

The Ontario Securities Commission

# OSC Bulletin

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The Ontario Securities Commission administers the *Securities Act* of Ontario (R.S.O. 1990, c. S.5) and the *Commodity Futures Act* of Ontario (R.S.O. 1990, c. C.20)

**The Ontario Securities Commission**

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# Chapter 1

## Notices / News Releases

### 1.1 Notices

#### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**MAY 28, 2010**

#### CURRENT PROCEEDINGS

**BEFORE**

#### ONTARIO SECURITIES COMMISSION

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Unless otherwise indicated in the date column, all hearings will take place at the following location:

The Harry S. Bray Hearing Room  
Ontario Securities Commission  
Cadillac Fairview Tower  
Suite 1700, Box 55  
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Toronto, Ontario  
M5H 3S8

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#### CDS

#### TDX 76

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David L. Knight, FCA	—	DLK
Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
Charles Wesley Moore (Wes) Scott	—	CWMS

### SCHEDULED OSC HEARINGS

May 31, 2010		<b>Coventree Inc., Geoffrey Cornish and Dean Tai</b>
10:00 a.m.		s. 127
June 1, 2010		J. Waechter in attendance for Staff
9:00 a.m.		Panel: JEAT/MGC/PLK
June 2, 2010		
10:00 a.m.		
June 3, 2010		
1:00 p.m.		
June 4, 2010		
12:00 p.m.		
June 14-15; June 28, 2010		
10:00 a.m.		
June 29, 2010		
1:00 p.m.		
May 31 – June 2, 2010		<b>Lyndz Pharmaceuticals Inc., James Marketing Ltd., Michael Eatch and Rickey McKenzie</b>
10:00 a.m.		s. 127(1) and (5)
June 3, 2010		J. Feasby in attendance for Staff
2:30 p.m.		Panel: PJL/SA
June 2, 2010		<b>M P Global Financial Ltd., and Joe Feng Deng</b>
10:00 a.m.		s. 127(1)
		M. Britton in attendance for Staff
		Panel: DLK/MCH

June 3, 2010 9:00 a.m.	<b>Nelson Financial Group Ltd., Nelson Investment Group Ltd., Marc D. Boutet, Stephanie Lockman Sobol, Paul Manuel Torres, H.W. Peter Knoll</b>	June 10, 2010 2:00 p.m.	<b>Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York</b>
	s. 127		s. 127
	P. Foy in attendance for Staff		H. Craig in attendance for Staff
	Panel: DLK		Panel: TBA
June 3, 2010 10:00 a.m.	<b>Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, Pasquale Schiavone, and Shafi Khan</b>	June 10, 2010 2:00 p.m.	<b>York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott Bassingdale</b>
	s. 127(7) and 127(8)		s. 127
	H. Craig in attendance for Staff		H. Craig in attendance for Staff
	Panel: DLK		Panel: TBA
June 4, 2010 10:00 a.m.	<b>Franklin Danny White, Naveed Ahmad Qureshi, WNBC The World Network Business Club Ltd., MMCL Mind Management Consulting, Capital Reserve Financial Group, and Capital Investments of America</b>	June 14, 2010 10:00 a.m.	<b>Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Schiff</b>
	s. 127		s. 127
	C. Price in attendance for Staff		H. Craig in attendance for Staff
	Panel: PJJ/CSP		Panel: TBA
June 7, 2010 10:00 a.m.	<b>Sextant Capital Management Inc., Sextant Capital GP Inc., Otto Spork, Robert Levack and Natalie Spork</b>	June 15, 2010 2:00 p.m.	<b>Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya</b>
	s. 127		s. 127
	T. Center in attendance for Staff		C. Price in attendance for Staff
	Panel: JDC/CSP		Panel: TBA
June 7, 2010 10:00 a.m.	<b>Paul Donald</b>		
	s. 127		
	C. Price in attendance for Staff		
	Panel: TBA		

June 16, 2010 2:00 p.m.	<b>Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Networth Financial Group Inc., and Networth Marketing Solutions</b>	June 29, 2010 10:00 a.m.	<b>Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang</b>
	s. 127 and 127.1 H. Daley in attendance for Staff Panel: TBA		s. 127 and 127.1 M. Britton in attendance for Staff Panel: TBA
June 16, 2010 2:00 p.m.	<b>Wilton J. Neale, Multiple Streams of Income (MSI) Inc., and 360 Degree Financial Services Inc.</b>	June 30, 2010 9:30 a.m.	<b>Abel Da Silva</b>
	s. 127 and 127.1 H. Daley in attendance for Staff Panel: TBA		s. 127 M. Boswell in attendance for Staff Panel: MGC
June 16, 2010 2:00 p.m.	<b>Albert Leslie James, Ezra Douse and Dominion Investments Club Inc.</b>	July 8-9, 2010 10:00 a.m.	<b>Shane Suman and Monie Rahman</b>
	s. 127 and 127.1 H. Daley in attendance for Staff Panel: TBA		s. 127 and 127(1) C. Price in attendance for Staff Panel: JEAT/PLK
June 16, 2010 2:00 p.m.	<b>Rezwealth Financial Services Inc., Pamela Ramoutar, Chris Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc. and Sylvan Blackett</b>	July 9, 2010 10:00 a.m.	<b>Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, Daryl Renneberg and Danny De Melo</b>
	s. 127 and 127.1 H. Daley in attendance for Staff Panel: TBA		s. 127 A. Clark in attendance for Staff Panel: CSP
June 21, 2010 10:00 a.m.	<b>Shallow Oil &amp; Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman</b>	July 9, 2010 11:30 a.m.	<b>Global Energy Group, Ltd. And New Gold Limited Partnerships</b>
	s. 127(1) and (5) A. Heydon in attendance for Staff Panel: JEAT		s. 127 H. Craig in attendance for Staff Panel: CSP
June 28, 2010 10:00 a.m.	<b>Shallow Oil &amp; Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman</b>	August 10-13, 2010 10:00 a.m.	<b>Robert Joseph Vanier (a.k.a. Carl Joseph Gagnon)</b>
	s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: TBA		s. 127 S. Horgan in attendance for Staff Panel: JEAT/PLK

