and

(b) that the exemptions contained in Ontario securities law do not apply to any of 7997698, Lee, and Huang;

TAKE NOTICE THAT the Commission will hold a hearing (the "Hearing") pursuant to subsections 127(7) and (8) of the Act at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room, Toronto, Ontario on Wednesday December 3, 2014 at 10:00 a.m. or as soon thereafter as the Hearing can be held;

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

(a) to extend the Temporary Order pursuant to subsections 127(7) and 127(8) of the Act until the conclusion of the hearing or until such further time as considered necessary by the Commission; and

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

BY REASON OF the facts recited in the Temporary Order and of such allegations and evidence as counsel may advise and the Commission may permit;

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

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

AND TAKE FURTHER NOTICE that the Notice of Hearing is also available in French, participation may be in either French or English and participants must notify the Secretary's Office in writing as soon as possible, and in any event, at least thirty (30) days before a hearing if the participant is requesting a proceeding to be conducted wholly or partly in French; and

ET AVIS EST ÉGALEMENT DONNÉ PAR LA PRÉSENTE que l'avis d'audience est disponible en français, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plut tôt possible et, dans tous les cas, au moins trente (30) jours avant l'audience si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

DATED at Toronto this 24th day of November, 2014.

"Daisy Aranha"
per: Josée Turcotte
Secretary to the Commission

1.4 Notices from the Office of the Secretary

1.4.1 Paul Azeff et al.

FOR IMMEDIATE RELEASE
November 26, 2014

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

AND

IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER
AND MAN KIN CHENG (a.k.a. FRANCIS CHENG)

TORONTO – The Commission issued Reasons and Decision regarding Non-Suit Motions in the above named matter.

A copy of the Reasons and Decision dated November 25, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.2 7997698 Canada Inc. et al.

FOR IMMEDIATE RELEASE
November 26, 2014

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

AND

IN THE MATTER OF
7997698 CANADA INC., carrying on business as
INTERNATIONAL LEGAL AND ACCOUNTING
SERVICES INC., WORLD INCUBATION CENTRE, or
WIC (ON), JOHN LEE also known as CHIN LEE, and
MARY HUANG also known as
NING-SHENG MARY HUANG

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on December 3, 2014 at 10:00 a.m. to consider whether it is in the public interest for the Commission:

(a) to extend the Temporary Order pursuant to subsections 127(7) and 127(8) of the Act until the conclusion of the hearing or until such further time as considered necessary by the Commission; and

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

A copy of the Notice of Hearing dated November 24, 2014 and Temporary Order dated November 21, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.3 IAC – Independent Academies Canada Inc. et al.

FOR IMMEDIATE RELEASE
November 27, 2014

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

AND

IN THE MATTER OF
IAC – INDEPENDENT ACADEMIES CANADA INC.,
MICRON SYSTEMS INC.,
THEODORE ROBERT EVERETT and
ROBERT H. DUKE

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on December 1, 2014 at 10:00 a.m. will be heard on December 1, 2014 at 11:00 a.m.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.4 TD Waterhouse Private Investment Counsel Inc. et al.

FOR IMMEDIATE RELEASE
November 27, 2014

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

AND

IN THE MATTER OF
TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC., TD WATERHOUSE CANADA INC. AND
TD INVESTMENT SERVICES INC.

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

A copy of the Oral Ruling and Reasons dated November 27, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.5 Patrick Myles Lough et al.

FOR IMMEDIATE RELEASE
November 28, 2014

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

AND

IN THE MATTER OF
PATRICK MYLES LOUGH, LYNDA DAWN DAVIDSON
and WAYNE THOMAS ARNOLD BARNES

TORONTO – The Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the Securities Act in the above noted matter.

A copy of the Reasons and Decision dated November 27, 2014 and the Order dated November 27, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.6 Kris Sundell

FOR IMMEDIATE RELEASE
November 28, 2014

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

AND

IN THE MATTER OF
KRIS SUNDELL

TORONTO – The Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the Securities Act in the above noted matter.

A copy of the Reasons and Decision dated November 27, 2014 and the Order dated November 27, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.7 Paul Yoannou

FOR IMMEDIATE RELEASE
November 28, 2014

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

AND

IN THE MATTER OF
PAUL YOANNOU

TORONTO – The Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the Securities Act in the above noted matter.

A copy of the Reasons and Decision dated November 27, 2014 and the Order dated November 27, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.8 A25 Gold Producers Corp. et al.

FOR IMMEDIATE RELEASE
November 28, 2014

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

AND

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

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

(a) the hearing dates of January 19, 20, 21, 22, 23, 26, 28, 29 and 30, 2015 be vacated;

(b) The Respondents shall provide their hearing briefs, will-say statements and witness lists to Staff by January 15, 2015; and

(c) t he hearing on the merits in this matter shall commence on February 25, 2015 at 10:00 a.m., on a peremptory basis with respect to the Respondents, and shall continue on February 26, 27, March 5, 6, 9, 10, 11, 12, and 13, 2015.

A copy of the Order dated November 27, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 CHI-X Canada ATS Limited

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, BRITISH COLUMBIA, ALBERTA,
MANITOBA AND QUEBEC
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
CHI-X CANADA ATS LIMITED
(THE FILER)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**), as set out in Appendix A, for an exemption from the requirement to be recognized as a “stock exchange” or “exchange” (the **Exemptive Relief Sought**).

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

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

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

The Filer also applied to the Director for an exemption pursuant to section 6.1 of the Ontario Securities Commission Rule 13-502 *Fees* (the **Fee Rule**) from the requirement in section 4.1 of the Fee Rule to pay a fee for the Exemptive Relief Sought (the **Fee Relief**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (**NP 11-203**), National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) and the *Securities Act* (Ontario) have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation subject to the laws of Canada and operates in Canada as an alternative trading system (**ATS**). The Filer operates a marketplace called CX2 Canada ATS (**CX2**) for listed securities traded on the Toronto Stock Exchange (**TSX**) and the TSX Venture Exchange (**TSXV**).

2. In connection with its status as an ATS, the Filer is registered as an investment dealer in British Columbia, Alberta, Manitoba, Ontario and Quebec, is an IIROC marketplace member and is not in default of any securities legislation in any jurisdiction in Canada.

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

4. The Filer is proposing to introduce a new facility in CX2 for odd lot trading: the CX2 Canada Odd Lot Trading Facility (the **Odd Lot Facility**). An odd lot is an order for a number of shares that is less than the minimum prescribed "board lot" size. A board lot is 100 shares for stocks valued at or above one dollar, 500 shares for stocks valued from 10 cents to 99 cents and 1000 shares for stocks valued from half a cent to 9.5 cents.

5. CX2 subscribers will be able to receive guaranteed fills for odd lot orders that are immediately marketable against the Canadian Best Bid Offer (**CBBO**) and marked IOC (immediate or cancel). Odd Lot Dealers will meet their responsibility to guarantee executions against incoming odd lot orders on the passive side of the CBBO through orders generated by the trading system (auto-execution). The Odd Lot Facility is described below:

   a. A Subscriber will qualify to become an Odd Lot Dealer if it is a member in good standing with IIROC, has met all applicable CX2 requirements and has requested to be an Odd Lot Dealer and signed the Odd Lot Dealer Addendum.

   b. Each CX2 Odd Lot Dealer will be randomly assigned a list of securities based on the number of CX2 Odd Lot Dealers. Each CX2 Odd Lot Dealer will also be assigned the underlying family of securities associated with a primary security.

   c. Odd lot orders that are not immediately marketable or not marked IOC will be rejected. An order containing at least one board lot and an odd lot (mixed lot) that is marked IOC will also be accepted. The odd lot portion of the mixed lot will receive auto execution and the board lot portion of the mixed lot order will seek available liquidity on CX2. If there is insufficient liquidity on CX2 to fully execute the order, any remaining volume will be canceled. Incoming Odd Lot Market Orders will auto-execute at the time of order entry, at the CBBO Best Bid and Offer price.

   d. CX2 subscribers that are interested in serving as Odd Lot Dealers can be designated as such at the discretion of CX2. Where CX2 Canada allocates listed securities to an Odd Lot Dealer, the Odd Lot Dealer will be responsible for guaranteeing automatic immediate fills for incoming marketable IOC odd lot orders through orders generated automatically by the trading system. Maintaining an inventory of securities traded in Odd Lots is the responsibility of the Odd Lot Dealer.

6. Because the Filer is offering the Odd Lot Facility described in paragraph 4 and as a result may be providing directly or through its subscribers, a guarantee of a two-sided market on a continuous or reasonably continuous basis, the Filer may not fall within the definition of "alternative trading system" under NI 21-101.

Decision

1. 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.

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

3. The decision in paragraph 2 is subject to the following term and condition:

   (a) The Filer complies with all requirements applicable to an ATS under NI 21-101.

"Edward P. Kerwin"

"Sarah B. Kavanagh

Ontario Securities Commission

Director Exemption Decision

The Director is satisfied that to grant the Fee Relief would not be prejudicial to the public interest.

It is the decision of the Director, pursuant to section 6.1 of the Fee Rule, that the Filer is exempt from the requirement in section 4.1 of the Fee Rule to pay an activity fee for filing the coordinated review application.

"Susan Greenglass"
Director, Market Regulation

DATED at Toronto, Ontario this 26th day of November, 2014.

APPENDIX A:

SECTIONS IN THE PROVINCIAL SECURITIES ACTS RELEVANT TO THE RECOGNITION OF AN EXCHANGE & EXEMPTION BY THE COMMISSION

Jurisdiction	**Sections in Provincial Securities Act Relevant to:** **(a) Recognition of an Exchange and;** **(b) Exemption by the Commission**
British Columbia	(a) Part IV, s. 25 (b) s. 33(1)
Alberta	(a) Part IV, s. 62(1) (b) s. 213
Manitoba	(a) Part XIV, s. 139(1) (b) s. 167
Ontario	(a) Part VIII, s. 21(1) (b) s. 147
Québec	(a) Title VI, s. 169 (b) s. 263

2.1.2 The Trendlines Group Ltd.

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 application securities legislation – Issuer became a reporting issuer by filing a prospectus, but the offering under the prospectus did not close. The issuer does not intend to do a public offering of its securities. The issuer's securities do not trade on any marketplace. The issuer's securityholders are aware of the issuer's intention to cease to be a reporting issuer.

Applicable Legislative Provisions

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

November 28, 2014

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN, MANITOBA AND NOVA SCOTIA
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
THE TRENDLINES GROUP LTD.
(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) that the Filer is not a reporting issuer (the Exemptive Relief Sought).

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

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

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

Interpretation

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

Representations

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

1. The Filer was incorporated in Israel under the Israeli Companies Law on May 1, 2007, under the name T.I.F. Ventures Ltd. On July 16, 2008, the Filer changed its name to The Trendlines Group Ltd.

2. The Filer's registered and head office is located at 17 T'helet Street, Misgav Business Park, M.P. Misgav 20174, Israel.

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

4. The Filer became a reporting issuer in the Jurisdictions upon the issuance of a receipt for the Filer's prospectus dated September 18, 2014 (the Prospectus) in connection with a proposed initial public offering (the IPO) of the Filer's securities pursuant to the Prospectus.

5. The Filer did not close the IPO and no securities have been, or will be, distributed pursuant to the Prospectus.

6. The Filer is not listed on the Toronto Stock Exchange or any other stock exchange inside or outside of Canada.

7. The Filer has no present intention of seeking financing by way of public offering of securities in Canada or elsewhere.

8. The Filer's registered (authorized) share capital is NIS 1,000,000 divided into 100,000,000 Ordinary Shares of NIS 0.01 par value of which 39,839,119 ordinary shares are currently outstanding. In addition, there are an aggregate of (a) 6,694,371 ordinary shares issuable upon the exercise of options outstanding under the Filer's stock option plan (the Option Plan); (b) 585,446 ordinary shares issuable upon the exercise of an existing put/call option agreement (the Put/Call); (c) 46,896 ordinary shares issuable upon the exercise of a warrant (the Warrant); (d) 6,767 ordinary shares issuable upon the exercise of a broker warrant (the Broker Warrant); (e) $1,575,071 principal amount of convertible debentures (the Debentures), excluding accrued interest, which are convertible into ordinary shares of the Filer upon the occurrence of certain events; (f) 117.58 compensation warrants convertible into 117.58 debentures at a purchase price equal to $1,000.00 per debenture (the Debenture Broker Warrant); and (g) 2,714,583 ordinary shares subject to a share exchange agreement (the Share Exchange Shares), which convert following specified exit events, with shareholders of a subsidiary of the Filer.

9. The outstanding ordinary shares of the Filer are beneficially owned by approximately 92 shareholders.

10. The Debentures are beneficially owned by approximately 21 debentureholders.

11. The options under the Option Plan are beneficially owned by approximately 29 employees of the Filer, all of whom are resident in Israel.

12. The options under the Put/Call are beneficially owned by approximately 5 optionees, all of whom are resident in Israel.

13. The Warrant is issued to Tmura – the Israeli Public Service Venture Fund, which is located in Israel.

14. The Broker Warrant is issued to one warrantholder, who is resident in Ontario.

15. The Debenture Broker Warrant is issued to two warrantholders, who are resident in Ontario and one of whom is the same holder as the holder of the Broker Warrant.

16. The rights to the Share Exchange Shares are issued to approximately 8 rightsholders, all of whom are resident in Israel.

17. The outstanding ordinary shares of the Filer are beneficially owned, directly or indirectly, by 10 shareholders who are resident in Canada, holding an aggregate of 323,956 ordinary shares. There are 7 shareholders located in Ontario, 2 shareholders located in Alberta and 1 shareholder located in Saskatchewan.

18. The outstanding Debentures of the Filer are beneficially owned, directly or indirectly, by 5 debentureholders who are resident in Canada, holding an aggregate of CAD $183,071 of the outstanding principal amount of the Debentures, excluding accrued interest. All 5 debentureholders who are resident in Canada are located in Ontario.

19. All of the securities of the Filer issued to security holders in Canada were issued pursuant to a prospectus exemption.

20. The Filer completed a private placement of 96,667 ordinary shares at a price of US $1.50 per share on October 27, 2014, to 3 investors who are resident in Ontario. The Filer also intends to complete a private placement of ordinary shares in the US and in Israel (if applicable) on similar terms. Sales of ordinary shares to residents of Ontario were made in accordance with the accredited investor exemption under section 2.3 of National Instrument 45-106 *Prospectus and Registration Exemptions*. The investors acknowledged in their signed subscription agreements that the Filer has applied for the Exemptive Relief Sought. No other trading of the Filer's securities has occurred in Canada since it filed the Prospectus.

