



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**NORSHIELD ASSET MANAGEMENT (CANADA) LTD.,
OLYMPUS UNITED GROUP INC., JOHN XANTHOUDAKIS, DALE SMITH AND
PETER KEFALAS**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

1. Further to a Notice of Hearing dated October 11, 2006, Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

I. BACKGROUND

2. Norshield Asset Management (Canada) Ltd. (“NAM”) is a corporation incorporated pursuant to the laws of Canada on September 25, 1996. Its head office is located in Montreal, Quebec. NAM has been registered under Quebec securities law as an adviser with an unrestricted practice since December 4, 1996. On May 31, 2000, NAM was registered under Ontario securities law with the Ontario Securities Commission (the “Commission”) as an Investment Counsel and Portfolio Manager (“ICPM”). On November 5, 2003, NAM’s registration was changed to ICPM, Commodity Trading Counsel and Commodity Trading Manager. NAM’s registration was suspended by the Commission on May 20, 2005.

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3. Prior to 1996, NAM carried on business as: GIC Commodity Advisors of USA, GIC Asset Management Ltd. and Norshield Asset Management Ltd.

4. Olympus United Group Inc. (“Olympus”) is a corporation originally incorporated under the name Norshield Fund Management Ltd. (“NFML”). NFML was incorporated pursuant to the laws of Canada on September 1, 1994 and changed its name to Olympus on May 16, 2002. From April 21, 1998 until the suspension of its registration by the Commission on May 16, 2005, Olympus was registered under Ontario securities law as a Limited Market Dealer and Mutual Fund Dealer. Olympus’ head office is registered in Ontario.

5. From 1993 to May of 2005, by way of Offering Memorandum, Olympus marketed and sold to Canadian accredited retail investors (the “Retail Investors”) a variety of hedge funds through which it was alleged they could, through a complex and multi-jurisdictional structure, pursue a trading strategy or series of strategies (the “Norshield Investment Structure”). At all material times, NAM (or one of its predecessor corporations) acted as manager for the Norshield Investment Structure. John Xanthoudakis (“Xanthoudakis”) held, at all material times through a corporate structure, a majority ownership interest in NAM and its related Canadian entities.

6. Until the appointment of RSM Richter Inc. (“Richter”) as Receiver on June 29, 2005, Xanthoudakis was the owner, Chief Executive Officer, director and sole shareholder of NAM and its predecessor corporations and was both an officer and director of Olympus, serving as an officer since 1998. At all material times, Xanthoudakis was also either an officer, director and/or part of the directing mind of some or all of the numerous additional corporate entities involved in the Norshield Investment Structure described herein.

7. Dale Smith (“Smith”) has been registered as a chartered accountant in the province of Quebec since 1973. In or about September of 1998, Smith commenced employment with Xanthoudakis as Chief Financial Officer of the Norshield Financial Group (“NFG”), an aggregation of numerous Norshield entities including NAM. Smith served as an officer, director

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and/or part of the directing mind of NAM from May, 2000 and Olympus from December, 1999 until his purported resignation in March, 2005. In 2000 or 2001, Smith's title was changed to President and Chief Operating Officer of the NFG.

8. Smith also served as an officer, director and/or part of the directing mind of several of the additional entities involved in the Norshield Investment Structure, including: Olympus United Bank and Trust SCC (from June, 1999 as director and January, 2003 as President and Chief Executive Officer), Olympus United Funds Corporation (from June 1999 as director and January, 2003 as Chairman and Chief Executive Officer), Olympus Uninvest (from January, 2003 as a member of the Board) and numerous of the entities comprising the Channel Funds (from 1998 onwards).

9. Peter Kefalas ("Kefalas") was employed at NAM (or one of its predecessor corporations) from March, 1985 to April, 2005. In December of 1996 Kefalas was registered under Quebec securities law as the Officer Responsible for NAM. Kefalas confirmed to the Ontario Securities Commission his role as Investment Adviser and Senior Analyst for NAM in March, 2000.

10. Kefalas' registration under Ontario securities law in relation to NAM was as follows:

- (a) Officer and Director from May 31, 2000 to November 19, 2004;
- (b) Compliance Officer from May 31, 2000 to February 19, 2003;
- (c) Ultimate Responsible Person from August 25, 2004 to November 19, 2004; and
- (d) Advising Representative from November 19, 2004 to April 25, 2005.

11. As a director of NAM, Kefalas approved annual audited financial statements, the last one being June 30, 2004. As the designated Compliance Officer, Kefalas was required to and did undertake to the Commission (including on November 26, 2002) that he would perform the duties set out in Part 1.3 of OSC Rule 31-505.