<p>August 13, 2010 10:00 a.m.</p>	<p><b>Access Automation LLC, Access Fund Management, LLC, Access Fund, L.P., Gordon Alan Driver and David Rutledge, Steven M. Taylor and International Communication Strategies</b></p> <p>s. 127</p> <p>Y. Chisholm in attendance for Staff</p> <p>Panel: CSP</p>	<p>September 13-24, 2010 and October 4-19, 2010 10:00 a.m.</p>	<p><b>Sulja Bros. Building Supplies, Ltd., Petar Vucicevich, Kore International Management Inc., Andrew Devries, Steven Sulja, Pranab Shah, Tracey Banumas and Sam Sulja</b></p> <p>s. 127 and 127.1</p> <p>J. Feasby in attendance for Staff</p> <p>Panel: TBA</p>
<p>September 7-10, 2010 10:00 a.m.</p>	<p><b>Maple Leaf Investment Fund Corp., Joe Henry Chau (aka: Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow), Tulsiani Investments Inc., Sunil Tulsiani and Ravinder Tulsiani</b></p> <p>s. 127</p> <p>M. Vaillancourt/T. Center in attendance for Staff</p> <p>Panel: TBA</p>	<p>September 27 – October 1, 2010 10:00 a.m.</p>	<p><b>Chartcandle Investments Corporation, CCI Financial, LLC, Chartcandle Inc., PSST Global Corporation, Stephen Michael Chesnowitz and Charles Pauly</b></p> <p>s. 127 and 127.1</p> <p>S. Horgan in attendance for Staff</p> <p>Panel: TBA</p>
<p>September 13, 2010 9:00 a.m.</p>	<p><b>Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiants Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group</b></p> <p>s. 127 and 127.1</p> <p>H. Craig in attendance for Staff</p> <p>Panel: JEAT</p>	<p>October 13, 2010 10:00 a.m.</p>	<p><b>Ameron Oil and Gas Ltd. and MX-IV, Ltd.</b></p> <p>s. 127</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: MGC</p>
<p>September 13-24, 2010 10:00 a.m.</p>	<p><b>New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar, Paola Lombardi and Alan S. Price</b></p> <p>s. 127</p> <p>S. Kushneryk in attendance for Staff</p> <p>Panel: TBA</p>	<p>October 13, 2010 10:30 a.m.</p>	<p><b>QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvaser and Rostislav Zemlinsky</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>





TBA	<p><b>Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling</b></p> <p>s. 127(1) and 127.1</p> <p>J. Superina, A. Clark in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony</b></p> <p>s. 127 and 127.1</p> <p>J. Feasby in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Global Partners Capital, Asia Pacific Energy Inc., 1666475 Ontario Inc. operating as “Asian Pacific Energy”, Alex Pidgeon, Kit Ching Pan also known as Christine Pan, Hau Wai Cheung, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, Gurdip Singh Gahunia also known as Michael Gahunia or Shawn Miller, Basis Marcellinius Toussaint also known as Peter Beckford, and Rafique Jiwani also known as Ralph Jay</b></p> <p>s. 127</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Gold-Quest International, Health and Harmony, Iain Buchanan and Lisa Buchanan</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun</b></p> <p>s. 127</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson</b></p> <p>s. 127(1) and 127(5)</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric</b></p> <p>s. 127 and 127(1)</p> <p>D. Ferris in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Lehman Cohort Global Group Inc., Anton Schnedl, Richard Unzer, Alexander Grundmann and Henry Hehlsinger</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: JEAT/CSP/SA</p>
		TBA	<p><b>Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance</b></p> <p>s. 127</p> <p>C. Johnson in attendance for Staff</p> <p>Panel: TBA</p>

TBA	<p><b>Borealis International Inc., Synergy Group (2000) Inc., Integrated Business Concepts Inc., Canavista Corporate Services Inc., Canavista Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky</b></p> <p>s. 127 and 127.1</p> <p>Y. Chisholm in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan</b></p> <p>s. 127</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk</b></p> <p>s. 37, 127 and 127.1</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt</b></p> <p>s. 127</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited</b></p> <p>s. 127</p> <p>M. Britton/J.Feasby in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Maple Leaf Investment Fund Corp., Joe Henry Chau (aka: Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow),</b></p> <p>s. 127</p> <p>M. Vaillancourt/T. Center in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Anthony Ianno and Saverio Manzo</b></p> <p>s. 127 and 127.1</p> <p>A. Clark in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Tulsiani Investments Inc. and Sunil Tulsiani</b></p> <p>s. 127</p> <p>M. Vaillancourt/T. Center in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Peter Robinson and Platinum International Investments Inc.</b></p> <p>s. 127</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Agoracom Investor Relations Corp., Agora International Enterprises Corp., George Tsiolis and Apostolis Kondakos (a.k.a. Paul Kondakos)</b></p> <p>s. 127</p> <p>T. Center in attendance for Staff</p> <p>Panel: TBA</p>