21. No securities of the Filer including debt securities are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 Marketplace Operation or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

22. The Filer is not in default of any of its obligations under the Legislation.

23. The Filer is subject to the provisions of the Israeli Companies Law, 5759-1999. As such, certain corporate records and information of the Filer are accessible to the public, including its address, articles of association, authorized and issued share capital, shareholders' names and shareholdings (not necessarily up-to-date), directors' names, registered liens and certain corporate resolutions adopted by the Filer, among other records. In accordance with the Israeli Companies Law and the regulations promulgated thereunder, the Filer is required to notify the Israeli Registrar of Companies upon certain corporate changes in the Filer, including without limitation, issuance and transfer of shares, appointment or dismissal of directors, imposition of liens, amendment or replacement of the Articles of Association, modifications in share capital, a merger and change of registered address, among other changes. In addition the Filer is required to file an annual report with the Israeli Registrar of Companies. The annual report is accessible to the public and contains general details regarding, among other things, the shareholders of the Filer and their shareholdings; the directors of the Filer; the name of the Filer's auditors; and the date the Filer's financial statements were presented to the shareholders in a general meeting.

24. The Filer is applying for the Exemptive Relief Sought in all of the jurisdictions of Canada in which it is currently a reporting issuer.

25. The Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 Applications for a decision that an Issuer is not a reporting Issuer because its outstanding securities are beneficially owned, directly or indirectly, by greater than 50 securityholders in total worldwide and because it is a reporting issuer in British Columbia.

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

27. The Filer issued a news release on September 30, 2014, announcing the cancellation of the IPO and that it intended to file an application in the Jurisdictions for a decision that it is not a reporting issuer in the Jurisdictions.

Decision

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

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

"Jim Turner"
Vice-Chair
Ontario Securities Commission

"Deborah Leckman"
Commissioner
Ontario Securities Commission

2.1.3 FAM 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 is a real estate investment trust which holds all of its properties through limited partnerships – entity holds units in limited partnerships which are exchangeable into and in all material respects the economic equivalent to the issuer's publicly traded units – relief granted from the valuation requirement for certain non-cash assets in connection with a specific related party transaction – valuation not required of exchangeable limited partnership units since public units can be a proxy for such exchangeable units – no imbalance of material information between the related party and minority shareholders since the reporting issuer has continuous disclosure obligations.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Shareholders in Special Transactions, ss. 5.4, 6.3, 9.1.

December 1, 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
FAM REAL ESTATE INVESTMENT TRUST
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction, pursuant to Section 9.1 of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Spec*ial *Transactions* ("**MI 61-101**"), that the Filer be granted an exemption from the requirement in Section 6.3(1)(d) of MI 61-101 to obtain a formal valuation of the Consideration Exchangeable LP Units (as defined below) to be issued in connection with the Proposed Transaction (as defined below) (the "**Relief**"):

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

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

(b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in Québec.

Interpretation

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

Representations

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

1. The Filer is an unincorporated, open-ended real estate investment trust established under the laws of the Province of Ontario. The Filer is governed pursuant to a declaration of trust dated August 27, 2012, as amended and restated on December 27, 2012.

2. The Filer's head office is located at 200 Front Street West, Suite 2400 Toronto, Ontario M5V 3K2.

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 ("**Trust Units**") and an unlimited number of special voting units ("**Special Voting Units**"). As of November 10, 2014, the Filer has 12,094,396 Trust Units and 2,977,132 Special Voting Units issued and outstanding.

5. The number of Special Voting Units outstanding at any point in time is equal to the number of outstanding class B limited partnerships units (the "**Class B LP Units**") of FAM Management Limited Partnership ("**FAM LP**"). The Class B LP Units are exchangeable at the option of the holder into Trust Units and the accompanying Special Voting Units provide to the holder of the Class B LP Units voting rights with respect to the Filer.

6. FAM LP is a limited partnership formed under the laws of the Province of Ontario and is governed by an agreement of limited partnership dated December 28, 2012 (the "**Partnership Agreement**"). The general partner of FAM LP is FAM GPCo Inc. ("**FAM GP**"), a company established under the laws of Ontario. FAM GP is a wholly-owned subsidiary of the Filer.

7. FAM LP is authorized to issue an unlimited amount of general partnership units, an unlimited amount of Class A limited partnership units ("**Class A LP Units**") and an unlimited amount of Class B LP Units. As of November 10, 2014, FAM LP has (i) 100 issued and outstanding general partnership units, all of which are held by FAM GP, (ii) 5,882,662 Class A LP Units issued and outstanding, all of which are held by the Filer, and (iii) 2,977,132 Class B LP Units issued and outstanding, all of which are held by Slate Capital Corp. ("**Slate Capital**") (together with its affiliates) as set out below.

8. The Trust Units are listed and posted for trading on the Toronto Stock Exchange (the "**TSX**") under the symbol "F.UN". The Class B LP Units are not listed or posted for trading on the TSX or any other stock exchange.

9. The Class B LP Units are, in all material respects, economically equivalent to Trust Units on a per unit basis, and holders are entitled to receive distributions from FAM LP equal to those paid to the holders of the Trust Units by the Filer. Pursuant to the Partnership Agreement and the exchange agreement dated December 28, 2012, as amended, among the Filer, FAM LP and Huntingdon (the "**Exchange Agreement**"), each Class B LP Unit is exchangeable at the option of the holder for one Trust Unit of the Filer (subject to customary anti-dilution adjustments) and is accompanied by a Special Voting Unit that entitles the holder to receive notice of, attend and vote together with the holders of Units at all meetings of voting unitholders of the Filer. The Class B LP Units are not transferable and the Partnership Agreement requires the holder thereof to not take any action that would result in the Class B LP Units being held by a non-resident.

10. The Filer is a diversified commercial real estate portfolio of office, industrial and retail properties throughout Canada. As at the date hereof, the Filer owns a portfolio of 28 properties containing approximately 1.8 million square feet of existing leasable space. The Filer also owns a 50% interest in a fully pre?leased 64,000 square foot data centre development currently under construction in Winnipeg, Manitoba.

11. As of November 10, 2014, Slate Capital, the manager of the Filer, held an approximate 30.7% voting and effective economic interest (on a non-diluted basis) in the Filer through the ownership of 1,648,278 Trust Units and 2,977,132 Class B LP Units (and the accompanying 2,977,132 Special Voting Units).

12. On August 12, 2014, Slate Capital entered into an arrangement agreement (the "**Arrangement Agreement**") to acquire all of the issued and outstanding shares of Huntingdon Capital Corp. ("**Huntingdon**") by plan of arrangement transaction (the "**Huntingdon Transaction**"). Upon the closing of the Huntingdon Transaction, which occurred on November 4, 2014, Slate Capital, among other things, assumed Huntingdon's obligations as the Filer's manager and indirectly owns, or controls or directs, all of the Trust Units, Special Voting Units and accompanying Class B LP Units previously held by Huntingdon.

13. On October 29, 2014, the Filer and FAM LP entered into a purchase and sale agreement with Slate GTA Suburban Office Inc. ("**Slate GTA"**) and Slate Capital (the "**Acquisition Agreement**") pursuant to which, in one or more transaction steps, the Filer, through either FAM LP or a newly created limited partnership managed and controlled by the Filer (the "**New Partnership**" and together with FAM LP, the "**Partnerships**"), will acquire a portfolio of seven office properties (the "**Portfolio Properties**") located in the greater Toronto area from Slate GTA for consideration of approximately $190.0 million (the "**Purchase Price**") to be comprised of: (i) approximately $144.0 million cash and (ii) the issuance of approximately $46.0 million in securities which shall consist of a combination of Trust Units and either the Class B LP Units or class B limited partnership units of the New Partnership (the "**New Partnership Class B LP Units**" and, collectively with the Class B LP Units, the "**Consideration Exchangeable LP Units**"), in each case, at a

price of $9.00 per unit (the acquisition and sale transactions are hereinafter referred to as the "**Proposed Transaction**"). The Purchase Price is subject to adjustment in accordance with the terms of the Acquisition Agreement.

14. As a result of the Arrangement Agreement, Slate Capital was, at the time the Acquisition Agreement and the Proposed Transaction were agreed to, considered a "related party" of the Filer pursuant to clause (d) of the definition of "related party" and subsection 1.6(2) in MI 61-101.

15. Slate GTA is an "affiliated entity" of Slate Capital pursuant to such definition in MI 61-101, and accordingly, Slate GTA was also considered a "related party" of the Filer at the time the Acquisition Agreement and the Proposed Transaction were agreed to pursuant to clause (h) of the definition of "related party" in MI 61-101.

16. Accordingly, the Proposed Transaction is a "related party transaction" pursuant to clause (a) of the definition of "related party transaction" in MI 61-101 and subject to the applicable requirements of MI 61-101 relating to, among other things, preparation of a formal valuation of the non-cash assets involved in the Proposed Transaction (the "**Non-Cash Valuation Requirement**") and the approval by a majority of the votes cast by disinterested holders of Trust Units and Special Voting Units (collectively, the "**Unitholders**") entitled to vote on the Proposed Transaction at a special meeting of Unitholders (the "**Unitholder Meeting**") to seek the approval in accordance with MI 61-101 of the Proposed Transaction by a majority of the votes cast by disinterested holders of Trust Units and Special Voting Units voting as a single class.

17. If a New Partnership is established in connection with the Proposed Transaction, it will have terms and conditions, including capital structure, a partnership agreement (the "**New Partnership Agreement**") and exchange rights under an amendment to the Exchange Agreement (the "**Amended Exchange Agreement**"), identical to FAM LP and as otherwise described herein (other than differences relating to the name, formation and capitalization amounts, or which are administrative or clerical in nature). The Consideration Exchangeable LP Units will have the same attributes as the Class B LP Units and as otherwise described herein (other than differences that are administrative or clerical in nature).

18. A committee of independent trustees of the Filer (the "**Special Committee**") was responsible for supervising the preparation of formal valuations of the Portfolio Properties (the "**Valuations**") and retained Altus Group Limited to prepare the Valuations in accordance with MI 61-101.

19. The Filer has also retained TD Securities Inc. to act as financial advisor to the Special Committee in evaluating the Proposed Transaction and TD Securities Inc. has delivered, in written form, a formal fairness opinion that, based upon and subject to the assumptions, limitations and other considerations set forth therein and such other matters considered relevant by TD Securities Inc., the Purchase Price to be paid to Slate GTA (or one of its affiliates) pursuant to the Proposed Transaction is fair, from a financial point of view, to the Filer.

20. Subsection 6.3(1)(d) of MI 61-101 states that an issuer required to obtain a formal valuation shall provide the valuation in respect of the non-cash assets involved in a related party transaction, which would include the Consideration Exchangeable LP Units.

21. Section 6.3(2)(a) of MI 61-101 provides an exemption (the "**Valuation Exemption**") from the Non-Cash Valuation Requirement where, among others:

    (a) the non-cash consideration or assets are securities of a reporting issuer or are securities of a class for which there is a published market;

    (b) the person that would otherwise be required to obtain the formal valuation of those securities states in the disclosure document for the transaction that the person has no knowledge of any material information concerning the issuer of the securities, or concerning the securities, that has not been generally disclosed; and

    (c) in the case of a related party transaction for the issuer of the securities, the conditions in subparagraphs (c)(i) and (ii) of section 5.5 of MI 61-101 are satisfied, regardless of the form of the consideration for the securities.

22. The Trust Units and Special Voting Units to be issued to Slate GTA (or its affiliates) as part of the Purchase Price in connection with the Proposed Transaction (collectively, the "**Consideration Filer Units**") are securities of a reporting issuer as required under subsection 6.3(2)(a) of MI 61-101.

23. Although the Consideration Exchangeable LP Units will not be securities of a reporting issuer or securities of a class for which there is a published market, the Consideration Exchangeable LP Units are, and shall be, in all material respects, economically equivalent to Trust Units on a per unit basis as:

(a) each Consideration Exchangeable LP Unit is, and shall be, exchangeable on a one-for-one basis for a Trust Unit of the Filer (subject to customary anti-dilution adjustments) at any time at the option of the holder thereof as well as automatically exchanged into Trust Units (subject to customary anti-dilution adjustments) on a one-for-one basis in certain circumstances in connection with a take-over bid for the Trust Units, the transfer of all of substantially all of the Filer's assets and other similar transactions;

(b) distributions to be made on the Consideration Exchangeable LP Units are, and shall be, equal to the distributions that the holder of the Consideration Exchangeable LP Units would have received if it was holding Trust Units that may be obtained upon the exchange of such Consideration Exchangeable LP Units; and

(c) each Consideration Exchangeable LP Unit is, and shall be, accompanied by a Special Voting Unit, that entitles the holder thereof to receive notice of, attend and to vote together with the holders of Trust Units at all meetings of Unitholders.

24. The Class B LP Units are not transferable except pursuant to an exchange of Class B Units for Trust Units in accordance with the terms of the Exchange Agreement and the limited partnership agreement of FAM LP requires Huntingdon to not take any action that would result in the Class B LP Units being held by a non-resident. The Class B Units are neither exchangeable for securities other than Trust Units nor redeemable for cash. Any Consideration Exchangeable LP Units will contain identical restrictions to those on the Class B LP Units (other than differences that are administrative or clerical in nature).

25. The Consideration Exchangeable LP Units represent, and shall represent, part of the equity value of the Filer and, moreover, the economic interests that underlie the Consideration Exchangeable LP Units are, and shall be, based solely upon the assets and operations held directly or indirectly by the operating entities of the Filer as a whole.

26. The Consideration Exchangeable LP Units are not, and shall not be, listed and posted for trading on the Toronto Stock Exchange or any other stock exchange.

27. Any additional rights (as compared to the Trust Units) attached to the Consideration Exchangeable LP Units arise by virtue of the Consideration Exchangeable LP Units being limited partnership units and would be no greater than customary rights associated with limited partnership units. Other than the rights described above, the Consideration Exchangeable LP Units would carry no other rights that would impact their value and Slate GTA does not, as a result of acquiring the Consideration LP Units rather than Trust Units in connection with the Proposed Transaction gain any additional or unique rights that it would not otherwise have.

28. Other than in respect of matters affecting the rights, benefits or entitlements of the holders of Consideration Exchangeable LP Units or as required by law, a holder of Consideration Exchangeable LP Units does not, and shall not, have the right to exercise any votes in respect of matters to be decided by the partners of the applicable Partnership and Consideration Exchangeable LP Units do not provide the holder thereof with an interest in any specific asset or property of the applicable Partnership.

29. Absent the Relief, the Non-Cash Valuation Requirement would require the Filer to have a formal valuation prepared in respect of the Consideration Exchangeable LP Units. Any such formal valuation would, in all material respects, mirror a formal valuation of the Trust Units, including Trust Units to be issued to Slate GTA pursuant to the Proposed Transaction (in respect of which the Filer is entitled to rely upon the Valuation Exemption). As a result, the Filer would be subject to a requirement that would be not be consistent with the logic underlying the exemption of securities of a reporting issuer or for which there is a published market from the requirement to obtain a formal valuation (i.e. the Valuation Exemption).

