

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

and

**IN THE MATTER OF
THE JUNIPER FUND MANAGEMENT CORPORATION, JUNIPER INCOME FUND,
JUNIPER EQUITY GROWTH FUND and ROY BROWN (a.k.a. ROY BROWN-
RODRIGUES)**

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

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

THE PARTIES

1. The Juniper Fund Management Corporation ("JFM") is the fund manager, trustee and fund administrator of both the Juniper Equity Growth Fund ("JEGF") and the Juniper Income Fund ("JIF"). JFM is not registered in any capacity with the Commission but is a market participant by virtue of being a manager of assets of a mutual fund.
2. JEGF is a mutual fund trust established on November 15, 1985. According to its simplified prospectus dated July 5, 2005, JEGF invests in equity and equity-related securities of companies listed on Canadian and foreign stock exchanges.
3. Effective October 7, 2005, JEGF merged with the Capstone Balanced Fund, the Capstone Canadian Equity Fund and the Capstone Global Equity Fund (the "Merged Capstone Funds"). Unitholders of the Merged Capstone Funds received units in JEGF equivalent in value to their holdings in the Merged Capstone Funds. Total net assets of JEGF were approximately \$12.3 million as at February 26, 2006.

4. JIF was formerly the Capstone Cash Management Fund, a Canadian money market fund organized as a mutual fund trust. The Capstone Cash Management Fund was renamed JIF and its investment objectives were changed to an income fund. Total net assets of JIF were approximately \$350,000 as of February 26, 2006.

5. The president, chief executive officer and sole shareholder of JFM is Roy Brown who is also known as Roy Brown-Rodrigues. Mr. Brown is not registered in any capacity with the Commission.

6. NBCN Inc. (“NBCN”) is the custodian of assets for the Funds. NBCN is registered with the Commission as a broker and investment dealer.

7. PolySecurities Asset Management Corp. (“PAM”) is a private company whose series B preference shares are portfolio assets of JEGF.

8. National Bank Financial Ltd. (“NBFL”) operates one margin account in the name of Roy Brown. NBFL is registered with the Commission as an investment dealer.

FOCUSED COMPLIANCE REVIEW

9. Staff of the Compliance Section of the Capital Markets Branch (“Compliance Staff”) conducted a focused compliance review of JFM on December 13 to 15, 2005 at JFM’s office located in Oakville, Ontario.

10. The compliance review focused on the following areas:

- (a) verifying the existence and quality of assets in the Funds;
- (b) the Funds’ ability to meet investor redemptions within T+3 days;

- (c) the financial condition of the Funds;
 - (d) the appropriateness of portfolio assets given the investment objectives set out in the Funds' prospectuses; and
 - (e) the appropriateness of JEGF's investment in PAM.
11. The results of the focused compliance review indicated that:
- (a) the portfolio securities of the Funds were of good quality (liquid and "blue chip") except for PAM;
 - (b) purchases in the Funds were almost nil, except for large purchases by JFM and associated parties and some small monthly purchases by retail clients;
 - (c) the Funds were taken off FundSERV in or about November 2005 and no active marketing of the Funds was taking place;
 - (d) unreconciled portfolio security positions and unreconciled cash balances in the Funds totalled \$1.2 million or about 9% of the Funds' assets;
 - (e) approximately \$1.4 million or 11% of JEGF's net assets (including the investment in PAM) were offside with JEGF's investment objectives;
 - (f) JEGF's investment in PAM appeared to contravene section 111(3) of the *Act* which prohibits mutual funds from knowingly holding an investment in an issuer in which an officer or director of the mutual fund's management company has a significant interest;
 - (g) potential net asset value ("NAV") errors existed for the Funds due to unreconciled assets, mispricing of portfolio securities and failure to record liabilities on a timely basis;

- (h) inadequate books and records were maintained as evidenced by no bank reconciliations, no portfolio security reconciliations and incomplete trade and unitholder records; and
- (i) JFM acting as a mutual fund dealer without registration, as unitholders could buy and redeem units in the Funds directly with JFM.

12. As a result of the focused compliance review, Mr. Brown and JFM were asked by Compliance Staff to address the following four key deficiencies:

- (a) unreconciled differences in the Funds' portfolio security positions between custodial records and JFM's records;
- (b) unreconciled differences in the Funds' cash balances between custodial and bank records and JFM's records;
- (c) \$1.4 million in investments inconsistent with JEGF's prospectus; and
- (d) JEGF's investment in PAM.

13. JFM delivered an action plan dated December 23, 2005 to address the key deficiencies listed above.

14. In January 2006, Staff and JFM exchanged correspondence and held discussions with Mr. Brown and his counsel aimed at resolving each of the four key deficiencies and other deficiencies.

15. As a result of the focused compliance review and further inquiries and discussions with Mr. Brown and his counsel, Staff became concerned with the accuracy and completeness of the

Funds' assets, liabilities and units outstanding resulting in the Funds' NAV being materially incorrect.

16. On or about March 14, 2006, Staff provided a Compliance Field Review Report to JFM and its counsel. The Compliance Field Review Report identified significant deficiencies including: (a) fund governance; (b) fund accounting; (c) unsuitable and prohibited investments; (d) inadequate books and records; (e) concerns that JFM was acting as a mutual fund dealer without registration; (f) inaccuracies and inconsistencies with JEGF's simplified prospectus; (g) misleading statements on Juniper's website and press releases; (h) examples of trades not settled within three business days; (i) a potential conflict of interest by the Funds' auditor; and (j) inadequate written policies and procedures.