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12. Despite his designation as Compliance Officer between May 31, 2000 and February 19, 2003, Kefalas admitted that he did not at any time during that period perform a compliance function at Norshield.

II. THE NORSHIELD INVESTMENT STRUCTURE

13. Between 1993 and May, 2005, the investments purchased and redeemed by Retail Investors in the Norshield Investment Structure totalled approximately \$293 million and \$161 million, respectively. Of the approximate \$293 million invested by Retail Investors, approximately \$265 million was invested between 2001 and 2005.

14. As of June 30, 2005, approximately 1,900 Retail Investors had aggregate outstanding claims of \$132 million against Norshield related companies arising out of investments made by them in the Norshield Investment Structure.

15. It appears that the Norshield Investment Structure involved a multitude of jurisdictions and corporations as follows:

- (a) By way of its Offering Memorandum, Olympus sold to accredited Retail Investors a variety of hedge funds through which they could pursue a trading strategy or series of strategies. These investments were sold as one or more of twelve classes of shares in Olympus United Funds Corporation (“Olympus United”), a company incorporated pursuant to the laws of Canada;
- (b) Monies from the Retail Investors then flowed in segregated cells designed to follow the investor’s chosen trading strategy to Olympus United Bank and Trust SCC (“Olympus Bank”), a company incorporated pursuant to the laws of Barbados;
- (c) Of these assets, 10-15% remained at the Olympus Bank level and were invested with certain hedge fund managers as part of an “overlay” or “tactical trading” program. The

balance of the assets (85-90%) were invested into Olympus Uninvest (“Uninvest”), a company incorporated pursuant to the laws of the Bahamas;

- (d) At the Uninvest level, the assets originating from Retail Investors were commingled with institutional investment funds and direct investments of cash or cash equivalents and assets in kind. At the Uninvest level, investors received preference shares issued by Uninvest. As of September 30, 2003, the consolidated net assets of Olympus Uninvest had an assigned book value of approximately US \$430 million;
- (e) These assets were in turn invested into Mosaic Composite Ltd. (“Mosaic”), another company incorporated pursuant to the laws of the Bahamas. Mosaic notionally segregated its assets into hedged and non-hedged assets;
- (f) Mosaic’s notionally segregated hedged assets were principally comprised of a cash settled equity barrier call option with the Royal Bank of Canada (the “RBC Option”). The RBC Option provided Mosaic with exposure to a basket of portfolio investments through the payment of a premium in the approximate amount of 15-25% of the basket. The difference between the premium and the exposure is the leverage inherent in the RBC Option.
 - (i) As of June 30, 2005, it appears that for a premium of approximately \$37 million, Mosaic was provided exposure to a basket of investments and securities valued at approximately \$221 million.
 - (ii) In November, 2004, under the direction of Xanthoudakis and/or Smith, Mosaic purportedly assigned its interest in the RBC Option to MS-II, a non-arms length Cayman Islands entity, in exchange for Class A and B shares of MS-II. As at November, 2004, MS-II appears to have been a dormant shell company with no assets.

- (iii) In or around late 2004 or early 2005, Mosaic conveyed its Class A shares of MS-II to subsidiaries of Merrill Lynch International for a total of approximately \$30 million;
- (iv) Subsequently, the RBC Option was liquidated upon which a premium of approximately \$44 million was realized.
- (g) The other component of Mosaic's notionally segregated hedged assets consisted of managed futures and tactical trading. These assets generally represented approximately 10-15% of the aggregate value of the Olympus Univest assets and were managed, at all material times, by NAM; and
- (h) The non-hedged assets of Mosaic consisted primarily of shares and debentures in a group of entities collectively referred to as the "Channel Funds," all of which were incorporated pursuant to the laws of the Bahamas. These assets had, as at September 30, 2003, an assigned book value of \$368 million.

III. BREACHES OF DUTY TO INVESTORS AND FAILURE TO KEEP PROPER BOOKS AND RECORDS

A. Unexplained and Undocumented Depletion of Assets

16. Of the \$132 million in claims outstanding that is referred to in paragraph 15 above, the Court reports filed by the Receiver as of November 15, 2005 indicate a maximum gross recovery of approximately \$8.5 million for Retail Investors up to the Olympus Bank level and potential further recovery in respect of the RBC Option. Such recoveries, however, could be significantly diluted by competing claims and litigation expense.