Decision

The principal regulator is satisfied that the decision meets the test set out in MI 61-101 for the principal regulator to make the decision.

The decision of the principal regulator is that the Relief is granted, provided that:

(a) pursuant to subsection 6.3(2) of MI 61-101, a formal valuation of the Consideration Filer Units is not required;

(b) the terms of the Consideration Exchangeable LP Units, including the terms of the New Partnership Agreement and the Amended Exchange Agreement, are identical to those of the Class B LP Units and the Partnership Agreement (other than differences relating to the name, formation and capitalization amounts of the New Partnership, or which are administrative or clerical in nature);

(c) neither the Filer nor, to the knowledge of the Filer after reasonable inquiry, Slate GTA (or any of its affiliates) has knowledge of any material information concerning the Filer, the New Partnership (if applicable) or their respective securities that has not been generally disclosed, and

(d) the information circular for the Unitholder Meeting includes the disclosure required under MI 61-101 with respect to the Proposed Transaction and otherwise complies with the requirements of applicable securities law, and includes:

(i) a statement that neither the Filer nor, to the knowledge of the Filer after reasonable inquiry, Slate GTA (or any of its affiliates) has knowledge of any material information concerning the Filer, New Partnership (if applicable) or their securities that has not been generally disclosed; and

(ii) a description of the effect of the Proposed Transaction on the direct or indirect voting interest in the Filer of Slate GTA and its affiliates.

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

2.1.4 CI Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds managed by the Filer granted relief from paragraphs 15.3(4)(c) and (f) of NI 81-102 Investment Funds to permit references to Lipper Leader ratings and Lipper Awards in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the Lipper Awards being referenced not have been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss.15.3(4)(c) and (f), 19.1.

November 27, 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
CI INVESTMENTS INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from CI Investments Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption under section 19.1 of NI 81-102 from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

(i) the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund

(ii) the rating or ranking is to the same calendar month end that is:

  (a) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and

  (b) not more than three months before the date of first publication of any other sales communication in which it is included

(together, the **Exemption Soug**ht), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador. The head office of the Filer is located in Toronto, Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. Securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper’s programs is the Lipper awards program. This program recognizes funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently, the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which were awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper designates award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper ratings provide an instant measure of a fund’s success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds’ historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds’ historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds’ historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a fund is awarded a Lipper Award, Lipper permits references to the award to be made in sales communications for the fund.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards may be considered to be performance ratings or rankings under NI 81-102 given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

14. Section 15.3(4)(c) of NI 81-102 imposes a "matching" requirement for performance ratings or rankings that are included in sales communications for funds. If a performance rating or ranking is referred to in a sales communication, the performance rating or ranking must be provided for, or "match", each period for which standard performance data is required to be given for the fund except the period since the inception of the fund (i.e., for one, three, five and ten year periods, as applicable).

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

18. Section 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. The section provides that in order for a rating or ranking such as a Lipper Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

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 to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

   (a) the name of the category for which the Fund has received the award or rating;

   (b) the number of mutual funds in the category for the applicable period;

   (c) the name of the ranking entity, i.e., Lipper;

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

"Raymond Chan"
Manager, Investment Funds and Structured Products
Ontario Securities Commission

2.2 Orders

2.2.1 Canadian Pacific Railway Limited – s. 104(2)(c)

Headnote

Subsection 104(2)(c) of the Act – 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 1,210,163 of its common shares from one of its shareholders – due to the discounted purchase price, proposed purchases cannot be made through the 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 Act and in accordance with the TSX rules governing normal course issuer bid purchases – the selling shareholder did not purchase the subject shares in anticipation or contemplation of resale to the Issuer and has not, for a minimum of 30 days prior to the date of the application seeking the requested relief, purchased common shares of the Issuer in anticipation or contemplation of a sale of common shares to the Issuer – no adverse economic impact on, or prejudice to, the Issuer or public shareholders – proposed purchases exempt from the 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, and that the Issuer will not make any proposed purchase unless it has first obtained written confirmation that between the date of the order and the date on which the proposed purchase is completed, the selling shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any common shares of the Issuer.

Statutes Cited

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

AND

IN THE MATTER OF
CANADIAN PACIFIC RAILWAY LIMITED

ORDER
(Clause 104(2)(c))

UPON the application (the "**Application**") of Canadian Pacific Railway Limited (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order under clause 104(2)(c) of the *Securities Act* (Ontario) (the "**Act**") exempting the Issuer from the requirements of sections 94 to 94.8, inclusive, and 97 to 98.7, inclusive, of the Act (the "**Issuer Bid Requirements**") in connection with the proposed purchases by the Issuer of up to 1,210,163 common shares in the capital of the Issuer (collectively, the "**Subject Shares**") in one or more trades from Canadian Imperial Bank of Commerce (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, 9, 10, 16, 27 and 28 as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation incorporated under the *Canada Business Corporations Act*.

2. The registered, executive and head office of the Issuer is located at 7550 Ogden Dale Road S.E., Calgary, Alberta, T2C 4X9.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada and the common shares of the Issuer (the "**Common Shares**") are listed for trading on the Toronto Stock Exchange (the "**TSX**") and the New York Stock Exchange (the "**NYSE**") under the symbol "CP". 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 Issuer's authorized share capital consists of an unlimited number of Common Shares, an unlimited number of First Preferred Shares and an unlimited number of Second Preferred Shares, of which 170,089,858 Common Shares and no First Preferred Shares or Second Preferred Shares were issued and outstanding as of October 31, 2014.

5. The Selling Shareholder has its corporate headquarters in Toronto, Ontario.

6. The Selling Shareholder does not, directly or indirectly, own more than 5% of the issued and outstanding Common Shares, is at arm's length to the Issuer and is not an "insider" of the Issuer, an "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act.

7. The Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions*.

8. The Selling Shareholder is the beneficial owner of at least 1,210,163 Common Shares. None of the Subject Shares were acquired by, or on behalf of, the Selling Shareholder in anticipation or contemplation of resale to the Issuer.

9. No Common Shares were purchased by, or on behalf of, the Selling Shareholder on or after October 7, 2014, being the date that was 30 days

prior to the date of the Application, in anticipation or contemplation of a sale of Common Shares to the Issuer.

10. The Subject Shares are held by the Selling Shareholder in connection with arrangements to hedge client transactions in respect of the Common Shares. The Selling Shareholder will not purchase, have purchased on its behalf, or otherwise accumulate, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of the Subject Shares pursuant to the Proposed Purchases (as defined below) between the date of this Order and the date on which a Proposed Purchase is to be completed.

11. On March 11, 2014, the Issuer announced a normal course issuer bid (the "**Normal Course Issuer Bid**") to purchase up to 5,270,374 Common Shares during the period from March 17, 2014 to March 16, 2015 pursuant to the terms of a "Notice of Intention to Make a Normal Course Issuer Bid" (the "**Original Notice**") submitted to, and accepted by, the TSX.

12. On September 29, 2014, the Issuer announced that the TSX accepted an amendment to the Original Notice (the "**Amendment**" and together with the Original Notice, the "**Notice**") effective October 2, 2014 to increase the maximum number of Common Shares that may be purchased for cancellation under the Normal Course Issuer Bid from 5,270,374 Common Shares, being approximately 3.00% of the Common Shares issued and outstanding, to 12,650,862 Common Shares, representing approximately 8.00% of the Issuer's "public float", each as at March 4, 2014 (being the reference date specified in the Original Notice).

13. In accordance with the Notice, purchases under the Normal Course Issuer Bid may be conducted through the facilities of the TSX, the NYSE or alternative trading systems, if eligible, or by such other means as may be permitted by the TSX and/or the NYSE in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX Rules**"), including private agreements under issuer bid exemption orders issued by securities regulatory authorities (each, an "**Off-Exchange Block Purchase**").

14. The Commission granted the Issuer two orders, one on March 28, 2014 (the "**March 2014 Order**") and the other on June 10, 2014 (the "**June 2014 Order**") pursuant to clause 104(2)(c) of the Act exempting the Issuer from the Issuer Bid Requirements in connection with Off-Exchange Block Purchases by the Issuer of up to 1,300,000 Common Shares and 456,791 Common Shares, respectively, in one or more trades from arm's length selling shareholders. As at October 31, 2014, the Issuer has acquired an aggregate of 6,390,374 Common Shares pursuant to the Normal Course Issuer Bid, including 1,300,000 Common Shares under the March 2014 Order and 456,791 Common Shares under the June 2014 Order.

15. The Issuer implemented an automatic repurchase plan (the "**ARP**") on October 1, 2014 to permit the Issuer to make purchases under its Normal Course Issuer Bid at such times when the Issuer would not be permitted to trade in its Common Shares during regularly scheduled quarterly blackout periods. The ARP was approved by the TSX, and complies with the TSX Rules, applicable securities laws and this Order, and contains provisions restricting the Issuer from conducting a Block Purchase (as defined below) in accordance with the TSX Rules during the calendar week in which the Issuer completes a Proposed Purchase. Under the terms of the ARP, at times when the Issuer is not subject to blackout restrictions, the Issuer may, but is not required to, instruct the designated broker to make purchases under the Normal Course Issuer Bid in accordance with the terms of the ARP. Such purchases under the ARP will be determined by the designated broker in its sole discretion based on parameters established by the Issuer prior to any blackout period in accordance with the TSX Rules, applicable securities laws and the terms of the agreement between the designated broker and the Issuer. No Subject Shares will be acquired under the ARP or otherwise during any of the Issuer's blackout periods.

16. The Issuer intends to enter into one or more agreements of purchase and sale with the Selling Shareholder (each an "**Agreement**"), pursuant to which the Issuer will agree to purchase Subject Shares from the Selling Shareholder by way of one or more purchases, each occurring by March 16, 2015 (each such purchase, a "**Proposed Purchase**") for a purchase price that will be negotiated at arm's length between the Issuer and the Selling Shareholder (each such price, a "**Purchase Price**" in respect of such Proposed Purchase). The Purchase Price will, in each case, be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of each Proposed Purchase.

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

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

19. Because the Purchase Price will, in each case, be at a discount to the prevailing market price and below the bid-ask price for the Common Shares on the TSX at the time of the relevant Proposed Purchase, none of the Proposed Purchases can 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 Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to subsection 101.2(1) of the Act.

20. 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 on the TSX at the time of each such Proposed Purchase, the Issuer could otherwise acquire the applicable Subject Shares on the TSX as a "block purchase" (a "**Block Purchase**") in accordance with the block purchase exception in clause 629(l)7 of the TSX Rules and the exemption from the Issuer Bid Requirements that is available pursuant to subsection 101.2(1) of the Act.

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

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

23. Management of the Issuer is of the view that through the Proposed Purchase(s), the Issuer will be able to purchase the Subject Shares at a lower price than the price at which it would otherwise be able to purchase Common Shares under the Normal Course Issuer Bid through the facilities of the TSX and management of the Issuer is of the view that this is an appropriate use of the Issuer's funds.

24. The purchase of the Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's security holders 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 security holders of the Issuer to otherwise sell Common Shares in the open market at the then-prevailing market price. The Proposed Purchases will be carried out at minimal cost to the Issuer.

25. To the best of the Issuer's knowledge, as of October 31, 2014, the "public float" for the Common Shares represented approximately 92% of all issued and outstanding Common Shares for purposes of the TSX Rules.

26. The Common Shares are "highly-liquid securities" within the meaning of section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* and section 1.1 of the Universal Market Integrity Rules.

27. Other than the Purchase Price, no fee or other consideration will be paid in connection with the Proposed Purchases.

28. 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 any member of the Selling Shareholder's trading groups, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, 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.

29. The Issuer will not purchase, pursuant to Off-Exchange Block Purchases, in aggregate, more than one-third of the maximum number of Common Shares that the Issuer can purchase under its Normal Course Issuer Bid, such one-third being equal to 4,216,954 Common Shares as of the date of this Order.

30. The Issuer has made an application to the Commission for exemptive relief from the Issuer Bid Requirements in connection with the proposed acquisition by the Issuer of up to 1,250,000 Common Shares from another holder of Common Shares pursuant to Off-Exchange Block Purchases (the "**Concurrent Application**").

31. Assuming completion of the purchase of the maximum number of Subject Shares, being 1,210,163 Subject Shares, and the maximum number of Common Shares which are the subject of the Concurrent Application, being 1,250,000 Common Shares, the Issuer will have purchased under the Normal Course Issuer Bid an aggregate of 4,216,954 Common Shares pursuant to Off-Exchange Block Purchases, representing one-third of the maximum of 12,650,862 Common Shares authorized to be purchased under the 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 the Proposed Purchases, 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 Rules;

(b) the Issuer will refrain from conducting either a Block Purchase in accordance with the TSX Rules, or another Off-Exchange Block Purchase, during the calendar week in which it completes a Proposed Purchase and will not make any further purchases under its Normal Course Issuer Bid for the remainder of the calendar day on which it completes a Proposed Purchase;

(c) the Purchase Price in respect of each Proposed Purchase will be at a discount to the last "independent trade" (as that term is used in paragraph 629(l)1 of the TSX Rules) of a board lot of Common Shares immediately prior to the execution of such Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Common Shares pursuant to its Normal Course Issuer Bid in accordance with the Notice and the TSX Rules, including by means of open market transactions and by such other means as may be permitted by the TSX, including under automatic trading plans and, subject to condition (i) below, by Off-Exchange Block Purchases;

(e) immediately following each Proposed Purchase of Subject Shares from the Selling Shareholder, the Issuer will report the purchase of 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 any member of the Selling Shareholder's trading groups, nor any 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) in advance of the first Proposed Purchase, 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 Subject Shares purchased and the aggregate Purchase Price, on SEDAR before 5:00 p.m. (Toronto time) on the business day following such purchase;

(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 its Normal Course Issuer Bid, such one-third being equal to, as of the date of this Order, 4,216,954 Common Shares; and

(j) the Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing that between the date of this Order and the date on which such Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares.

DATED at Toronto, Ontario this 25th day of November, 2014.

