

TBA **Xi Biofuels Inc., Biomaxx Systems Inc., Ronald David Crowe and Vernon P. Smith**
and
Xiiva Holdings Inc. carrying on Business as Xiiva Holdings Inc., Xi Energy Company, Xi Energy and Xi Biofuels

s. 127

M. Vaillancourt in attendance for Staff

Panel: WSW/DLK/PJL

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

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

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

Maitland Capital Ltd., Allen Grossman, Hanouch Ulfan, Leonard Waddingham, Ron Garner, Gord Valde, Marianne Hyacinthe, Diana Cassidy, Ron Catone, Steven Lanys, Roger McKenzie, Tom Mezinski, William Rouse and Jason Snow

Euston Capital Corporation and George Schwartz

Al-Tar Energy Corp., Alberta Energy Corp., Eric O'Brien, Bill Daniels, Bill Jakes, John Andrews, Julian Sylvester, Michael N. Whale, James S. Lushington, Ian W. Small, Tim Burton and Jim Hennesy

Global Partners Capital, WS Net Solution, Inc., Hau Wai Cheung, Christine Pan, Gurdip Singh Gahunia

Land Banc of Canada Inc., LBC Midland I Corporation, Fresno Securities Inc., Richard Jason Dolan, Marco Lorenti and Stephen Zeff Freedman

1.1.2 OSC Staff Notice 33-730 Capital calculations for investment counsel/portfolio managers

ONTARIO SECURITIES COMMISSION STAFF NOTICE 33-730

CAPITAL CALCULATIONS FOR INVESTMENT COUNSEL/PORTFOLIO MANAGERS

Overview

The Compliance team of the Ontario Securities Commission (OSC) has noticed a slight increase in the number of investment counsel/portfolio managers (portfolio managers) that are deficient in meeting the minimum capital requirements under the *Securities Act* (Ontario) (the Act) based on their year end audited financial statements. While the vast majority of portfolio managers do maintain adequate capital, this notice is to remind all portfolio managers of the capital requirements under the Act and also describes the terms and conditions that are recommended by staff when a portfolio manager is capital deficient.

All portfolio managers are required to prepare monthly capital calculations within a reasonable period of time after each month end. Capital calculations must be based on monthly financial statements prepared in accordance with generally accepted accounting principles (GAAP).

Proposed changes to Ontario securities law will change the capital requirements of portfolio managers and will also capture other market participants who are not currently required to prepare capital calculations, such as investment fund managers and certain exempt market dealers. Therefore, this notice also reminds all market participants, including portfolio managers, to be watchful of future changes to the amount and scope of capital requirements as a result of proposed National Instrument 31-103 *Registration Requirements* (NI 31-103).

Minimum free capital requirement

Regulation 107(3) under the Act requires every portfolio manager to maintain minimum free capital of the maximum amount, if any, that is deductible under any clause of the bonding or insurance policy required under Regulation 108(3) plus \$5,000 of working capital calculated in accordance with GAAP. Portfolio managers who have access to or take possession of client funds or securities are required to maintain minimum free capital of the maximum insurance deductible plus \$25,000 of working capital calculated in accordance with GAAP.

In addition, portfolio managers are required under Regulation 113(3)(10) to maintain a record of a reasonable calculation of required capital for each month within a reasonable time after the month.

Registrants who do not meet the prescribed capital requirement for any given month should inform the OSC immediately of the deficiency and take corrective measures within 48 hours.

Historically, issues concerning capital calculations have been among the most common deficiencies encountered during compliance reviews. Registrants should refer to OSC Staff Notice 33-728 *2007 Annual Report – Compliance Team* for our observations and suggested practices for dealing with capital calculations which may be found on the OSC website at www.osc.gov.on.ca.

Terms and conditions

Staff recommends imposing terms and conditions on a registrant's registration in all circumstances where the OSC becomes aware of a capital deficiency. The terms and conditions are generally imposed for a six month period and include requirements to:

- File year-to-date unaudited financial statements with the OSC every month, including a balance sheet and income statement, prepared in accordance with GAAP;
- File a capital calculation for each month end;
- Review their policies and procedures for compliance with Ontario securities law and file a compliance report that includes:
 - (a) the reasons for the registrant's failure to meet the capital requirement as required under Ontario securities law;
 - (b) a certification from its compliance officer to the effect that the registrant has reviewed its system for on-going compliance with Ontario securities law and rectified the problem(s) that led to its failure to satisfy the capital requirement; and
 - (c) details of the specific measures that will be taken to ensure that the capital requirement will be satisfied at all times in the future.

We impose similar terms and conditions on registrants who do not meet their regulatory filing requirements. See OSC Staff Notice 33-713 *Registrant Regulatory Filings* for more information.

Under section 26(3) of the Act, registrants may oppose the imposition of recommended terms and conditions on registration and request an opportunity to be heard.

Proposed NI 31-103

On February 28, 2008, the Canadian Securities Administrators published for second comment proposed NI

31-103. Changes under proposed NI 31-103 will affect the minimum capital requirements for registered firms who are not members of a self regulatory organization (SRO), including portfolio managers. The proposed changes are meant to more closely link the minimum capital with the associated risks of a particular category of registration.

Key changes to the proposed capital requirements, some of which may impact portfolio managers, include:

- an increase in the minimum capital requirement for most non-SRO members;
- an increase in the frequency of filings for most non-SRO members; and
- an enhanced capital calculation formula to better reflect the firm's business model.

Market participants should refer to proposed NI 31-103 to familiarize themselves with the proposed preparation and reporting requirements and the proposed changes to their capital requirements.

Contact information

For more information, please contact:

Noulla Antoniou, CA,
Senior Accountant, Compliance
(416) 595-8920
nantoniou@osc.gov.on.ca

Marriane Bridge, CA,
Manager, Compliance
(416) 595-8907
mbridge@osc.gov.on.ca

Christina Forster-Pazienza, CA,
Assistant Manager, Compliance
(416) 593-8061
cpazienza@osc.gov.on.ca

June 10, 2008