TBA            **Gold-Quest International, 1725587  
Ontario Inc. carrying  
on business as Health and  
Harmony, Harmony Club Inc.,  
Donald Iain Buchanan, Lisa  
Buchanan and Sandra Gale**

s. 127

H. Craig in attendance for Staff

Panel: TBA

**ADJOURNED SINE DIE**

**Global Privacy Management Trust and Robert  
Cranston**

**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  
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Hemingway, Kelly Friesen, Sonja A. McAdam, Ed  
Moore, Kim Moore, Jason Rogers and Dave  
Urrutia**

**Hollinger Inc., Conrad M. Black, F. David Radler,  
John A. Boulton and Peter Y. Atkinson**

**1.1.2 CSA/IIROC Joint Staff Notice 23-308 – Update on Forum to Discuss CSA/IIROC Joint Consultation Paper 23-404 “Dark Pools, Dark Orders and Other Developments in Market Structure in Canada” and Next Steps**

**CANADIAN SECURITIES ADMINISTRATORS/INVESTMENT  
INDUSTRY REGULATORY ORGANIZATION OF CANADA JOINT STAFF NOTICE 23-308**

**Update on Forum to Discuss CSA/IIROC Joint Consultation Paper 23-404  
“Dark Pools, Dark Orders and Other Developments in Market Structure in Canada” and Next Steps**

**I. Background**

On October 2, 2009, the Canadian Securities Administrators (CSA) and the Investment Industry Regulatory Organization of Canada (IIROC and together with the CSA, we) published the CSA/IIROC Joint Consultation Paper 23-404 *Dark Pools, Dark Orders, and Other Developments in Market Structure in Canada* (Consultation Paper), requesting comments on a number of market structure issues, particularly the impact of marketplaces that offer no pre-trade transparency (dark pools), the introduction of new non-transparent order types, and the introduction of smart order routers. We received 23 response letters from a range of respondents including marketplaces, buy side and sell side representatives, and industry associations. A summary of the comment letters received is included at Appendix A of this Notice and a list of commenters at Appendix B.

On March 23, 2010, the CSA and IIROC also hosted a forum to discuss the issues raised in the Consultation Paper and comment letters and to give respondents a chance to elaborate on their views. The morning session consisted of 11 formal presentations and the afternoon consisted of a roundtable discussion. Representatives from marketplaces, dealers and buy-side investors took part in the morning session and addressed questions from a panel consisting of senior executives from both the CSA and IIROC.<sup>1</sup> The afternoon session involved a roundtable discussion among the presenters facilitated by Wendy Rudd, which touched on issues raised in the Consultation Paper and in morning presentations. In addition, there was a luncheon keynote speech by Larry Tabb, founder and CEO of Tabb Group, discussing similar market structure issues in the United States.

Edited recordings of each of the presentations and the roundtable discussion<sup>2</sup> are available on the IIROC website at [www.iiroc.ca](http://www.iiroc.ca) under the heading “Member Resources” and the subheadings “Member Events – Webcasts/Recorded Events”.

We thank those who contributed to the process by both responding to our request for comments or by presenting and participating in the forum. In particular, we thank Ms. Wendy Rudd who facilitated the afternoon session. We have gathered a great deal of information from this process and will be using it to inform our policy-making going forward.

**II. Themes of the Forum**

We identified a number of themes that emerged during the forum. Many reiterated issues that had been raised in response letters we received, while others went beyond the topics addressed in the Consultation Paper and touched on other market structure issues of interest.

Some of the themes directly related to the issues raised for discussion in the Consultation Paper included:

- the practice of broker preferencing<sup>3</sup> at the marketplace level and internalization of order flow;
- the practice of dark pools sending Indications of Interest (IOIs) to attract order flow;
- the fairness of a marketplace using a proprietary smart order router (SOR) that has access to information on that marketplace that is not otherwise available to other marketplace participants;
- the use of market pegged orders<sup>4</sup> and whether those orders “free-ride” off the visible market;
- whether dark pools should be required to offer price improvement; and
- the use of sub-penny pricing.

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<sup>1</sup> The panel consisted of: Louis Morisset, Superintendent, Securities Markets, Autorité des marchés financiers; Susan Wolburgh Jenah, President and CEO, IIROC; David Wilson, Chair of the Ontario Securities Commission; and Sinan Akdeniz, OSC Commissioner.

<sup>2</sup> The presentation and roundtable discussions were edited for the purposes of publication by removing housekeeping and other matters.

<sup>3</sup> We define broker preferencing to mean a marketplace feature that allows orders from the same participant or subscriber to execute ahead of other orders posted at the same price in a central limit order book.

<sup>4</sup> Market pegged orders are orders which automatically and continuously re-price, according to changes in a reference bid or offer.

Issues related to the Canadian equity market structure that were not raised specifically in the Consultation Paper included:

- concerns about marketplace data fee increases with the emergence of multiple marketplaces;
- direct and sponsored access to marketplaces;
- the impact of high-frequency trading on the market; and
- the need for regulators to take a holistic view of the market when considering regulation instead of dealing with specific issues in isolation.