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"Christopher Portner"
Commissioner
Ontario Securities Commission

2.2.2 799698 Canada Inc. et al. – ss. 127(1), 127(5)

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

AND

**IN THE MATTER OF
7997698 CANADA INC., carrying on business as
INTERNATIONAL LEGAL AND ACCOUNTING
SERVICES INC. and WORLD INCUBATION CENTRE,
JOHN LEE also known as CHIN LEE, and
MARY HUANG also known as
NING-SHENG HUANG**

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

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

1. 7997698 Canada Inc., carrying on business as International Legal and Accounting Services Inc. and World Incubation Centre ("7997698"), is a Canadian corporation with a business address in Ontario;

2. John Lee also known as Chin Lee ("Lee") is an Ontario resident and a director of 7997698;

3. Mary Huang also known as Ning-Sheng Huang ("Huang") is an Ontario resident, the spouse of Lee, and is a director of 7997698;

4. 7997698, Lee, and Huang (collectively, the "Respondents") may have engaged in or held themselves out as engaging in the business of trading in securities without being registered in accordance with Ontario securities law and without an exemption from the registration requirement contrary to subsection 25(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") and National Instrument 31-103 – *Registration Requirements, Exemptions, and Ongoing Registration Obligations*;

5. None of the Respondents are registered in accordance with Ontario securities law as a dealer or are exempt under Ontario securities law from the requirement to comply with subsection 25(1) of the Act;

6. The Respondents may have traded securities that were a distribution without a prospectus having been filed with the Director and without the exemption from the prospectus requirement contrary to subsection 53(1) of the Act;

7. 7997698is not a reporting issuer. No prospectus receipt has been issued with respect to 7997698;

8. Lee and Huang may have authorized, permitted or acquiesced in the noncompliance with the Act by 7997698 contrary to section 129.2 of the Act;

9. Staff is continuing to investigate the conduct described above;

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

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

AND WHEREAS by Authorization Order made October 21, 2014, pursuant to subsection 3.5(3) of the Act, any one of Howard I. Wetston, James E. A. Turner, Monica Kowal, James D. Carnwath, Mary G. Condon, Edward P. Kerwin, Alan J. Lenczner, and Christopher Portner, acting alone, is authorized to make orders under section 127 of the Act;

IT IS ORDERED, pursuant to clause 2 of subsection 127(1) of the Act, that:

(a) all trading in any securities by 7997698 shall cease;

(b) all trading in any securities by Lee shall cease; and

(c) all trading in any securities by Huang shall cease.

IT IS FURTHER ORDERED that pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to any of the Respondents; and

IT IS FURTHER ORDERED that pursuant to subsection 127(6) of the Act, this Order shall take effect immediately and shall expire on the 15th day after its making unless extended by Order of the Commission.

DATED at Toronto this 21st day of November, 2014.

"Howard I. Wetston"

2.2.3 Patrick Myles Lough et al. – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
PATRICK MYLES LOUGH, LYNDA DAWN DAVIDSON
and WAYNE THOMAS ARNOLD BARNES

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on July 25, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Patrick Myles Lough ("Lough"), Lynda Dawn Davidson ("Davidson") and Wayne Thomas Arnold Barnes ("Barnes") (collectively, the "Respondents");

AND WHEREAS on the same date, Staff of the Commission ("Staff") filed a Statement of Allegations in this matter;

AND WHEREAS on January 31, 2014, the Respondents entered into a settlement agreement (the "Settlement Agreement") with the Alberta Securities Commission (the "ASC");

AND WHEREAS the Respondents are subject to sanctions, conditions, restrictions or requirements pursuant to the Settlement Agreement, within the meaning of paragraph 5 of subsection 127(10) of the Act;

AND WHEREAS on August 18, 2014, the Commission granted Staff's application to convert this matter to a written hearing in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS the Respondents did not appear and did not file any materials;

AND WHEREAS based on my reasons dated the date of this Order, I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Lough cease until January 31, 2018, except for (a) trades made in a personal brokerage account, a registered retirement savings plan, a tax-free savings account, or a registered education savings plan (such an account or plan is referred to as a "Personal Account or Plan") for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Resort development project referred to in the Settlement Agreement (the "Dorchester Project");

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lough cease until January 31, 2018, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Project;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities law do not apply to Lough until January 31, 2018;

(d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Lough resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Project;

(e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Lough be prohibited until January 31, 2018 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Project;

(f) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Project;

(g) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Davidson cease until

January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Project;

(h) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities law do not apply to Davidson until January 31, 2017;

(i) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Davidson resign any positions that she holds as director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Project;

(j) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Davidson be prohibited until January 31, 2017 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Project;

(k) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children;

(l) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children; and

(m) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Barnes until January 31, 2018.

DATED at Toronto this 27th day of November, 2014.

"James E. A. Turner"

2.2.4 Kris Sundell – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
KRIS SUNDELL

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on July 21, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Kris Sundell (the "Respondent" or "Sundell");

AND WHEREAS Staff of the Commission ("Staff") filed a Statement of Allegations in this matter on the same date;

AND WHEREAS on February 20, 2014, Sundell entered into a settlement agreement (the "Settlement Agreement") with the Alberta Securities Commission (the "ASC");

AND WHEREAS the Respondent is subject to sanctions, conditions, restrictions or requirements imposed upon him pursuant to the Settlement Agreement;

AND WHEREAS on August 18, 2014, the Commission granted Staff's application to convert this matter to a written hearing in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS Sundell did not appear and did not file any materials;

AND WHEREAS based on my reasons dated the date of this Order, I find that it is in the public interest to issue this Order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Sundell cease until February 20, 2019; and

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Sundell cease until February 20, 2019.

DATED at Toronto this 27th day of November, 2014.

"James E. A. Turner"

2.2.5 Paul Yoannou – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
PAUL YOANNOU

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on July 3, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Paul Yoannou ("Yoannou" or the "Respondent");

AND WHEREAS Staff of the Commission ("Staff") filed a Statement of Allegations in this matter on the same date;

AND WHEREAS on February 1, 2013, Yoannou pleaded guilty in the Ontario Court of Justice to 15 counts of fraud over $5,000;

AND WHEREAS on February 28, 2013, Yoannou was sentenced by the Ontario Court of Justice to a term of imprisonment of six years and was ordered to pay restitution of $6.6 million;

AND WHEREAS on August 18, 2014, the Commission granted Staff's application to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS the Respondent did not appear and did not file any materials;

AND WHEREAS I issued written reasons for issuing this Order on the date hereof;

AND WHEREAS I find that it is in the public interest to issue this Order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Yoannou cease permanently;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any

securities by Yoannou be prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Yoannou permanently;

(d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Yoannou resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;

(e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

(f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

DATED at Toronto this 27th day of November, 2014.

"James E. A. Turner"

2.2.6 A25 Gold Producers Corp. et al.

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

AND

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

ORDER

WHEREAS on December 19, 2013, the Ontario Securities Commission ("the Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990 c.S.5, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on December 18, 2013 with respect to A25 Gold Producers Corp., David Amar, James Stuart Adams, and Avi Amar (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing set a hearing in this matter for January 16, 2014;

AND WHEREAS on January 16, 2014, the Commission ordered that a pre-hearing conference take place on February 28, 2014 at 9:00 a.m.;

AND WHEREAS on February 28, 2014, the Commission ordered:

(a) a pre-hearing conference shall take place on April 1, 2014 at 9:00 a.m.; and

(b) the hearing on the merits in this matter shall commence on October 20, 2014 at 10:00 a.m. and shall continue on October 22, 23, and 24, 2014;

AND WHEREAS on April 1, 2014, the Commission ordered:

(a) the hearing dates of October 20, 22, 23, and 24, 2014 be vacated;

(b) Staff shall provide Staff's hearing brief, will-say statements and witness list to the Respondents by July 11, 2014;

(c) The Respondents shall provide their hearing briefs, will-say statements and witness lists to Staff by September 11, 2014;

(d) a pre-hearing conference shall take place on October 20, 2014 at 10:00 a.m.; and

(e) the hearing on the merits in this matter shall commence on November 17, 2014 at 10:00 a.m. and shall continue on

November 19, 20, 21, 24, 25, 26, 27, and 28, 2014;

AND WHEREAS on September 24, 2014, Staff and the agent for counsel to the Respondents appeared for a pre-hearing conference before the Commission and the agent for counsel to the Respondents brought a motion to adjourn the hearing;

AND WHEREAS on September 24, 2014, the Commission ordered:

(a) the pre-hearing conference date of October 20, 2014 be vacated;

(b) the hearing dates of November 17, 19, 20, 21, 24, 25, 26, 27, and 28, 2014 be vacated;

(c) The Respondents shall provide their hearing briefs, will-say statements and witness lists to Staff by November 14, 2014; and

(d) the hearing on the merits in this matter shall commence on January 19, 2015 at 10:00 a.m. and shall continue on January 20, 21, 22, 23, 26, 28, 29 and 30, 2015;

AND WHEREAS on November 27, 2014, Staff and the agent for counsel to the Respondents appeared for a pre-hearing conference before the Commission and the agent for counsel to the Respondents brought a motion to adjourn the hearing;

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

IT IS ORDERED that:

(a) the hearing dates of January 19, 20, 21, 22, 23, 26, 28, 29 and 30, 2015 be vacated;

(b) The Respondents shall provide their hearing briefs, will-say statements and witness lists to Staff by January 15, 2015; and

(c) the hearing on the merits in this matter shall commence on February 25, 2015 at 10:00 a.m., on a peremptory basis with respect to the Respondents, and shall continue on February 26, 27, March 5, 6, 9, 10, 11, 12, and 13, 2015.

DATED at Toronto this 27th day of November, 2014.

"James E. A. Turner"

2.2.7 Onex Corporation – s. 104(2)(c)

Headnote

Subsection 104(2)(c) of the Act – 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 310,000 of its subordinate voting shares from one of its shareholders – due to the discounted purchase price, proposed purchases cannot be made through the 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 Act and in accordance with the TSX rules governing normal course issuer bid purchases – the selling shareholder did not purchase the subject shares in anticipation or contemplation of resale to the Issuer and has not, for a minimum of 30 days prior to the date of the application seeking the requested relief, purchased subordinate voting shares of the Issuer in anticipation or contemplation of resale to the Issuer – no adverse economic impact on, or prejudice to, the Issuer or public shareholders – proposed purchases exempt from the 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, and that the Issuer will not make any proposed purchase unless it has first obtained written confirmation that between the date of the order and the date on which the proposed purchase is completed, the selling shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any common shares of the Issuer.

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

AND

IN THE MATTER OF
ONEX CORPORATION

ORDER
(Clause 104(2)(c))

UPON the application (the "**Application**") of Onex Corporation (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to clause 104(2)(c) of the *Securities Act* (Ontario) (the "**Act**") exempting the Issuer from the requirements of sections 94 to 94.8, inclusive, and sections 97 to 98.7, inclusive, of the Act (the "**Issuer Bid Requirements**") in connection with the proposed purchases by the Issuer of up to 310,000 subordinate voting shares of the Issuer (collectively, the

"**Subject Shares**") in one or more tranches, from Canadian Imperial Bank of Commerce (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, 9, 10, 23 and 24 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* (Ontario).

2. The registered and head office of the Issuer is located at 49th Floor, 161 Bay Street, Toronto, Ontario, M5J 2S1.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada and its subordinate voting shares (the "**Subordinate Voting Shares**") are listed for trading on the Toronto Stock Exchange (the **TSX**) under the symbol "OCX". 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 share capital of the Issuer consists of 100,000 multiple voting shares (the "**Multiple Voting Shares**") of which 100,000 are issued and outstanding as of October 29, 2014, an unlimited number of Subordinate Voting Shares of which 109,430,092 are issued and outstanding as of October 29, 2014, an unlimited number of junior preferred shares (the "**Junior Preferred Shares**") and an unlimited number of senior preferred shares (the "**Senior Preferred Shares**"). As of October 29, 2014, no Junior Preferred Shares or Senior Preferred Shares are issued or outstanding.

5. The corporate headquarters of the Selling Shareholder are located in the Province of Ontario. The trades contemplated by this Application will be executed and settled in the Province of Ontario.

6. The Selling Shareholder does not, directly or indirectly, own more than 5% of the issued and outstanding Subordinate Voting Shares.

7. The Selling Shareholder is the beneficial owner of at least 310,000 Subordinate Voting Shares. None of the Subject Shares were acquired by, or on behalf of, the Selling Shareholder in anticipation or contemplation of resale to the Issuer.

8. No Subordinate Voting Shares were purchased by, or on behalf of, the Selling Shareholder on or after October 7, 2014, being the date that was 30 days prior to the date of the Application of the Issuer seeking this Order, in anticipation or contemplation of a resale of Subordinate Voting Shares to the Issuer.

9. The Subject Shares are held by the Selling Shareholder in connection with arrangements to hedge client transactions in respect of the Subordinate Voting Shares. The Selling Shareholder will not purchase, have purchased on its behalf, or otherwise accumulate, any Subordinate Voting Shares to re-establish its holdings of Subordinate Voting Shares which will have been reduced as a result of the sale of the Subject Shares pursuant to the Proposed Purchases (as defined below) between the date of this Order and the date on which a Proposed Purchase is to be completed.

10. The Selling Shareholder is at arm's length to the Issuer and is not an "insider" of the Issuer or an "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*.

11. Pursuant to a Notice of Intention to Make a Normal Course Issuer Bid (the "**Original Notice**") accepted by the TSX effective April 14, 2014, the Issuer was permitted to make a normal course issuer bid (the "**Normal Course Issuer Bid**") to purchase up to 8,620,038 Subordinate Voting Shares, representing approximately 10% of the Issuer's public float of Subordinate Voting Shares. On April 22, 2014, the Issuer announced that the TSX accepted an amendment to the Original Notice (the "**First Amendment**") effective April 22, 2014 in order to permit the Issuer to acquire Subordinate Voting Shares through the facilities of the TSX as well as through alternative trading systems. On November 14, 2014, the Issuer announced that the TSX accepted a further amendment (the "**Second Amendment**" together with the Original Notice and the First Amendment, the "**Notice**") effective November 17, 2014. In accordance with the Notice, purchases under the Normal Course Issuer Bid are conducted through the facilities of the TSX, through alternative trading systems or by such other means as may be permitted by the TSX, 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 (each, an "**Off-Exchange Block Purchase**").

12. 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 some or all of the Subject Shares from the Selling Shareholder in one or more tranches, such tranches to occur not more than once per calendar

week, each to occur prior to April 15, 2015 (each such purchase, a "**Proposed Purchase**") for a purchase price (each such price, a "Purchase Price" in respect of such Proposed Purchase) that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price, in each case, will be at a discount to the prevailing market price and below the bid-ask price for the Subordinate Voting Shares on the TSX at the time of each Proposed Purchase.

13. 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.

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

15. Because the Purchase Price, in each case, will be at a discount to the prevailing market price and below the bid-ask price for the Subordinate Voting Shares on the TSX at the time of each Proposed Purchase, none of the Proposed Purchases can 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 subsection 101.2(1) of the Act.

16. 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 Subordinate Voting Shares on the TSX, at the time of each Proposed Purchase, the Issuer could otherwise acquire the Subject Shares through the facilities of the TSX 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 subsection 101.2(1) of the Act.

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

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

19. Management of the Issuer is of the view that: (a) the Issuer will be able to purchase the Subject Shares at a lower price than the price at which it would be able to purchase Subordinate Voting Shares under the Normal Course Issuer Bid in accordance with the TSX NCIB Rules and the exemption from the Issuer Bid Requirements available pursuant to subsection 101.2(1) of the Act; and (b) the Proposed Purchases are an appropriate use of the Issuer's funds.