17. The Receiver also reports that the vast majority of the investments allegedly made in the Channel Funds were placed into non-arms length entities which have little or no realizable value.

18. It therefore appears that recovery for Retail Investors in the Norshield Investment Structure will be nominal.

19. No audited financial statements were prepared or filed for any of the entities referred to in the Norshield Investment Structure (with the exception of NAM) for financial periods after September 30, 2003. Adequate books and records in relation to the flow of funds through the Norshield Investment Structure during the material time have not been produced nor has any documentation with respect to transactions occurring after September 30, 2003 been produced.

20. To date, each of Xanthoudakis, Smith and Kefalas has been unable or unwilling to adequately describe and account for the flow of funds through the Norshield Investment Structure. They have also been unable or unwilling to provide documentation in relation to the corporate entities involved in the Norshield Investment Structure outside of Canada.

21. Given their positions of seniority and responsibility, as described above, each of Xanthoudakis, Smith and Kefalas had a duty to ensure that the best interests of Retail Investors were being served. The fulfillment of such duty was dependent upon an adequate understanding and good faith implementation of the Norshield Investment Structure.

22. Participating, authorizing, permitting or acquiescing in the acceptance and/or redemptions of investments by Retail Investors in light of the aforementioned impairments, overvaluations and outstanding redemption requests impacting liquidity, of which Xanthoudakis, Smith and Kefalas were or should have been aware, was contrary to the best interests of investors.

23. In addition, each of Xanthoudakis, Smith and Kefalas were required, as a matter of law, to take all reasonable steps to ensure that proper and compliant books and records were kept in relation to the Norshield Investment Structure.

B. False Net Asset Values

24. From at least the inception of the RBC Option in August of 1999, the method used to calculate the Net Asset Value (“NAV”) of the various classes of shares of the Norshield Investment Structure entities was improper. NAV calculations were based on the underlying value of the hedged assets of Mosaic without taking into account the investments allegedly made in the Channel Funds or the significant leverage associated with the hedged assets. As a consequence, subscription and redemption values were significantly inflated.

25. To date, each of Xanthoudakis, Smith and Kefalas have been either unable or unwilling to provide a reasonable explanation and/or documentation with respect to the NAV calculation.

26. In light of the actual application of funds through the Norshield Investment Structure, of which Xanthoudakis, Smith and Kefalas were or should have been aware, there could be no reasonable reliance by them on third parties engaged to provide valuations for partial assets.

27. Given their positions of seniority and responsibility, as described above, in order to fulfill their duties to the Retail Investors, each of Xanthoudakis, Smith and Kefalas should have taken all reasonable steps to ensure the accuracy and legality of the NAV calculations.

IV. MISLEADING OR UNTRUE OFFERING MEMORANDUM

28. In the Offering Memorandum filed with the Commission and distributed to Retail Investors during the material time, Olympus failed to disclose:

- (a) the non-segregation of assets;
- (b) the illiquid nature of the investments in the Channel Funds;
- (c) the alleged acceptance by Olympus Uninvest of subscriptions “in kind;”
- (d) the apparent ability of “in kind” subscribers to redeem their shares for cash;
- (e) the identity of alleged “in kind” subscribers;

- (f) the nature of the “in kind” assets allegedly invested; and
- (g) the basis of the valuation for the “in kind” subscriptions.

29. The above deficiencies in the Offering Memorandum, both individually and on a cumulative basis, rendered it materially misleading and/or untrue in respect of the nature, level and type of investments in the Norshield Investment Structure.

30. Given their positions of seniority and authority, each of Xanthoudakis and Smith knew or should have known that the Offering Memorandum was materially misleading and/or untrue.

V. XANTHOUDAKIS AND SMITH MATERIALLY MISLED STAFF

31. During Staff’s investigation of this matter, Xanthoudakis led Staff to believe that a significant portion of the investments of Retail Investors were ultimately placed in the RBC Option through Mosaic.

32. Xanthoudakis failed to inform Staff of the existence of the Channel Funds and the purported roles of both Mosaic and Channel Funds in the Norshield Investment Structure. With respect to the investments in the Channel Funds, Xanthoudakis also failed to inform Staff that:

- (a) he had known since at least 2002 that numerous of the alleged investments in the Channel Funds were impaired;
- (b) Smith (whom Xanthoudakis knew or should have known was responsible for reviewing the financial statements for the Channel Funds and whom Xanthoudakis knew or should have known sat on the board of numerous of the entities comprising the Channel Funds) had told him in 2004 that he was concerned about the valuations for some of the investments in the Channel Funds; and

(c) the investments in the Channel Funds were not accounted for in NAV calculations.