We have compiled a high-level overview of the views expressed both in writing and at the forum and also included below a discussion of ongoing initiatives and proposed next steps to address some of the issues.

**a. Broker Preferencing**

There were many different views on this issue. Some participants supported the concept stating that in the absence of inter-market time priority that broker preferencing is essentially irrelevant. Others believed that broker preferencing is inherently unfair as earlier orders are bypassed and ignored. A common point of discussion was the concern that the removal of broker preferencing from the Canadian marketplaces might result in dark pools being established by dealers to internalize orders which would reduce transparency. Forum participants also indicated that due to the relatively small number of dealers that control a significant portion of the order flow, additional internalization of order flow at the dealers is a factor that should be considered when analyzing dark pools.

We acknowledge that broker preferencing is a unique feature of certain Canadian marketplaces and that it is a by-product of Rule 6.3 of the UMIR that requires dealers to immediately expose "small" orders on a transparent marketplace. This rule supports price discovery and increases the breadth and depth of the displayed market and provides direction to achieve best execution for these small orders. In other jurisdictions, these types of orders are often withheld from the market and matched internally by the dealer, therefore eliminating the need for broker preferencing. We agree that the impact of the internalization of order flow is an important consideration in our review of the issues raised at the forum, including broker preferencing.

CSA and IIROC staff intend to examine the issue of broker preferencing. We do believe that at the outset, more transparency is required so that market participants understand how all trading options offered by the marketplaces function. CSA staff are considering requiring that marketplaces provide specific disclosure on their websites on how orders entered on a marketplace interact with other orders on that marketplace throughout the day, including a detailed description of each order type. This proposal will be part of a package of amendments to National Instrument 21-101 *Marketplace Operation* (NI 21-101) and National Instrument 23-101 *Trading Rules* that will deal with updating the regulatory regime for alternative trading systems.<sup>5</sup> CSA staff anticipate that the amendments will be published for comment by the Fall of 2010.

**b. Dissemination of IOIs by Dark Pools**

The main issues related to IOIs disseminated by dark pools in order to attract order flow were:

- the point at which an IOI becomes an order<sup>6</sup> and becomes subject to the transparency requirements set out in Part 7 of NI 21-101; and
- the fairness and transparency of marketplaces' practices with respect to IOI dissemination.
- CSA and IIROC staff will be monitoring the initiatives taken in the U.S. with respect to "actionable IOIs".<sup>7</sup> CSA staff believes that enhanced transparency of marketplaces' practices regarding the dissemination of information respecting orders and trades, including the provision of IOIs, will also address some of the concerns raised.
- CSA staff are also considering providing clarification on the definition of an order and what features would qualify an IOI as an order.

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<sup>5</sup> This project will be the second phase to related initiatives set out in OSC Staff Notice 21-703 *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems*.

<sup>6</sup> NI 21-101 defines an order as meaning a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security.

<sup>7</sup> SEC Release No. 34-60997 (October 21, 2009). The SEC proposed that, if the practical context in which IOIs are transmitted renders them "actionable", for example if they include sufficient information (including symbol, side (buy or sell), size (minimum of a round lot of trading interest), and price (explicit or implicit) they be included in the definition of "bid" or "offer" in Rule 600(b)(8) of Regulation NMS and thus become subject to transparency requirements.

**c. Use of SORs by Marketplaces**

This issue revolves around the concept of a marketplace-owned smart order router using information about hidden orders on that marketplace when making routing decisions. Although some felt that this practice was not a concern as this is a routing decision only, others thought that all visible orders at a given price should have priority over all hidden orders.

CSA staff are assessing whether the use of marketplace-owned SORs which take into account hidden liquidity available on their own book gives that marketplace an unfair advantage over other marketplaces and SORs. CSA staff are also considering the impact that this practice has on investors and will be examining whether marketplaces that provide information on hidden liquidity to their proprietary SORs should be required to provide the same information to other third-party SORs in order to meet the fair access provisions of NI 21-101.<sup>8</sup>

**d. Market-Pegged Orders**

Some forum participants raised concerns over market-pegged orders, specifically whether market-pegged orders have a negative impact on price discovery because they are simply free-riding the quotes from other marketplaces or whether the unrestricted use of such orders created a disincentive to display liquidity. Others were of the view that many order types are variations of pegs, and that the concept was simply centralizing a process which could be, and is currently, done by dealer algorithms or manually, and thus would result in a reduction of message traffic between market participants. This was also consistent with the majority of the responses to the Consultation Paper, which did not raise concerns with pegged orders. We will continue to review proposed order types from marketplaces.

**e. Price Improvement and Sub-Penny Pricing<sup>9</sup>**

Forum participants discussed the idea of price improvement in dark pools, as well as the concept of sub-penny pricing. Questions were raised whether dark pools should always be required to offer price improvement, how much price improvement is meaningful, and whether sub-penny price improvement is desired or even relevant. It was noted that sub-penny price improvement may only be meaningful for dark pools achieving block sized execution, but is of questionable benefit to the overall market or to the investors for small orders. Participants also discussed the fairness of allowing dark pools to offer sub-penny price improvement while transparent markets are not allowed to offer the same execution opportunities. Some participants felt that sub-penny quoting on visible exchanges would not be desirable, one reason being the impact of increased messaging due to sub-penny pricing and marketplaces' technology infrastructure costs.