20. The purchase of the Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's security holders 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 security holders of the Issuer to otherwise sell Subordinate Voting Shares in the open market at the then prevailing market price. The Proposed Purchases will be carried out at minimal cost to the Issuer.

21. To the best of the Issuer's knowledge, as of October 29, 2014, the "public float" for the Issuer's Subordinate Voting Shares represented approximately 77.42% of all issued and outstanding Subordinate Voting Shares for purposes of the TSX NCIB Rules.

22. The Subordinate Voting Shares are "highly-liquid securities" within the meaning of section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* and section 1.1 of the Universal Market Integrity Rules.

23. Other than the Purchase Price, no fee or other consideration will be paid by the Issuer in connection with the Proposed Purchases.

24. 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 any member of the trading group of the Selling Shareholder, nor any personnel of, the Selling Shareholder that negotiated the Agreement or made, 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.

25. The Issuer will not purchase, pursuant to Off-Exchange Block Purchases, in aggregate, more than one-third of the maximum number of Subordinate Voting Shares that the Issuer can purchase under the Normal Course Issuer Bid, such one-third being equal to 2,873,346 Subordinate Voting Shares as of the date of this Order.

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 the Proposed Purchases, 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 or an Off-Exchange Block Purchase during the calendar week in which it completes a Proposed Purchase and will not make any further purchases under its Normal Course Issuer Bid for the remainder of the calendar day on which it completes a Proposed Purchase;

(c) the Purchase Price in respect of each Proposed Purchase will be at a discount to the last "independent trade" (as that term is used in paragraph 629(l)1 of the TSX NCIB Rules) of a board lot of Subordinate Voting Shares immediately prior to the execution of such Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Subordinate Voting Shares pursuant to the Issuer's Normal Course Issuer Bid in accordance with the Notice and the TSX NCIB Rules, including by means of open market transactions and by other means as may be permitted by the TSX and, subject to condition (i) below, by Off-Exchange Block Purchases;

(e) immediately following each Proposed Purchase of Subject Shares from the Selling Shareholder, the Issuer will report the purchase of 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 any member of the trading group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, 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 where such Proposed Purchases are made in tranches, in advance of the first tranche purchased from the Selling Shareholder, and (ii) that information regarding each Proposed Purchase, including the number of Subordinate Voting 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 Proposed Purchase;

(h) the Issuer will report information regarding each Proposed Purchase, including the number of Subordinate Voting Shares purchased and the aggregate Purchase Price, on SEDAR before 5:00 p.m. (Toronto time) on the business day following such purchase;

(i) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate more than one-third of the maximum number of Subordinate Voting Shares the Issuer can purchase under its Normal Course Issuer Bid, such one-third being equal to, as of the date of this Order, 2,873,346 Subordinate Voting Shares; and

(j) the Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing that between the date of this Order and the date on which such Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Subordinate Voting Shares on the facilities of the TSX or any other published market.

DATED at Toronto this 27th day of November, 2014.

"Mary G. Condon"
Commissioner
Ontario Securities Commission

"Judith R. Robertson"
Commissioner
Ontario Securities Commission

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Paul Azeff et al. – Rule 3 of the OSC Rules of Procedure

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

AND

IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW, MITCHELL FINKELSTEIN,
HOWARD JEFFREY MILLER AND MAN KIN CHENG (a.k.a. FRANCIS CHENG)

REASONS AND DECISION REGARDING NON-SUIT MOTIONS
(Rule 3 of the Commission's Rules of Procedure (2014), 37 O.S.C.B. 4168)

Hearing: October 30, 2014

Decision: November 25, 2014

Panel:	Alan J. Lenczner	–	Commissioner and Chair of the Panel
	AnneMarie Ryan	–	Commissioner
	Catherine E. Bateman	–	Commissioner
Appearances:	Simon Bieber	–	For Howard Miller
	Tyler Hodgson	–	For Paul Azeff and Korin Bobrow
	Donna Campbell	–	For Staff of the Ontario Securities Commission

REASONS AND DECISION

I. OVERVIEW

[1] At the close of Staff's case and before we heard any evidence or explanation from the respondents Mitchell Finkelstein ("**Finkelstein**"), Paul Azeff ("**Azeff**") or Korin Bobrow ("**Bobrow**"), the respondents Howard Miller ("**Miller**"), Azeff and Bobrow brought motions to dismiss certain allegations in the Fresh As Amended Statement of Allegations dated August 14, 2014 (the "**Fresh SOA**").

[2] On November 3, 2014, we rendered our decision with reasons to follow.

[3] Our decision was:

1. With respect to Miller:

   (a) we dismissed his non-suit motions relating to allegations against him with respect to Masonite International Corporation ("**Masonite**") and Dynatec Corporation ("**Dynatec**"); and

   (b) we granted his motion with respect to the limitation period applicable to the allegation in paragraph 45 of the Fresh SOA that he recommended Dynatec contrary to the public interest.

2. With respect to Bobrow, we granted his non-suit motion relating to allegations regarding MDSI Mobile Data Solutions Inc. ("**MDSI**").

3. With respect to Azeff:

   (a) we dismissed his non-suit motion relating to the allegations that he tipped Client A with respect to Dynatec; and

   (b) we dismissed his non-suit motion relating to the allegations that he acted contrary to the public interest in relation to MDSI.

IV. THE LAW

1. Test for Granting a Non-Suit Motion

[4] The test for a non-suit motion is whether "there is any evidence which, if taken at its highest, establishes or gives rise to a reasonable inference in favour of the party responding to the motion." (*Toronto (City) v. Toronto Civic Employees' Union, Local 416 (Espinola Grievance)*, [2000] O.L.A.A. No. 890, 93 L.A.C. (4th) 372 (QL) at para. 22).

[5] The Commission adopted this test in *Re ATI Technologies Inc.* (2005), 28 O.S.C.B. 9667 at para. 23 ("ATI") and *Re Suman* (2009), 32 O.S.C.B. 8375 ("***Suman***") at para. 24.

[6] As the Commission concluded in Suman, "[w]hether ultimately we conclude that Staff has proven its case on a balance of probabilities is a matter to be decided at the conclusion of the hearing on the merits based on all of the evidence" (*Suman*, *supra* at para. 24).

[7] We have reviewed the evidence on a *prima facie* standard, not on the standard of a balance of probabilities, a level of assessment that we will apply after all the evidence is complete and final arguments have been received.

2. The Statutory Limitation Period

[8] Section 129.1 of the Act provides that: "[e]xcept where otherwise provided in this Act, no proceeding under this Act shall be commenced later than six years from the date of the occurrence of the last event on which the proceeding is based."

V. ANALYSIS

3. Miller

[9] Miller submits that Staff has failed to lead evidence that establishes or gives rise to a reasonable inference of a constituent element of the charges against Miller; namely, that Miller was in a special relationship with both Masonite and/or Dynatec.

[10] We dismiss Miller's non-suit motion relating to allegations with respect to Masonite and Dynatec. It is our opinion on a limited weighing of the evidence that Staff has made out a *prima facie* case that Miller was in a special relationship with each of the issuers.

[11] In coming to this conclusion we considered the specificity of information that Miller had, the evidence regarding the source of that information, the communications between Miller and Client A and the proximity of trading activity by Miller and others.

[12] Miller also submits that the allegation that he recommended Dynatec contrary to the public interest in paragraph 45 of the Fresh SOA in this matter is barred by the statutory limitation period in section 129.1 of the Act.

[13] Section 129.1 of the Act provides that no proceeding under the Act shall be commenced later than six years from the date of the occurrence of the last event on which it is based. The Fresh SOA of August 14, 2014 included, for the first time, an allegation that Miller recommended investing in Dynatec. We interpret the "event" in this instance to be the act of recommending Dynatec shares on April 18 and 19, 2007. It is a new, specific and discrete allegation, although it might be said to be based on many of the same facts that were pleaded in a timely way in the Amended Amended Statement of Allegations of April 18, 2011. We have concluded that it is different in nature and character from the prior allegations. Therefore, it is beyond the six year limitation period and the allegation is struck.

4. Bobrow

[14] Bobrow submits that there is no evidence that he traded MDSI, no evidence that he profited or received commission for any purchase of MDSI shares and no evidence that he recommended MDSI to any of the three persons alleged to have traded in MDSI.

[15] We are not satisfied that Staff has made out a *prima facie* case linking Bobrow to the allegation in question. We grant Bobrow's non-suit motion relating to allegations that he acted contrary to the public interest in relation to MDSI.

5. Azeff

[16] Azeff submits that, with respect to allegations relating to MDSI, Staff's case at its very highest gives rise to suspicion, speculation and conjecture. Azeff submits that, of the three individuals who purchased MDSI, none purchased shares through him, one was not a client, he made no commission on the sale of MDSI shares and there is no evidence that, following the MDSI announcement, he met with Finkelstein, the alleged tipper, in person and gave him cash. Azeff contends that Staff's case, at its highest, is limited to an opportunity to speak with Finkelstein about MDSI prior to the announcement and contact with one client six days prior to the client's purchase of MDSI.

[17] With respect to Dynatec, Azeff submits that the only logical and reasonable inference that can be drawn from the trading pattern in Dynatec is that Client A was not provided with material non-public information. Azeff submits that Client A testified to several reasons why he invested in Dynatec, that he did not agree that he was told by Azeff that Dynatec was in play and that, although Client A began purchasing Dynatec on April 18, 2007, he sold 100% of his wife's position at a loss on April 19 after speaking with Azeff.

[18] We dismiss Azeff's non-suit motion relating to allegations that: (i) he acted contrary to the public interest with respect to MDSI; and (ii) tipped Client A with respect to Dynatec, as it is our opinion on a limited weighing of the evidence that Staff has made out a *prima facie* case in relation to those allegations.

[19] On a *prima facie* standard, we conclude that the access by Finkelstein to deal documents in July 2005, the telephone contacts between Azeff and Finkelstein and the timing of trades by Azeff's clients gives rise to reasonable inferences that support the allegations relating to MDSI.

[20] We also conclude that, with respect to Dynatec, Staff's evidence, on a *prima facie* standard, gives rise to reasonable inferences capable of supporting the allegations. In coming to this conclusion we have considered the relationship between Azeff and Client A, the testimony of Client A and the proximity of communications and trading activity by Azeff's clients.

DATED at Toronto this 25th day of November 2014.

"Alan Lenczner"

"AnneMarie Ryan"

"Catherine Bateman"

3.1.2 TD Waterhouse Private Investment Counsel Inc. 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
TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.,
TD WATERHOUSE CANADA INC. AND TD INVESTMENT SERVICES INC.

ORAL RULING AND REASONS
(Section 127 and 127(1) of the Act)

Hearing: November 13, 2014

Oral Ruling: November 13, 2014

Panel:	Mary G. Condon	–	Commissioner and Chair of the Panel
	Christopher Portner	–	Commissioner
	Judith N. Robertson	–	Commissioner
Appearances:	Michelle Vaillancourt Catherine Weiler	–	For Staff of the Commission
	David Hausman Brad Moore	–	For TD Waterhouse Private Investment Counsel Inc., TD Waterhouse Canada Inc. and TD Investment Services Inc.

ORAL RULING AND REASONS

The following ruling and reasons have been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and are based on portions of the transcript of the hearing. The excerpts from the transcript have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the oral ruling and reasons.

Chair of the Panel:

[1] Staff of the Ontario Securities Commission ("**Staff**") has made a number of allegations against TD Waterhouse Private Investment Counsel Inc., TD Waterhouse Canada Inc. and TD Investment Services Inc. (collectively, the "**TD Entities**"). These allegations involve failures of the internal compliance systems within the TD Entities to ensure that investors were charged the appropriate fees for mutual fund investments. Were these allegations proven in a contested hearing on a balance of probabilities, they would represent a serious breach of the duty of registrants to deal fairly with their clients. However, Staff and the TD Entities have agreed to a settlement with respect to which the TD Entities neither admit nor deny the allegations of Staff or the facts underlying these allegations.

[2] So what is role of the Panel with respect to the matters submitted to us by the parties? The role of the Panel is to consider whether to approve the settlement, agreed to between the parties, that is intended to resolve the issues between them. The question for the Panel to determine is whether it would be in the public interest to approve this settlement agreement.

[3] In coming to a conclusion on this issue, the Panel must consider the mandate of the Commission as expressed in section 1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), which is to protect investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in those markets. The Panel must also consider the case law that has established the role of the Commission in making sanctions orders under section 127 of the Act. That case law requires the Commission to focus on protecting investors and preventing future harm to investors and to the capital markets (see *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 and *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600).

[4] In making its determination about whether this settlement agreement is in the public interest, the Panel considered the terms of the proposed settlement and the terms of OSC Staff Notice 15-702 – *Revised Credit for Co-operation Program* (2014), 37 O.S.C.B. 2583 ("**Staff Notice 15-702**"). In addition, two confidential settlement conferences were held with the parties to address a number of questions the Panel had about the proposed settlement agreement. Having said this, the Panel

acknowledges that the parties to this agreement have much more detailed knowledge of the background circumstances of this matter than the Panel does.

[5] Ultimately, the panel has determined that it will approve this settlement agreement in the public interest.

[6] The major factors considered by the panel are as follows:

(a) The TD Entities came forward to self-report the alleged compliance and supervision inadequacies.

(b) The TD Entities have undertaken to provide compensation to all investors harmed by the alleged inadequacies of their compliance systems, including compensation for foregone opportunity costs, and have already taken steps to contact investors in this regard. Staff has closely analysed the process for determining this compensation and finds it to be acceptable. To date, this amounts to over $13 million of compensation payable.

(c) The TD Entities have undertaken to upgrade their compliance systems to ensure that there will be no recurrence of the practices characterized by Staff as control and supervision inadequacies. Furthermore, Staff is overseeing the process for ensuring that the enhanced compliance systems are implemented appropriately.

[7] These factors respecting compensation, improvement of compliance processes to protect investors, and self-reporting by registrants, in the Panel's view, are crucial to the acceptability of this no-contest settlement since they achieve the objectives of being protective of investors and of being forward-looking. They also signal to other market participants the importance placed by the Commission on self-reporting, remediation of harm to investors and on internal compliance systems that operate appropriately.

[8] Other important factors taken into consideration by the Panel include the following:

(d) Staff does not allege dishonest conduct on the part of the TD Entities.

(e) As referenced in the settlement agreement, a specific dispute resolution mechanism has been devised to address situations where investors dispute the amounts provided to them by way of compensation.

(f) The TD Entities have undertaken to make a voluntary payment of $50,000 to be allocated to the costs of the investigation and a further voluntary payment of $600,000. Staff counsel reported this morning that these payments have already been made.

(g) Finally, the settlement is an efficient way of avoiding the cost of a potentially lengthy hearing.

[9] One factor referenced by Staff Notice 15-702 which concerned the Panel was that of the length of time that passed between the TD Entities becoming aware of the alleged compliance and supervision issues and reporting them to Staff. The terms of Staff Notice 15-702 require that self-reporting be made in a timely manner. In this case, the settlement agreement indicates that two years passed between the TD Entities learning of the inadequacies and reporting them to Staff.