JFM'S AND MR. BROWN'S MARGIN ACCOUNTS

17. Roy Brown is a client of NBFL and has a margin trading account 116KRZ-E which was transferred from another broker and opened with NBFL in or about November 2005. Mr. Brown had \$800,000 in JEGF units in this margin account and an outstanding debit balance of approximately \$350,000 as of March 15, 2006.

18. JFM has a margin trading account 27R001E with NBCN which was opened in or about March 2005. JFM had approximately 600,000 JEGF units in JFM margin account 27R001E and had an outstanding debit balance of approximately \$1.8 million as of March 15, 2006.

19. Staff alleges that JFM and/or Mr. Brown has/have misrepresented their ownership interests in JEGF units to NBCN and NBFL and/or to Compliance Staff.

20. Staff alleges that the number of JEGF units owned by JFM and Mr. Brown as shown on the account statements for JFM account 27R001E and Mr. Brown's account 116KRZ-E is inconsistent with the unitholder information as at December 31, 2005 and January 25, 2006 provided by JFM and Mr. Brown to Compliance Staff.

21. Staff alleges that JFM and/or Mr. Brown improperly issued JEGF units in the names of JFM and Mr. Brown to the prejudice of JEGF and the other JEGF unitholders.

22. Staff alleges that JFM and/or Mr. Brown has/have improperly permitted JEGF to guarantee JFM's outstanding cash balances in accounts including 27R001E and 27R005E contrary to section 112 of the *Act* and section 2.6 of NI 81-102.

CONDUCT CONTRARY TO THE PUBLIC INTEREST

23. Staff alleges that JFM did not exercise its powers and discharge its duties as fund manager honestly, in good faith and in the best interests of the Funds and did not exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, contrary to section 116(1) of the *Act* and contrary to the public interest. JFM breached its statutory duty of care to the Funds by: (i) failing to have complete supporting records of unitholders and their trades and failing to prepare accurate NAV calculations for the Funds which resulted in material NAV errors; (ii) failing to keep proper books and records contrary to section 19(1) of the *Act*; (iii) improperly issuing JEGF units in the names of JFM and Mr. Brown; (iv) failing to have an adequate process for the pricing of the Funds' portfolio securities; and (v) failing to ensure that the Funds' portfolio holdings complied with the fundamental investment objectives of the Funds and with Ontario securities law.

24. Staff alleges that JFM failed to ensure that the NAV of the Funds was calculated in accordance with Canadian generally accepted accounting principles ("GAAP") due to the inaccurate recording and valuation of all assets, liabilities and outstanding units contrary to subsections 14.2(1) and 14.4 of NI 81-106 and contrary to the public interest.

25. Staff alleges that JFM failed to maintain accurate records of the unitholders and the units held by each unitholder contrary to subsection 18.1 of NI 81-102 and contrary to the public interest.

26. Staff alleges that material NAV errors for the Funds have resulted from JFM's failure to put in place an adequate process and a system of controls for the calculation of the Funds' NAV. Staff alleges that the impact of the material NAV errors is that either the unitholders or the Funds are either overpaid or underpaid when purchases or redemptions are made which is contrary to the public interest.

27. Staff alleges that JFM participated in a prohibited loan in the amount of \$618,900 and borrowed other monies from JEGF contrary to subsection 111(1)(a) and section 112 of the *Act* and contrary to the public interest.

28. Staff allege that JEGF's investment of \$400,000 in preferred shares of PAM is contrary to subsections 111(2)(c)(ii) and 111(3) of the *Act* and contrary to the public interest. After its merger, JEGF held securities that were inconsistent with its fundamental investment objectives contrary to the public interest.

29. Staff alleges that JFM has acted as custodian or sub-custodian of assets of JEGF in the investment in PAM, cash and GICs of JEGF were not properly held with the custodian of JEGF, contrary to subsection 6.1(1) of NI 81-102.

30. Staff alleges that JFM acted as a mutual fund dealer for purchases and redemptions in units of the Funds without being registered as a mutual fund dealer contrary to subsection 25(1)(a) of the *Act* and contrary to the public interest.

31. Staff alleges that JEGF's simplified prospectus and annual information form contained inaccuracies and inconsistencies contrary to sections 56(1) and 122(1) of the *Act* and contrary to the public interest.

32. Staff alleges that the Funds' website at www.juniperfund.ca and press releases contained untrue or misleading sales communications contrary to subsection 15.2(1) of NI 81-102 and contrary to the public interest.

33. Staff alleges that Mr. Brown, as an officer and director of JFM, has authorized, permitted or acquiesced in breaches of sections 19(1), 25(1)(a), 56(1), 111(1)(a), 111(2)(c)(ii), 111(3), 112, 116(1) and 122(1) of the *Act* and in breaches of subsections 2.6, 6.1(1), 15.2(1) and 18.1 of NI 81-102 and subsections 14.2(1) and 14.4 of NI 81-106 and in doing so has acted contrary to section 129.2 of the *Act* and engaged in a conduct contrary to the public interest.

34. Staff alleges that Mr. Brown, as an officer and director of JFM, has authorized, permitted or acquiesced in a misrepresentation of JFM's ownership interest in JEGF units and in the issuance of JEGF units to JFM and Mr. Brown and in so doing has prejudiced other JEGF unitholders and the Funds and engaged in conduct contrary to the public interest.

35. Such additional allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 21st day of March, 2006