We will examine the issue of sub-penny pricing with the goal of assessing how any changes in either printing or quoting in sub-pennies would impact both the market as a whole, and the individual participants. Additionally, we will consider both transparent and dark markets, and whether principles of fairness would allow both types of venues to offer sub-penny price improvement and printing or execution, or whether different market structure models necessitate different treatment.

**f. Market Data Fees**

Participants expressed concern that marketplace data fees are too high, especially in today's multiple marketplace environment where dealers need to consider data from all appropriate marketplaces, and not just those where a dealer is a participant. Some believed that dealers are, in effect, "captive consumers" of marketplaces' data, and that current fees for such data may not be commensurate with the marketplaces' market share or value of their data.

The CSA are currently conducting a review of all fees charged by marketplaces, including data fees. CSA staff's goal is to ensure that the costs involved with accessing services provided by marketplaces, including data, trading and routing are compliant with the fair access provisions in NI 21-101.<sup>10</sup>

**g. Electronic Trading and Direct Market Access**

Some participants indicated that the regulators should examine the issues surrounding direct market access.

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<sup>8</sup> Subsections 5.1(b) and 6.13(b) of NI 21-101 require exchanges and ATs, respectively, to not unreasonably prohibit, condition or limit access by a person or company to services offered by them.

<sup>9</sup> Subsection 6.1(1) of the UMIR does not allow the entry of orders on a marketplace at a price that includes a fraction or a part of a cent, other than orders with prices of less than \$0.50 which may be entered to trade at an increment of one-half of one cent. However, executions for certain specialty orders (such as basis, call market or volume-weighted average price orders) may occur at sub-penny increments and may be reported in that fashion if permitted by the information processor or by the information vendor used by the marketplace.

<sup>10</sup> NI 21-101 5.1 and 6.13 state that exchanges and ATs must not unreasonably prohibit, condition, or limit access by a person or company to services offered by it. As indicated in Companion Policy 21-101CP, these includes services related to data.

In April 2007, the CSA and IIROC published proposals relating to direct market access. Since that time, the market has changed, technology has significantly advanced and regulatory regimes governing direct market access have changed in other jurisdictions. As a result, CSA and IIROC staff have embarked on a broad scope review of electronic trading in Canada, including direct market access practices, with a view to assess what requirements are needed to address credit risk, market risk and systemic risk to the Canadian market. The objectives of the review of electronic trading include assessing what controls, filters and other mechanisms marketplaces and market participants should have to prevent errors at the order-entry stage and, in general, to promote fair and orderly markets.

As a result of the market volatility experienced on May 6<sup>th</sup>, 2010, we have expanded the scope of the project to include the examination of other electronic trading issues, including the need to standardize the volatility parameters used by Canadian marketplaces in times of extreme volatility.<sup>11</sup>

***h. High Frequency Trading***

It was suggested at the forum that regulators also review high frequency trading, particularly as its growth may have impacted time priority benefits and the ability of some market participants to achieve trade execution. We continue to monitor developments in this area, and particularly recent initiatives in the U.S. aimed at reviewing short-term trading strategies and their impact on the market. A review of issues associated with high frequency trading was also included in the scope of the project to examine electronic trading discussed above.

IIROC staff continue to monitor changes in patterns of trading on Canadian marketplaces, and the impact of “high frequency trading” is included in that monitoring. Changes in technology and the development of competitive multiple marketplaces have significantly increased message traffic and order to trade ratios. Future rates of growth in high frequency trading will be dependent upon decisions which may be made with respect to such issues as sub-penny pricing.

***i. Other***

A few forum participants were concerned that the scope of the Consultation Paper and of the forum discussions was limited to issues related to dark pools and certain order types. They indicated that the CSA and IIROC should expand their review and take a holistic view of the markets rather than considering the issues separately.

We believe that we are accomplishing this through our review of the issues discussed above. These issues are not considered in isolation and are, in many cases, related. We believe that our approach also allows us to focus our consultation with market participants on specific issues and to elicit meaningful comments.

**III. Conclusion**

In the last few years, we have experienced significant developments in the Canadian capital markets. Most notably, the introduction of multiple marketplaces, which have different features and business models, has given rise to new market structure issues. We have described a number of initiatives currently in place to address such new issues. As we are working through these initiatives, we welcome any input and perspective of market participants. If you have any comments or questions, please contact any of the CSA or IIROC staff listed below.

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<sup>11</sup> Currently, some marketplaces use “freeze parameters” on their trading engines that allow them to freeze trading in specific securities where a significant price change occurs. This allows them to determine if a sudden price movement is due to potential erroneous trades. Currently, the use of these parameters is not consistent across the marketplaces.



## APPENDIX A

### CSA/IIROC Joint Consultation Paper 23-404 Dark Pools, Dark Orders, and Other Developments in Market Structure in Canada

#### Summary of Comments

In response to the CSA/IIROC Joint Consultation Paper 23-404 (Consultation Paper), 23 comment letters were received. The commenters included buy and sell side representatives, transparent and non-transparent marketplaces and industry associations. A summary of the comments is presented below.