[10] Taking all the circumstances into account, including the fact that the TD Entities ultimately did come forward and that Staff indicates that the TD Entities provided prompt and detailed co-operation once the TD Entities reported, the Panel is prepared to accept Staff's submissions as to the suitability of a no-contest settlement in this instance. However, the Panel wishes to underscore the importance of timely and fulsome self-reporting of potential regulatory infractions by market participants. Not only is this an on-going responsibility of registrants, but it is an important component of accountability to the Commission for potential regulatory inadequacies.

[11] For all the reasons identified above, this settlement agreement is approved. The Panel will issue an order in the form contained at Appendix A to the settlement agreement filed by the parties.

Approved by the Chair of the Panel on the 27th day of November 2014.

"Mary G. Condon"

3.1.3 Patrick Myles Lough et al. – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
PATRICK MYLES LOUGH, LYNDA DAWN DAVIDSON
and WAYNE THOMAS ARNOLD BARNES

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the Act)

Decision: November 27, 2014

Panel: James E. A. Turner – Vice-Chair of the Commission

Counsel: Keir Wilmut – For Staff of the Commission

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REASONS FOR DECISION

I. OVERVIEW

[1] This was a hearing (the “**Hearing**”) conducted in writing before the Ontario Securities Commission (the “**Commission**”) pursuant to subsections 127(1) and 127(10) 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 market conduct restrictions against Patrick Myles Lough (“**Lough**”), Lynda Dawn Davidson (“**Davidson**”) and Wayne Thomas Arnold Barnes (“**Barnes**”) (collectively, the “**Respondents**”).

[2] A Notice of Hearing in this matter was issued by the Commission on July 25, 2014 and a Statement of Allegations was filed by Staff of the Commission (“**Staff**”) on the same date. Both the Notice of Hearing and the Statement of Allegations were duly served on the Respondents.

[3] On August 18, 2014, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondents were duly served with that application but did not appear at the application hearing or make any submissions.

[4] The Commission granted Staff’s application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff filed written submissions, a hearing brief and a brief of authorities. The Respondents did not appear and did not file any responding materials.

Facts

[6] On January 31, 2014, the Respondents entered into a settlement agreement with the Alberta Securities Commission (the "**ASC**") (the "**Settlement Agreement**").

[7] Pursuant to the Settlement Agreement, the Respondents agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements under the Alberta *Securities Act*, R.S.A. 2000, c. S-4 (the "**ASA**").

[8] The conduct for which the Respondents were sanctioned occurred between January 2011 and September 2011 (the "**Material Time**").

[9] During the Material Time, the Respondents raised approximately $2.9 million from 23 investors in connection with a proposed real estate development near Pigeon Lake, Alberta without filing a prospectus or relying on an available prospectus exemption as required under Alberta securities laws. In the Settlement Agreement, the Respondents admitted to illegal distributions of Mountain Shores Land Ventures Ltd. ("**MSLV**") shares and to making false or misleading statements to potential investors.

[10] MSLV was also a respondent in the ASC proceedings and a party to the Settlement Agreement. Pursuant to the Settlement Agreement, MSLV undertook to correct misinformation previously provided to investors and to offer investors an optional refund of their investment, and agreed that any future capital raising activity of MSLV in Alberta would be conducted under the advice and guidance of a lawyer with knowledge of Alberta securities laws and exempt financing.

[11] These are my reasons for the market conduct restrictions I impose on the Respondents pursuant to subsections 127(1) of the Act in reliance on subsection 127(10)5 of the Act.

II. AGREED STATEMENT OF FACTS

[12] In the Settlement Agreement, the Respondents admitted the following facts (the "**Agreed Facts**"):

(a) MSLV is a private corporation incorporated in July 2008 in British Columbia, and extra-provincially registered in Alberta on March 3, 2011;

(b) Lough is a resident of Boswell, British Columbia. At the Material Time, Lough was the primary executive officer, a director and the majority owner of MSLV;

(c) Davidson is a resident of Saskatoon, Saskatchewan, and Lough's sister. At the Material Time, Davidson was an officer, director and owner of MSLV;

(d) Barnes is a resident of Kimberley, British Columbia. At the Material Time, Barnes was the Director of Sales & Marketing of MSLV;

(e) in late 2010, MSLV negotiated the purchase of property near Pigeon Lake, Alberta, known as the Dorchester Ranch RV and Golf Resort ("**Dorchester Resort**"), intending to develop some of the land surrounding the existing golf course into permanent RV lots;

(f) in January 2011, to acquire the Dorchester Resort, MSLV entered into agreements to purchase two pieces of land for $5 million;

(g) between February and September 2011, the Respondents distributed securities of MSLV, raising approximately $2.9 million from 23 investors, including 18 investors in Alberta;

(h) no prospectus, offering memorandum or exempt distribution reports were filed under the ASA in respect of the distribution of securities of MSLV;

(i) the distributions of securities of MSLV were purportedly made in reliance on the "accredited investor" and "family, friends, and business associates" exemptions contained in National Instrument 45-106, but a number of investors did not meet the relevant exemption criteria;

(j) Barnes failed to take adequate steps to ensure that he and the other salespersons understood the criteria applicable to the exemptions relied upon, and failed to take adequate steps to ensure that investors understood and met the criteria at the time of their investment. Lough and Davidson, as the only directors and officers of MSLV, failed to adequately oversee Barnes and the investment program;

(k) in soliciting investors in MSLV, the Respondents made statements to potential investors that they knew or ought reasonably to have known were materially misleading or untrue;

(l) in describing the project and anticipated profits, the Respondents failed to disclose to investors that there was a risk, which ultimately materialized, that the municipal authority responsible for providing development approvals would require, as a condition of approval, that MSLV either pave approximately 3 miles of roadway (in addition to the development's internal roadways), at an approximate cost of $3 million, or to post security equal to 120% of the paving cost;

(m) the Respondents also represented that investors would "have their initial investment returned," before any net profit would be paid;

(n) MSLV and Barnes breached section 110 of the ASA by distributing securities without having filed a prospectus and without an applicable prospectus exemption, and Lough and Davidson permitted such illegal distributions;

(o) MSLV, Lough, Davidson and Barnes breached section 92(4.1) of the ASA by making statements that each knew or reasonably ought to have known were materially misleading or untrue (including by factual omission) and would reasonably be expected to have a significant effect on the market price or value of a security; and

(p) the Respondents' conduct was contrary to the public interest.

The Terms of Settlement

[13] Pursuant to the Settlement Agreement, the Respondents each agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements under the ASA. Those terms are:

(a) Lough:

(i) Lough pay to the ASC, on execution of the Settlement Agreement, the amount of $40,000 in settlement of all allegations against him, and an additional $5,000 in respect of investigation costs; and;

(ii) for a period of 4 years from the date of the Settlement Agreement:

1. Lough refrain from trading in or purchasing securities or exchange contracts, except for (a) trades made in a personal brokerage account, a registered retirement savings plan, a tax-free savings account, or a registered education savings plan, for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Resort development project;

2. Lough refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws, except in respect of securities of MSLV; and

3. Lough refrain from becoming or acting as either a director or an officer of any issuer, registrant, or investment fund manager, and to immediately resign any such positions he holds, except that he may act as a director and officer of MSLV in connection with the Dorchester Resort development project;

(b) Davidson:

(i) Davidson pay to the ASC, on execution of the Settlement Agreement, the amount of $30,000 in settlement of all allegations against her, and an additional $5,000 in respect of investigation costs; and

(ii) for a period of 3 years from the date of the Settlement Agreement:

1. Davidson refrain from trading in or purchasing securities or exchange contracts, except for (a) trades made in a personal brokerage account, a registered retirement savings plan, a tax-free savings account, or a registered education savings plan, for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Resort development project;

2. Davidson refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws, except in respect of securities of MSLV; and

3. Davidson refrain from becoming or acting as either a director or an officer of any issuer, registrant, or investment fund manager, and to immediately resign any such positions she holds, except that she may act as a director and officer of MSLV in connection with the Dorchester Resort development project;

(c) Barnes:

(i) Barnes pay to the ASC, on execution of the Settlement Agreement, the amount of $30,000 in settlement of all allegations against him, and an additional $5,000 in respect of investigation costs; and

(ii) for a period of 4 years from the date of the Settlement Agreement:

1. Barnes retrain from trading in or purchasing securities or exchange contracts, except for trades made in a personal brokerage account, a registered retirement savings plan, a tax-free savings account, or a registered education savings plan, for the benefit of one or more of himself, his spouse and his children; and

2. Barnes refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws.

[14] The Respondents also acknowledged and agreed that the Settlement Agreement "may be referred to ... in securities regulatory proceedings in other jurisdictions."

III. ANALYSIS

A. Subsection 127(10) of the Act

[15] Subsection 127(10) of the Act provides as follows:

> **127 (10) Inter-jurisdictional enforcement** – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
>
> …
>
> 5. The person or company has agreed with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements.

[16] Based on the Settlement Agreement and the terms of settlement, it is apparent that the Respondents agreed with the ASC to be made subject to sanctions, conditions, restrictions or requirements, within the meaning of paragraph 5 of subsection 127(10) of the Act. Accordingly, the Commission is entitled to make one or more orders under subsections 127(1) or 127(5) of the Act, if in its opinion it is in the public interest to do so. (See *Re Euston Capital Corp.* (2009), 32 OSCB 6313.)

[17] I therefore find that I have the authority to make a public interest order against the Respondents under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act.

[18] I must determine whether, based on the Settlement Agreement, imposing the market conduct restrictions proposed by Staff would be in the public interest. An important consideration is that the Respondents' conduct would have constituted a breach of the Act and/or would have been considered to be contrary to the public interest if the conduct had occurred in Ontario (*JV Raleigh Superior Holdings Inc., Re* (2013), 36 OSCB 4639 at para. 16 ("***JV Raleigh***")).

B. Submissions of Staff

[19] In order to protect Ontario investors and capital markets, Staff submits that it is in the public interest for the Commission to impose market conduct restrictions on the Respondents consistent with the sanctions agreed to in the Settlement Agreement.

[20] Staff requests the following sanctions against Lough:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Lough cease until January 31, 2018, except for (a) trades made in a personal brokerage account, a registered retirement savings plan, a tax-free savings account, or a registered education savings plan (such accounts or plans are referred to as a "**Personal Account or Plan**") for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lough cease until January 31, 2018, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities law do not apply to Lough until January 31, 2018;

(d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Lough resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Resort development project; and

(e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Lough be prohibited until January 31, 2018 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Resort development project.

[21] Staff requests the following sanctions against Davidson:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Resort development project;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities laws do not apply to Davidson until January 31, 2017;

(d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Davidson resign any positions that she holds as director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Resort development project; and

(e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Davidson be prohibited until January 31, 2017 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Resort development project.

[22] Staff requests the following sanctions against Barnes:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children; and

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Barnes until January 31, 2018.

[23] Staff submits that I am entitled to issue an order imposing those market conduct restrictions based solely on the evidence before me, which consists of the Settlement Agreement and the Agreed Facts.

D. Should an Order be Issued?

[24] When exercising the public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

(a) to protect investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[25] In pursuing these purposes, I must have regard for the fundamental principles described in section 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act is restrictions on fraudulent and unfair market practices and procedures.

[26] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that "participation in the capital markets is a privilege and not a right" (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[27] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now section 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so 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.

[28] While the Commission must make its own determination of what is in the public interest, it is important that the Commission recognize the increasingly complex and cross-jurisdictional nature of securities markets (*JV Raleigh*, *supra*, at paras. 21-26, and *New Futures Trading International Corp.* (2013), 36 OSCB 5713 at paras. 22-27).

[29] In imposing the market conduct restrictions in this matter, I am relying on the Settlement Agreement and the Agreed Facts. In doing so, it is not appropriate for me to revisit or second-guess the terms of settlement.

[30] I find that it is necessary and appropriate to protect Ontario investors and the integrity of Ontario's capital markets to impose market conduct restrictions against the Respondents in the public interest.

E. The Appropriate Restrictions

[31] In determining the nature and duration of the appropriate market conduct restrictions, I must consider all of the relevant facts and circumstances before me, including:

(a) the seriousness of the Respondents' conduct and breaches of the ASA;

(b) the harm to investors;

(c) whether or not the restrictions imposed may serve to deter the Respondents or others from engaging in similar abuses of Ontario investors and Ontario capital markets; and

(d) the effect any Ontario restrictions may have on the ability of the Respondents to participate without check in Ontario capital markets.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 ("***Belteco***") at paras. 25 and 26.)

[32] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against the Respondents:

(a) the Respondents admitted to breaching Alberta securities law;

(b) the conduct for which the Respondents were sanctioned would constitute a contravention of Ontario securities law if the conduct had occurred in Ontario, specifically a contravention of subsections 53(1) and 126.2(l) of the Act.

[33] As mitigating factors, the Settlement Agreement notes that the Respondents have no previous regulatory history in Alberta and co-operated with ASC Staff in their investigation. Further, the Respondents promptly and voluntarily stopped selling further securities when alerted to the ASC's concerns.

[34] I have reviewed the Commission and other decisions on sanctions referred to me by Staff in assessing the market conduct restrictions appropriate in this case. In reviewing those decisions, I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco*, *supra*, at para. 26).

[35] In *British Columbia (Securities Commission) v. McLean* (2011) BCCA 455 ("***McLean***") the British Columbia Court of Appeal held that when reciprocating an order originally made in Ontario, the British Columbia Securities Commission has a duty to provide reasons, however brief, for the sanctions it was imposing and why they were in the public interest (*McLean*, *supra*, at paras. 28-29).

[36] In *Lines v. British Columbia (Securities Commission*), (2012) BCCA 316 ("***Lines***"), the British Columbia Court of Appeal interpreted *McLean* as holding that the Commission "must make its own determination of the public interest under s. 161 [section 127 of the Act], rather than make an order automatically based on the order of the foreign jurisdiction" (*Lines*, *supra*, at para. 31).

[37] The Commission held in *Re Elliott* (2009), 23 OSCB 6931 at para. 24 ("***Elliott***") that "subsection 127(10) ... allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest".

[38] While the Commission may rely on the findings of the other jurisdiction, it must satisfy itself that an order is necessary to protect the public interest in Ontario:

> The applicability of subsection 127(10) to the BCSC Order and the Settlement Agreement does not automatically lead to the conclusion that this Panel must make an order similar to that made by the BCSC against Elliott. Rather, we must first consider whether or not sanctions are necessary to protect the public interest, before exercising any powers granted to us under subsections 127(1) and (5), and second, if necessary, consider what the appropriate sanctions should be.
>
> (*Elliott*, *supra* at para. 27)

[39] In matters such as this, the Commission has relied on the findings made in other jurisdictions and has not required that the misconduct be directly connected to Ontario or Ontario capital markets (*Weeres, Re* (2013), 36 OSCB 3608 and *Shantz (Re)* (2013), 36 OSCB 5993).