33. As a consequence of the foregoing conduct, Xanthoudakis materially misled Staff in respect of the legitimacy, realizable value, and liquidity of the investments in the Norshield Investment Structure.

34. During Staff's investigation of this matter, Smith also led Staff to believe that a significant portion of the investments made by the Retail Investors were ultimately placed in the RBC Option.

35. Smith failed to inform Staff of the existence of the Channel Funds and the purported roles of both Mosaic and the Channel Funds in the Norshield Investment Structure. With respect to the investments in the Channel Funds, Smith failed to inform Staff that:

- (a) he had served as a board member for numerous of the entities comprising the Channel Funds;
- (b) he was responsible for reviewing the financial statements in respect of Mosaic, the Channel Funds and Uninvest;
- (c) at least as early as 2004, he had developed serious concerns as to the valuations ascribed to some of the investments in the Channel Funds;
- (d) he resigned from NAM in March, 2005 as a result of his concerns over the value of the investments in the Channel Funds;
- (e) he had informed Xanthoudakis (and others in positions of authority) of his concerns regarding the value of the investments in the Channel Funds; and

(f) the failure to file audited financial statements in respect of the Norshield Investment Structure (as described above) was a result of delays by auditors at the Channel Funds level.

36. As a consequence of the foregoing conduct, Smith materially misled Staff in respect of the legitimacy, realizable value and liquidity of the investments in the Norshield Investment Structure.

VI. FAILURE TO SAFEGUARD NORSHIELD DOCUMENTS

37. During Staff's investigation and in the context of the Receivership, Xanthoudakis and/or Smith failed to take all reasonable steps to safeguard documents of NAM and/or Olympus despite their obligation to do so as officers/directors and/or controlling minds of NAM and/or Olympus.

38. Specifically, in or about late May, 2006, more than 40 boxes of NAM and/or Olympus documents were moved to a location in the United States not connected with any of the corporate offices involved in the Norshield Investment Structure.

39. Upon their removal and relocation, attempts were made to destroy all such documents. However, the Receiver, through proceedings brought in the United States, was able to seize and recover a number of the documents. The documents seized and recovered by the Receiver include documents relevant to the flow of Retail Investors' funds through the Norshield Investment Structure, including the purported assignment of the RBC Option to MS-II.

40. The contents of the destroyed documents cannot be determined by Staff. As such, their destruction may have irreparably harmed Staff's investigation and may have impeded the Receiver's ability to identify assets and trace the flow of funds within the Norshield Investment Structure.

VII. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

41. Staff allege that the foregoing conduct engaged in by the respondents constituted breaches of Ontario securities law and/or was contrary to the public interest:

- (a) by engaging in the conduct described herein, NAM, Olympus and each of Xanthoudakis, Smith and Kefalas failed to deal fairly, honestly and in good faith with clients, contrary to sections 2.1(1) and 2.1(2) of OSC Rule 31-505;
- (b) NAM and Olympus failed to keep and/or maintain proper books and records in relation to the Norshield Investment Structure in contravention of section 19 of the *Securities Act* (the “Act”) and section 113 of Ontario Regulation 1015 of the Act;
- (c) as a consequence of their positions of seniority and responsibility and in their positions as officers and directors of NAM and/or Olympus, Xanthoudakis, Smith and Kefalas authorized, permitted or acquiesced in the violations of the requirements of Ontario securities laws and breaches of duty described in subparagraphs (a) – (b) above;
- (d) the Offering Memorandum filed and distributed by Olympus contained misleading or untrue information and/or failed to state facts which were required to be stated (as particularized above), in contravention of clause (b) of subsection 122(1) of the Act;
- (e) as a consequence of their positions of seniority and responsibility and in their positions as officers and directors of Olympus, Xanthoudakis and Smith authorized, permitted or acquiesced in the breach of Ontario securities law described in subparagraph (d) above;
- (f) Xanthoudakis and Smith knowingly made statements and provided evidence and information to Staff that was materially misleading or untrue and/or failed to state facts

which were required to be stated in an effort to hide the violations of Ontario securities laws and breaches of duty described in subparagraphs (a) - (e) above, in contravention of clause (a) of subsection 122(1) of the Act; and

- (g) the course of conduct engaged in by Xanthoudakis, Smith and Kefalas as described herein compromised the integrity of Ontario's capital markets, was abusive to Ontario's capital markets and was contrary to the public interest.

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

DATED AT TORONTO this 11th day of October, 2006