#### **General considerations**

Most commenters, which included the vast majority of the buy-side respondents, believed that there were benefits from having dark pools and dark order types. For example, they indicated that dark pools may result in lower trading costs, they provide investors with more choice, encourage competition, allow asset managers to trade large blocks of securities without information leakage, and play an important role in achieving best execution.

The views of the marketplace representatives that provided comments were mixed. Some stressed the importance of transparency in the price discovery process and believed that, while dark pools may serve the investors' interest in the right circumstances, their use may be detrimental to price discovery and liquidity. Others believed that dark pools operate with interdependencies with the transparent marketplaces, and help increase total liquidity and benefit investors. The latter group also highlighted the benefits of dark pools, such as the fact that they protect the confidentiality of institutional block orders, increase liquidity by allowing these orders to interact with other orders, including but not limited to block orders, and that they contribute to price discovery.

A few respondents supported additional regulatory requirements, such as a requirement on dark pools to disclose their method of operation, order routing and communication of indication of interest (IOI) practices, requirements on dealers to be transparent regarding their decisions to route orders to dark pools and how their decisions comply with best execution, or a requirement that only large block trades be executed in dark pools. Some commenters, however, indicated that with the low volume of trading in dark pools (less than 2% of the entire Canadian market) and the lack of empirical evidence to analyze issues relating to Dark Pools, it is premature to consider regulatory action at this time. It was also suggested that there are other issues in the existing marketplace that should be scrutinized by the regulators such as, for example, high-frequency trading. One commenter noted that many changes have recently occurred in the marketplaces, and recommended the establishment of a committee of experts to ensure the CSA are kept apprised of issues surrounding rapidly changing markets.

It was also suggested that any discussion of non-transparent trading should expand beyond trading on marketplaces and should consider dealer internalization.

The questions in the Consultation Paper and a summary of the responses are included below.

#### **Question 1 – While trading on Dark Pools has not been extensive in Canada, please provide your views on the actual and/or potential impact of Dark Pools on:**

- a) Order size**
- b) Price discovery**
- c) Liquidity**
- d) Market fragmentation**
- e) Trading strategy**
- f) Client instructions**

**In your view, what will be the potential impact if the market share of Dark Pools in Canada increases significantly?**

#### *Order size*

Most commenters were of the view that dark pools would have little effect on order size. Some noted that there has been a general decrease in order size in the Canadian marketplace, but did not attribute this to the emergence of dark pools. Some respondents believed that, when used by large institutions, dark pools could in fact increase order size through the execution of large blocks. However, one buy-side commenter noted that the average trade size on dark pools is very small, suggesting that orders are merely being moved from visible to dark markets.

#### *Price discovery*

The majority of the respondents did not believe that dark pools impair price discovery, and some thought that they actually have a net positive benefit to price discovery resulting from post-trade reporting and in some opinions, the ability to attract large orders away from the upstairs market. Some indicated that dark pools have a less substantial negative impact on price discovery than the upstairs market has. However, a few respondents were of the view that dark pools undermine the price

discovery process, especially where dark pools attract orders from lit markets. Some thought that they offer little or no value to the price discovery process.

#### *Liquidity*

The question of liquidity brought mixed opinions, but most respondents believed that they would have a positive impact on liquidity. Most of those who believed that liquidity was enhanced made the assumption that dark pools were in fact successful in attracting latent interest to the market, and were not simply drawing existing orders from lit venues. Some dealer firms believed that dark pools are merely removing liquidity from visible markets and that, if dark pools are not accessible by everyone, liquidity would in fact be reduced.

#### *Fragmentation*

Most commenters agreed that dark pools would add to market fragmentation. Some noted, however, that there is fragmentation in the marketplace already due to the existence of the upstairs market, which caters to big blocks, and dark pools would not increase it. Others thought that the competition and innovation resulting from multiple marketplaces would provide a net benefit despite the inherent fragmentation. Many thought that the increased use of technology in the marketplace, and the fact that marketplaces are increasingly interconnected due to the use of Smart Order Routers (SORs) may address market fragmentation concerns.

#### *Trading strategy and client instructions*

The question regarding trading strategy and client instructions was not widely commented upon, however most of those who responded were of the opinion that both trading strategies and client instructions would continue to become more sophisticated and detailed, and that this would be a net benefit to participants. It was noted that dark pools support different types of trading strategies which are important to investors. One commenter questioned whether these sophisticated strategies would come at the expense of the retail investor. One indicated that dark pools increase the use of algorithms, electronic trading and SOR technology, which would allow institutional investors to play a greater role in trading decisions though their direct market access.

#### *Impact if dark pool market share increases significantly*

The responses varied. Some thought that increased market share by dark pools would have a positive effect as it may attract previously undisclosed liquidity. Some believed that an increase in market share of dark pools would have little, if any impact on the Canadian market. Other possible consequences identified by commenters were: increased use of technology and associated costs as there will be a need to connect to all marketplaces to access liquidity; narrowing of the spreads; and reduced market impact costs.

### **Question 2 – Please provide your views on whether there should be a minimum size requirement for orders entered on Dark Pools.**

In response to the question of imposing a minimum size for dark pool orders, the responses indicated a split in opinion. Although almost all comments from the marketplaces were against minimum size requirements, the opinions from both dealers and buy-side firms varied. Some felt that this decision should be left up to the dark pools themselves, while others indicated that minimum sizes such as 50 trading units, or \$100,000 CAD value, might work to protect the lit markets and contribute to improved price discovery and liquidity.