[40] Staff submits that the market conduct restrictions imposed in the Settlement Agreement are appropriate to the misconduct of the Respondents and serve as both specific and general deterrence. Staff further submits that a protective order imposing market conduct restrictions on the Respondents substantially similar to the those imposed under the Settlement Agreement, are necessary and appropriate to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondents or others.

[41] The Respondents admitted to breaching Alberta securities laws by distributing securities without a prospectus and by making statements to investors that they knew or reasonably ought to have known were materially misleading or untrue. The Respondents further admitted that their conduct was contrary to the public interest.

[42] In distributing MSLV securities, the Respondents relied upon the "accredited investor" and "family, friends, and business associates" exemptions contained in National Instrument 45-106, but a number of investors failed to meet the relevant exemption criteria. As noted in the Settlement Agreement:

> Barnes failed to take adequate steps to ensure that he and the other salespersons understood the criteria of the exemptions relied upon, and failed to take adequate steps to ensure that investors understood and met the criteria at the time of their investment. Lough and Davidson, as the only directors and officers of MSLV, failed to adequately oversee Barnes and the investment program.
>
> (*Lough*, *supra* at paras. 13-14)

[43] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following market conduct restrictions on the Respondents:

(a) Against Lough:

(i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Lough cease until January 31, 2018, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;

(ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lough cease until January 31, 2018, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;

(iii) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities laws do not apply to Lough until January 31, 2018;

(iv) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Lough resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Resort development project; and

(v) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Lough be prohibited until January 31, 2018 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Resort development project;

(b) Against Davidson:

(i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;

(ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Resort development project;

(iii) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities law do not apply to Davidson until January 31, 2017;

(iv) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Davidson resign any positions that she holds as director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Resort development project; and

(v) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Davidson be prohibited until January 31, 2017 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Resort development project;

(c) Against Barnes:

(i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children;

(ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children; and

(iii) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Barnes until January 31, 2018.

IV. CONCLUSION

[44] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule “A” to these reasons.

DATED at Toronto this 27th day of November, 2014.

“James E. A. Turner”

Schedule "A"

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

AND

IN THE MATTER OF
PATRICK MYLES LOUGH, LYNDA DAWN DAVIDSON
and WAYNE THOMAS ARNOLD BARNES

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on July 25, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Patrick Myles Lough ("Lough"), Lynda Dawn Davidson ("Davidson") and Wayne Thomas Arnold Barnes ("Barnes") (collectively, the "Respondents");

AND WHEREAS on the same date, Staff of the Commission ("Staff") filed a Statement of Allegations in this matter;

AND WHEREAS on January 31, 2014, the Respondents entered into a settlement agreement (the "Settlement Agreement") with the Alberta Securities Commission (the "ASC");

AND WHEREAS the Respondents are subject to sanctions, conditions, restrictions or requirements pursuant to the Settlement Agreement, within the meaning of paragraph 5 of subsection 127(10) of the Act;

AND WHEREAS on August 18, 2014, the Commission granted Staff's application to convert this matter to a written hearing in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS the Respondents did not appear and did not file any materials;

AND WHEREAS based on my reasons dated the date of this Order, I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Lough cease until January 31, 2018, except for (a) trades made in a personal brokerage account, a registered retirement savings plan, a tax-free savings account, or a registered education savings plan (such an account or plan is referred to as a "Personal Account or Plan") for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Resort development project referred to in the Settlement Agreement (the "Dorchester Project");

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lough cease until January 31, 2018, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children, and (b) trades or acts in furtherance of trades in securities of MSLV made solely for the purpose of completing the Dorchester Project;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities law do not apply to Lough until January 31, 2018;

(d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Lough resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Project;

(e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Lough be prohibited until January 31, 2018 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that he may act as a director and officer of MSLV in connection with the Dorchester Project;

(f) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Project;

(g) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Davidson cease until January 31, 2017, except for (a) trades made in a Personal Account or Plan for the benefit of one or more of herself, her spouse and her children, and (b) trades or acts in furtherance of trades in securities of MSLV, made solely for the purpose of completing the Dorchester Project;

(h) pursuant to paragraph 3 of subsection 127(1) of the Act, except in respect of securities of MSLV, any exemptions contained in Ontario securities law do not apply to Davidson until January 31, 2017;

(i) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Davidson resign any positions that she holds as director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Project;

(j) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Davidson be prohibited until January 31, 2017 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that she may act as a director and officer of MSLV in connection with the Dorchester Project;

(k) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children;

(l) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Barnes cease until January 31, 2018, except for trades made in a Personal Account or Plan for the benefit of one or more of himself, his spouse and his children; and

(m) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Barnes until January 31, 2018.

DATED at Toronto this 27th day of November, 2014.

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James E. A. Turner

3.1.4 Kris Sundell – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
KRIS SUNDELL

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the Act)

Decision: November 27, 2014

Panel: James E. A. Turner – Vice-Chair of the Commission

Counsel: Keir Wilmut – For Staff of the Commission

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REASONS FOR DECISION

I. OVERVIEW

[1] This was a hearing (the “**Hearing**”) conducted in writing before the Ontario Securities Commission (the “**Commission**”) pursuant to subsections 127(1) and 127(10) 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 market conduct restrictions against Kris Sundell (the “**Respondent**” or “**Sundell**”).

[2] A Notice of Hearing in this matter was issued by the Commission on July 21, 2014 and a Statement of Allegations was filed by Staff of the Commission (“**Staff**”) on the same date. Both the Notice of Hearing and the Statement of Allegations were duly served on the Respondent.

[3] On August 18, 2014, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondent was duly served with that application but did not appear at the application hearing or make any submissions.

[4] The Commission granted Staff’s application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff filed written submissions, a hearing brief and a brief of authorities. The Respondent did not appear and did not file any responding materials.

Facts

[6] On February 20, 2014, Sundell entered into a settlement agreement with the Alberta Securities Commission (the "**ASC**") (the "**Settlement Agreement**").

[7] Pursuant to the Settlement Agreement, Sundell agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements.

[8] The conduct for which Sundell was sanctioned occurred between January 1, 2011 and June 30, 2011 (the "**Material Time**").

[9] During the Material Time, Sundell was a resident of Calgary, Alberta. Sundell was a former investment advisor and he admitted in the Settlement Agreement that he breached subsections 93(a)(i) and (a)(ii) of the Alberta *Securities Act*, R.S.A. 2000, c. S-4 ("**ASA**") by engaging in a course of conduct relating to securities of Teras Resources Inc. ("**Teras**") that he knew or reasonably ought to have known resulted in a false and misleading appearance of trading activity and in an artificial price. He also admitted that his trading activity was conduct contrary to the public interest.

[10] These are my reasons for the market conduct restrictions I impose pursuant to subsections 127(1) of the Act in reliance on subsection 127(10)5 of the Act.

II. AGREED STATEMENT OF FACTS

[11] In the Settlement Agreement, Sundell agreed to the following facts (the "**Agreed Facts**"):

(a) Sundell is a 38 year-old resident of Calgary, Alberta. From approximately 2001 to 2006, he was employed as an investment advisor at a national investment broker with offices in Calgary. It was during this period that he first met a fellow employee and investment advisor named Peter Leger ("**Leger**");

(b) in September 2008, Sundell incorporated Strategic Capital International Inc. ("**Strategic**"). He was its sole director, shareholder, and representative. Sundell described Strategic as being involved in market expansion and financings;

(c) in 2009, Sundell and Leger had discussions concerning a possible business relationship. In March 2010, a consulting agreement was entered into between Strategic and Teras. At all material times, Leger was the president and CEO of Teras, a publicly-traded company. Pursuant to the agreement, Strategic was to start an "awareness" campaign to increase public interest in Teras through telephone calls and e-mails;

(d) from 2009 to early 2011, Sundell, through Strategic, assisted Teras with private placements and received finder's fees and, in some cases, shares, warrants or options for Teras shares. Strategic also received consulting fees from Teras;

(e) During this period, Sundell opened a self-directed trading account for Strategic with Scotia Capital Inc. ("**Scotia**") (the "**Account**"). Sundell had sole trading authority and executed all orders in the Account;

(f) From January 1, 2011 to June 30, 2011, Sundell traded shares of Teras in the Account. The Account only ever held and traded Teras shares;

(g) Sundell received some direction from Leger with respect to Sundell's trading in Teras shares in the Account. On occasion, Leger would call Sundell late in the trading day and tell him it would be great for the Teras stock to close high that day, or words to that effect. Sundell also made high closing trades without direction, believing that was expected of him by Leger, and wanting to protect his investment in Teras;

(h) In early May 2011, Scotia contacted Sundell with concerns that he had engaged in high closes in the Account. He was referred to Uniform Market Integrity Rule 2 (2.2) and asked to modify his trading. Following two more high closes on May 26 and 27, 2011, Sundell was asked to leave Scotia; and

(i) In June 2011, Scotia sent a "Gatekeeper Report" concerning Sundell's trading to the Investment Industry Regulatory Organization of Canada. On June 30, 2011, Sundell made arrangements to close the Account and move the Teras shares to another brokerage.

The Terms of Settlement

[12] Pursuant to the Settlement Agreement, Sundell agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements under the ASA as follows:

(a) Sundell pay to the ASC the amount of $40,000;

(b) Sundell pay to the ASC the amount of $5,000 towards investigation and legal costs; and

(c) Sundell cease trading in or purchasing securities for a period of five years.

[13] Sundell acknowledged and agreed that the Settlement Agreement "may be referred to ... in securities regulatory proceedings in other jurisdictions."

III. ANALYSIS

A. Subsection 127(10) of the Act

[14] Subsection 127(10) of the Act provides as follows:

> **127 (10) Inter-jurisdictional enforcement** – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
>
> …
>
> 5. The person or company has agreed with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements.

[15] Based on the Agreed Facts and the terms of settlement, it is apparent that Sundell agreed with the ASC to be made subject to sanctions, conditions, restrictions or requirements, within the meaning of paragraph 5 of subsection 127(10) of the Act. Accordingly, the Commission is entitled to make one or more orders under subsections 127(1) or 127(5) of the Act, if in its opinion it is in the public interest to do so. (See *Re Euston Capital Corp.* (2009), 32 OSCB 6313)

[16] I therefore find that I have the authority to make a public interest order against the Respondent under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act.

[17] I must determine whether, based on the Settlement Agreement, imposing the market conduct restrictions requested by Staff would be in the public interest. An important consideration is that the respondent's conduct would have constituted a breach of the Act and/or would have been considered to be contrary to the public interest if the conduct occurred in Ontario. (*JV Raleigh Superior Holdings Inc., Re* (2013), 36 OSCB 4639 at para. 16 ("***JV Raleigh***"))

B. Submissions of Staff

[18] In order to protect Ontario investors and capital markets, Staff submits that it is in the public interest for the Commission to impose market conduct restrictions on the Respondent consistent with the sanctions agreed to in the Settlement Agreement.

[19] Staff requests the following sanctions against Sundell:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Sundell cease until February 20, 2019; and

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Sundell cease until February 20, 2019.

[20] Staff submits that I am entitled to issue an order imposing those market conduct restrictions based solely on the evidence before me, which consists of the Settlement Agreement and the Agreed Facts.

C. Should an Order be Issued?

[21] When exercising the public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

(a) to protect investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[22] In pursuing these purposes, I must have regard to the fundamental principles described in section 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act are restrictions on unfair, improper and fraudulent market practices.

[23] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that "participation in the capital markets is a privilege and not a right" (*Erikson v. Ontario (Securities Commission),* [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[24] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now section 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so 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.

[25] While the Commission must make its own determination of what is in the public interest, it is important that the Commission recognize the increasingly complex and cross-jurisdictional nature of securities markets. (*JV Raleigh*, *supra*, at paras. 21-26, and *New Futures Trading International Corp.* (2013), 36 OSCB 5713 at paras. 22-27)

[26] In imposing the market conduct restrictions in this matter, I am relying on the Settlement Agreement and the Agreed Facts. It is not appropriate in doing so to revisit or second-guess the terms of settlement.

[27] I find that it is necessary and appropriate to protect Ontario investors and the integrity of Ontario's capital markets to impose market conduct restrictions against the Respondent in the public interest.

D. The Appropriate Restrictions

[28] In determining the nature and duration of the appropriate market conduct restrictions, I must consider all of the relevant facts and circumstances before me, including:

(a) the seriousness of the Respondent's conduct and breaches of the ASA;

(b) the harm to investors;

(c) whether or not the restrictions imposed may serve to deter the Respondent or others from engaging in similar abuses of Ontario investors and Ontario capital markets; and

(d) the effect any Ontario restrictions may have on the ability of the Respondent to participate without check in Ontario capital markets.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 ("***Belteco***") at paras. 25 and 26.)

[29] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against Sundell:

(a) the Respondent admitted to breaching Alberta securities law; and

(b) the conduct for which the Respondent was sanctioned would constitute a contravention of Ontario securities law if it had occurred in Ontario, specifically a contravention of subsection 126.1(l)(a) of the Act.

[30] Further, Sundell was warned by Scotia in early May 2011 that he had engaged in high closes in the Account. Sundell was referred to Uniform Market Integrity Rule 2 (2.2) and was asked to change his trading activity. Sundell ignored that warning and engaged in an additional two high closes at the end of May 2011, at which time, Sundell was asked to leave Scotia.

[31] As mitigating factors, it is stated in the Settlement Agreement that Sundell had no previous regulatory history and co-operated with ASC Staff in their investigation.

[32] I have reviewed the Commission and other decisions on sanctions referred to me by Staff in assessing the market conduct restrictions appropriate in this case. In reviewing those decisions, I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco*, *supra*, at para. 26).

[33] In *British Columbia (Securities Commission) v. McLean* (2011) BCCA 455 ("***McLean***") the British Columbia Court of Appeal held that when reciprocating an order originally made in Ontario, the British Columbia Securities Commission has a duty to provide reasons, however brief, for the sanctions it was imposing and why they were in the public interest. (*McLean*, *supra*, at paras. 28-29).

[34] In *Lines v. British Columbia (Securities Commission)*, (2012) BCCA 316 ("***Lines***"), the British Columbia Court of Appeal interpreted *McLean* as holding that the Commission "must make its own determination of the public interest under s. 161 [section 127 of the Act], rather than make an order automatically based on the order of the foreign jurisdiction" (*Lines*, *supra*, at para. 31).

[35] The Commission held in *Elliott, Re* (2009), 23 OSCB 6931 at para. 24 ("***Elliott***") that "subsection 127(10) ... allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest."