### **Question 3 – Please provide your views on whether Dark Pools should be permitted to send IOIs. If so, what information should be permitted to be included?**

The responses varied. Some commenters thought dark pools should be allowed to send IOIs, others that dark pools should be allowed to send IOIs only if their policies are transparent to users. Some thought the IOIs should not be sent at all, as they leak information, which runs counter to the very reason for the existence of the dark pools. A common theme amongst responses was that client or subscriber consent to IOIs, as well as full disclosure of IOI policies by dark pools, were essential. Some commenters believed that issues with IOIs become apparent when these messages are sent to only a small segment of the market. Others felt that the decision regarding who should receive such messages should be dependent on the structure of the dark pool in question. A couple of commenters indicated that IOIs should be used for routing decisions only, and not trading decisions. A few thought that the dark pool subscribers should be made aware of, and consent to, disclosure of the IOI before they can be disseminated by the dark pools.

### **Question 4 – Please provide your views whether or not Dark Pools should be permitted to select which destinations are able to receive IOIs. In your view should the ability to select which destinations receive IOIs be offered to subscribers?**

While the views of the respondents were mixed, most thought that allowing dark pools to select destinations for the IOIs they receive would create an unlevel playing field and a two-tiered market with some having access to information that others do not. Some indicated that it should be the subscribers of the Dark Pools that have the ability to select the destination for their IOIs, based on their clients' interest. A few thought that it is important that dark pools have the flexibility to target recipients of

communications and that this could be based on commercial relationships, business goals and needs, technology and probability of execution.

**Question 5 – In your view, when does an IOI provide sufficient information to require it to be treated like an order that should be subject to pre-trade transparency requirements?**

Responses about when an indication of interest actually becomes an order reflected differing opinions amongst commenters. The information in question relates to details about security symbol, order size, side and price. Many commenters believed that any IOI which establishes certainty in all four factors would constitute an order and should require pre-trade transparency. At the opposite end of the spectrum, some felt that any and all information which leaves a dark environment should immediately be transparent to all participants.

**Question 6 – What kind of transparency regarding practices of sending IOIs should be made by dark pools to their subscribers?**

Generally, respondents agreed that there should be transparency of dark pool practices regarding IOI information. One commenter suggested the information disclosed include a description of the IOI recipients and of the information that will be included in the IOIs, but most did not specify the type of disclosure that should be provided. A few respondents thought that disclosure of IOI practices should be made not only to subscribers, but also to the broad market.

**Question 7 – Should Dark Pools be required to provide full or partial transparency of their orders if a threshold of trading activity is reached?**

The views of the majority of respondents were similar with respect to this topic, and most agreed that dark pools should not be subject to these requirements. Some noted that this would undermine the very purpose and value of dark pools.

**Question 8 – What are your views on the fairness of broker preferencing?**

Most marketplace commenters indicated that broker preferencing was inherently unfair, however regulating the practice could result in greater negative consequences in the form of dealer-sponsored dark pools. Also voicing the same concern about dealer pools were the buy-side respondents, however their opinions on the fairness of broker preferencing were generally mixed. One commenter suggested a minimum transaction size in order for a broker-preferenced match to occur. Responses from dealer representatives varied, with some supporting the practice, and others indicating that it should only be allowed if the marketplace chooses to provide it, and others indicating that pure price-time priority is the only method of ensuring fairness to all participants.

**Question 9 – Are there other issues that should be considered in connection with dark pools?**

In addition to the issues raised in the responses to Questions 1 through 8, the respondents noted that:

- dark pools should not provide advantages to their users other than pre-trade opacity
- the goal should be to maintain a symbiotic relationship between the dark and lit markets to encourage liquidity
- the dark pools should only be allowed if they provide price improvement
- dark pools should be required to disclose rules and publish rule amendments for public comment to allow the public to monitor developments and comment before implementation of rules that may impact market structure

It was also noted that the needs of institutional investors in executing large block trades are different than those executing retail orders, as large trades have market impact while small trades do not.

Some commenters reiterated their recommendation that the upstairs market should be reviewed as well, as they believed it is much less transparent and fair than dark pools.

**Question 10 - Please comment on the actual and/or potential impact, if any, of Dark Orders on: a) price discovery; b) liquidity; c) clients' execution instructions; d) trading strategy.**

Many commenters reiterated their responses to Question 1 when discussing the impact of Dark Orders. In addition, they noted the following:

*Price discovery*

In response to the question regarding price discovery, some also indicated that visible elements of dark orders (such as the visible portion of an iceberg order) contribute to pre-trade discovery, and others thought that dark orders assist in providing price discovery by interacting with visible liquidity.

*Liquidity*

With respect to the impact of such orders on liquidity, the views were split between respondents that thought dark orders would increase liquidity, for example by attracting latent liquidity which would otherwise wait on the upstairs market or by allowing more liquidity to be brought into the market instead of being negotiated off-market, and others who thought that a natural progression toward dark orders would reduce liquidity.

*Client's execution instructions and trading strategy*

Some commenters thought that clients may not make full use of dark orders, as they are not aware of the various dark order types. One respondent noted that, while dealers are responsible for best execution and should be the ones making the decision whether to use dark orders, clients should also be aware of the dark orders that their dealers consider for trading.