[36] While the Commission may rely on the findings of the other jurisdiction, it must satisfy itself that an order is necessary or appropriate to protect the public interest in Ontario:

> The applicability of subsection 127(10) to the BCSC Order and the Settlement Agreement does not automatically lead to the conclusion that this Panel must make an order similar to that made by the BCSC against Elliott. Rather, we must first consider whether or not sanctions are necessary to protect the public interest, before exercising any powers granted to us under subsections 127(1) and (5), and second, if necessary, consider what the appropriate sanctions should be.
>
> (*Elliott*, *supra*, at para. 27)

[37] In matters such as this, the Commission has relied on the findings made in other jurisdictions and has not required that the misconduct be directly connected to Ontario or Ontario capital markets (*Weeres, Re* (2013), 36 OSCB 3608 and *Shantz (Re)* (2013), 36 OSCB 5993).

[38] Staff submits that the market conduct restrictions imposed in the Settlement Agreement are appropriate to the misconduct of the Respondent and serve as both specific and general deterrence. Staff further submits that a protective order imposing market conduct restrictions on the Respondent, substantially similar to those imposed under the Settlement Agreement, are necessary and appropriate to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondent.

Submission of the Respondent

[39] Staff seeks an order stating that, among other matters, "pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Sundell cease until February 20, 2019." In an e-mail to Staff dated August 18, 2014, Sundell requested that, so as to mirror the terms of the Settlement Agreement, the Ontario order instead state that "pursuant to paragraph 2.1 of subsection 127(1) of the Act, the *purchase* of any securities by Sundell cease until February 20, 2019". [emphasis added]

[40] Staff submits that Sundell's proposed amendment to the Order is not appropriate. If the Panel finds that the facts admitted to by Sundell in the Settlement Agreement are sufficient to impose sanctions under the Act, Staff submits that the sanctions imposed should be those set out in the Act. In this case, paragraph 2.1 of subsection 127(1) of the Act refers to the acquisition of any securities.

[41] It is not clear to me what the effect of the change requested by the Respondent is intended to be. If my order in this matter restricts trading activity that is permitted under the Settlement Agreement, the Respondent is entitled to bring an exemption application to the Commission in respect of that trading activity. I am not suggesting, however, that such exemption should necessarily be granted.

[42] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following market conduct restrictions on Sundell:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Sundell cease until February 20, 2019; and

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Sundell cease until February 20, 2019.

IV. CONCLUSION

[43] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule “A” to these reasons.

DATED at Toronto this 27th day of November, 2014.

“James E. A. Turner”

Schedule "A"

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

AND

IN THE MATTER OF
KRIS SUNDELL

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on July 21, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Kris Sundell (the "Respondent" or "Sundell");

AND WHEREAS Staff of the Commission ("Staff") filed a Statement of Allegations in this matter on the same date;

AND WHEREAS on February 20, 2014, Sundell entered into a settlement agreement (the "Settlement Agreement") with the Alberta Securities Commission (the "ASC");

AND WHEREAS the Respondent is subject to sanctions, conditions, restrictions or requirements imposed upon him pursuant to the Settlement Agreement;

AND WHEREAS on August 18, 2014, the Commission granted Staff's application to convert this matter to a written hearing in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS Sundell did not appear and did not file any materials;

AND WHEREAS based on my reasons dated the date of this Order, I find that it is in the public interest to issue this Order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Sundell cease until February 20, 2019; and

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Sundell cease until February 20, 2019.

DATED at Toronto this 27th day of November, 2014.

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James E. A. Turner

3.1.5 Paul Yoannou – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
PAUL YOANNOU

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the Act)

Decision: November 27, 2014

Panel: James E. A. Turner – Vice-Chair of the Commission

Counsel: Keir Wilmut – For Staff of the Commission

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Schedule “A” – Form of Order

REASONS FOR DECISION

I. OVERVIEW

[1] This was a hearing (the “**Hearing**”) conducted in writing before the Ontario Securities Commission (the “**Commission**”) pursuant to subsections 127(1) and 127(10) 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 market conduct restrictions against Paul Yoannou (“**Yoannou**” or the “**Respondent**”).

[2] A Notice of Hearing in this matter was issued by the Commission on July 3, 2014 and a Statement of Allegations was filed by Staff of the Commission (“**Staff**”) on the same day. Both the Notice of Hearing and the Statement of Allegations were duly served on the Respondent.

[3] On August 18, 2014, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondent was duly served with that application but did not appear at the application hearing or make any submissions.

[4] The Commission granted Staff’s application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff filed written submissions, a hearing brief and a brief of authorities. The Respondent did not appear and did not file any responding materials.

Facts

[6] Pursuant to an Information sworn June 28, 2012 (the "**Information**"), Yoannou was charged with 32 counts of fraud over $5,000, contrary to section 380(l)(a) of the *Criminal Code*, R.S.C. 1985, c. C-46, as amended (the "**Criminal Code**").

[7] On February 1, 2013, Yoannou pleaded guilty to 15 counts of fraud over $5,000. The circumstances underlying the offences arose from a transaction, business or course of conduct related to securities as described in paragraph [14] below.

[8] The conduct for which Yoannou was convicted took place over the period from October 2004 to January 2006.

[9] A sentencing hearing was held on February 28, 2013 before Justice Boivin of the Ontario Court of Justice. Justice Boivin issued oral reasons for sentence and sentenced Yoannou to a term of imprisonment of 6 years (the "**Court Decision**"). Restitution orders were also made in favour of Investors Group and one of the victims totalling $6.6 million.

[10] On August 31, 2012, the Mutual Fund Dealers Association of Canada ("**MFDA**") issued a Notice of Hearing ("**MFDA Notice of Hearing**") concerning Yoannou's misconduct while employed with Investors Group (a member of the MFDA) during the relevant time.

[11] On April 25, 2013, the MFDA matter was heard at a disciplinary hearing before a panel of the MFDA (the "**MFDA Panel**"). In its Reasons for Decision dated May 8, 2013 (the "**MFDA Decision**"), the MFDA Panel acknowledged Yoannou's guilty pleas before the Ontario Court of Justice in relation to his misconduct.

[12] The MFDA Panel accepted as proven the allegations contained in the MFDA Notice of Hearing, and found that Yoannou misappropriated at least $6,000,000 from clients and other individuals, contrary to MFDA Rule 2.1.1. The MFDA Panel further found that Yoannou failed to attend an interview to provide a statement and to produce documents and records as requested by the MFDA in the course of its investigation, contrary to section 22.1 of MFDA By-law No. 1.

[13] The MFDA Panel ordered a permanent prohibition against Yoannou conducting securities related business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.

II. ADMITTED FACTS

[14] Yoannou admitted the following facts in respect of his criminal fraud convictions (the "**Admitted Facts**"):

(a) Yoannou was employed with Investors Group as a financial consultant for 14 years. He managed finances for clients and gave financial advice to these clients on how to investor their money. He was located at the Investors Group office at 2345 Yonge Street until his dismissal;

(b) between October of 2004 and January of 2012, Yoannou approached 30 of his Investors Group clients with three new investment strategies that he described as being Investors Group certified; these were a short term credit card program, a mortgage investment through bridge financing, and an investment in a company called Ethoca. These were not legitimate Investors Group investments, nor were they supported by Investors Group;

(c) Yoannou's clients trusted Yoannou's financial advice after many years of investing with him;

(d) the complainants authorized transfers from their accounts and/or borrowed money to invest with Yoannou, believing that the three investments referred to in (b) above were authorized by Investors Group and were sound investments;

(e) at Yoannou's request, cheques were made out to him personally and money was transferred into Yoannou's personal account. In some cases, cheques were made out to other investors who Yoannou represented were being bought out. In these cases, one investor would make out a cheque directly to another investor;

(f) Yoannou encouraged the complainants to mortgage their homes, to use lines of credit, or to take out loans to invest more money with him;

(g) when one of the clients referred to in the Information asked Yoannou to return her investment, he came up with excuses and refused to return it, telling her it was more financially beneficial to leave the money with him;

(h) in exchange for their investments, investors were provided with promissory notes on Investors Group letterhead, detailing the investments, and Yoannou provided some complainants with Investors Group portfolio summaries that had been modified to include the amounts of the dummy investments so that it appeared as if the money was still under the umbrella of Investors Group;

(i) the total loss to Investors Group of making investors whole was over $6 million; and

(j) the funds Yoannou obtained from investors were used for different purposes. Some of the funds were used to pay back other investors. It also appears that Yoannou was gambling heavily during the time that he was taking money from his clients.

III. ANALYSIS

A. Subsection 127(10) of the Act

[15] Subsection 127(10) of the Act provides as follows:

> **127 (10) Inter-jurisdictional enforcement** – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
>
> …
>
> 2. The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.

[16] Yoannou has been convicted in Ontario of 15 counts of fraud over $5,000 contrary to the Criminal Code. Those convictions arose from transactions, a business or a course of conduct related to securities. Yoannou admitted to misappropriating approximately $6,600,000 which he had solicited from investors pursuant to various fraudulent investment schemes.

[17] I find that I have the authority to make a public interest order against the Respondent under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act, based on the Court Decision and the Admitted Facts. Staff did not rely on the MFDA Decision in connection with this matter.

[18] I must determine whether, based on the Court Decision, the market conduct restrictions requested by Staff would be in the public interest. An important consideration is that the Respondent's conduct would have constituted a breach of the Act and/or would have been considered to be contrary to the public interest if proceedings had been brought under the Act. (*JV Raleigh Superior Holdings Inc., Re* (2013), 36 OSCB 4639 at para. 16)

B. Submissions of Staff

[19] In order to protect Ontario investors and capital markets, Staff submits that it is in the public interest for the Commission to impose the following market conduct restrictions on the Respondent:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Yoannou cease permanently;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Yoannou be prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Yoannou permanently;

(d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Yoannou resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;

(e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

(f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

[20] Staff submits that I am entitled to issue an order imposing these market conduct restrictions based solely on the evidence before me, which consists of the Court Decision and the Admitted Facts.

D. Should an Order be Issued?

[21] When determining to exercise the Commission's public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes are set out in subsection 1.1 of the Act and are:

(a) to protect investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[22] In pursuing these purposes, I must have regard for the fundamental principles described in section 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act is restrictions on fraudulent and unfair market practices and procedures.

[23] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that "participation in the capital markets is a privilege and not a right" (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[24] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now section 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so 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.

[25] In imposing the market conduct restrictions in this matter, I am relying on the Court Decision and the Admitted Facts. It is not appropriate in doing so to revisit or second-guess the findings in the Court Decision.

[26] I find that it is necessary to protect Ontario investors and the integrity of Ontario's capital markets to impose market conduct restrictions against the Respondent in the public interest.

E. The Appropriate Restrictions

[27] In determining the nature and duration of the appropriate market conduct restrictions, I am relying on the following considerations:

(a) the seriousness of the Respondent's conduct and breaches of the Criminal Code;

(b) the harm to investors; and

(c) the fact that the restrictions imposed will deter the Respondent from engaging in any further abuses of Ontario investors and Ontario capital markets.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 ("***Belteco***") at paras. 25 and 26.)

[28] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against the Respondent:

(a) Yoannou committed fraud and was sentenced to six years imprisonment;

(b) Justice Boivin noted Yoannou's misconduct, "involved building a trust relationship with the victims, only to abuse it on an ongoing basis thereafter. It was orchestrated by Mr. Yoannou. And it involved, in my view, a high level of deceit";

(c) Justice Boivin also noted, "[t]he impact ... was quite significant. And as the Crown has pointed out, the impact was to elderly people, many who had worked all their lives to prepare for retirement and to put money away for an inheritance for their children"; and

(d) Justice Boivin noted as aggravating factors that Yoannou's misconduct was “a sophisticated scheme. ... It took place over a significant period of time,” and that “there seems to have been no apparent effort to stop until, ultimately, the house of cards tumbled in this particular case.”

[29] As mitigating factors, Justice Boivin noted Yoannou's co-operation with police, early guilty plea, indications of remorse and absence of a previous criminal record.

[30] I have reviewed the following Commission decisions in coming to a conclusion as to the appropriate sanctions to be imposed in this matter: *Re Landen*, (2010) 33 OSCB 9489, *Re Lech*, (2010), 33 OSCB 4795 (“***Lech***”), *Re Portus Alternative Asset Management Inc.*, (2012) 35 OSCB 8128, and *Re Maitland Capital Ltd.* (2012), 35 OSCB 1729.

[31] I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco*, *supra*, at para. 26).

[32] The Commission found in *Lech* that a respondent’s criminal conviction for fraud over $5,000, contrary to subsection 380(1)(a) of the Criminal Code, could be relied upon by the Commission, in the circumstances contemplated by subsection 127(10), to make an order in the public interest under subsection 127(1) of the Act.

[33] Although Yoannou has been sentenced by the Ontario Court of Justice for a term of imprisonment for fraud, the Commission retains jurisdiction to make orders in the public interest under section 127 of the Act relating to the same acts.

[34] Staff submits that the market conduct restrictions requested by it are appropriate to the misconduct of the Respondent and will serve as both specific and general deterrence. Staff submits that it is in the public interest for the Commission to exercise its authority under subsection 127(1) of the Act to protect Ontario investors and Ontario's capital markets from further misconduct by Yoannou.

[35] It is clear based on the Court Decision and the Admitted Facts that the Respondent should not be permitted to participate in the future in Ontario capital markets.

[36] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing on the Respondent the following market conduct restrictions requested by Staff:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Yoannou cease permanently;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Yoannou be prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Yoannou permanently;

(d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Yoannou resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;

(e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

(f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

IV. CONCLUSION

[37] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule “A” to these reasons.

DATED at Toronto this 27th day of November, 2014.

“James E. A. Turner”

Schedule "A"

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

AND

IN THE MATTER OF
PAUL YOANNOU

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on July 3, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Paul Yoannou ("Yoannou" or the "Respondent");

AND WHEREAS Staff of the Commission ("Staff") filed a Statement of Allegations in this matter on the same date;

AND WHEREAS on February 1, 2013, Yoannou pleaded guilty in the Ontario Court of Justice to 15 counts of fraud over $5,000;

AND WHEREAS on February 28, 2013, Yoannou was sentenced by the Ontario Court of Justice to a term of imprisonment of six years and was ordered to pay restitution of $6.6 million;

AND WHEREAS on August 18, 2014, the Commission granted Staff's application to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS the Respondent did not appear and did not file any materials;

AND WHEREAS I issued written reasons for issuing this Order on the date hereof;

AND WHEREAS I find that it is in the public interest to issue this Order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Yoannou cease permanently;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Yoannou be prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Yoannou permanently;

(d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Yoannou resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;

(e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

(f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

DATED at Toronto this 27th day of November, 2014.

____
James E. A. Turner

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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
Mercator Minerals Ltd.	01 December 14	12 December 14		

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS TO REPORT 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
Besra Gold Inc.	10 October 14	22 October 14	22 October 14		
Northland Resources SE	21 November 14	3 December 14			

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