The commenters agreed that dark orders would increase the options available to any trading strategy, and some indicated that providing traders with more tools to bring liquidity to the market is preferable to restrictions in dark order types.

**Question 11 – Please comment on the effect, if any, of the interaction of Dark Orders with visible limit orders on fairness and price discovery.**

The majority of respondents had no issues with dark orders interacting with visible limit orders, provided that the visible orders or the visible portion of dark orders, always maintains priority. One commenter was of the view that certain types of dark orders were unfair, and that orders should be subject to a trade-off between the price improvement of dark fills, and the immediacy from lit fills. The commenter felt that no order should be allowed the opportunity to hold both a position in a protected book, as well as the opportunity to execute inside the posted spread. One respondent was of the view that all orders should be visible or partially visible, to interact with visible orders.

Respondents' opinions on this subject began to differ when discussing fully-hidden orders posting at prices inside the prevailing spread. Most commenters representing marketplaces had no concerns with the practice, however some dealers and some buy-side participants expressed reservations. Some felt that minimum tick rules should apply, with no sub-tick pricing allowed, while others believed that only deterministically priced orders (i.e.: mid-point matches) should be able to participate. At the other end of the spectrum, some were of the opinion that no fully-hidden orders should be allowed.

**Question 12 – Should there be a minimum size requirement for certain Dark Orders? If yes, please explain.**

The majority of commenters thought there should be no minimum size requirement, for reasons including the fact that this would limit alternatives available to investors, or that such restrictions would create a two-tiered market with reduced opportunities to trade. A few thought there should be a minimum size requirement, and others thought it should be up to the marketplace to decide.

**Question 13 – Should a transparent marketplace allow fully-hidden orders to post at prices inside the prevailing spread (or should at least a portion of the order be required to be exposed, thereby removing the spread)?**

The responses were split between those who believed that hidden orders should be allowed to post inside the prevailing displayed spread (these being mainly marketplace and some dealer commenters), and those who thought transparent marketplaces should only execute trades at the best bid or best ask. Reasons for allowing trades to be executed at prices inside the prevailing spread were the potential price improvement and compliance with best price and order protection obligations, as well as the ability of marketplaces to create innovative products that address customers needs to achieve best execution. Reasons against orders posting at prices inside the prevailing spread were lack of consistency with the transparent order types, and concerns regarding the loss of price priority by visible orders.

A few respondents indicated that a portion of the hidden orders should always be exposed, thereby limiting the spread. One of the reasons given was to allow market participants fair access to information.

**Question 14 – Should marketplaces be required to provide priority to visible orders over Dark Orders at the same price?**

The vast majority of respondents thought that visible orders should be given priority over dark orders at the same price, for reasons including: the fact that market participants taking the risk to display their order should be rewarded by being given priority; to promote price discovery; and the risk that liquidity would be negatively impacted if dark orders were given priority, as there would be no incentive to post transparent orders.

One commenter however, thought that whether to give priority to visible orders should be a marketplace's choice and should not be mandated.

**Question 15 – Are there other issues that should be considered in connection with Dark Orders?**

Commenters raised a few items for consideration, as follows:

- technology advancement should not be impeded, as long as trading practices are not manipulative and deceptive
- whether last sale price information should be marked differently if it is a dark to dark order or a dark to light order
- whether trades resulting from dark orders within the spread should set the last sale price
- whether dark orders executing within the National Best Bid and Offer (NBBO) spread should be marked as dark order trades

**Question 16 – Please comment on the actual or potential impact if any, of market pegged orders on: a) Price discovery; and b) Fairness**

Most commenters, especially buy-side and dealer representatives, thought pegged orders enhance liquidity and price discovery. Some noted that dealers already use pegged orders through both trading systems and algorithms and thought that such orders, if available at the marketplace level, add fairness as they will be available to all participants. A few were of the view that pegged orders contribute to price discovery and are fair, but only if a portion of such orders is visible. Some commenters stressed the importance of being able to re-price orders on a timely basis, and noted that the introduction of pegging functionality at the market level reduces the risk and inefficiencies of limit order re-pricing, which used to be done manually.

The views of marketplace respondents were mixed. For example, some thought that pegged orders can provide additional liquidity but only if they are dark, while another commenter thought that they should be displayed in order to provide price and volume discovery.

**Question 17 – Although this paper has not specifically addressed pegged orders that execute at the mid point of the NBBO, in your view, should market pegged orders be allowed to execute at prices unavailable to transparent orders (e.g. at a price between the bid and the ask when the spread is a single trading increment)?**

There was variation in opinion with respect to the topic of sub-penny execution. Some felt that it was inconsistent and unfair to the general market to allow dark pools to offer sub-penny pricing, and not permit visible marketplaces to provide the same, and a few believed that allowing sub-tick execution penalizes those participants who have placed visible bids. Conversely, other commenters thought that by not allowing pegged orders to execute at the midpoint of the NBBO, this would restrict trading option and it would not be possible to provide price improvement where there is a one-cent spread.

**Question 18 – Although this paper has not specifically addressed pegged orders that are fully-hidden, in your view are there any issues that arise due to fully hidden market pegged orders?**

As set out before, some respondents thought that pegged orders should be fully hidden in order for them to provide additional liquidity, while others thought that if fully hidden, they do not contribute to price discovery. One commenter added that, with proper regulation, fully hidden orders would not take priority from displayed orders.

**Question 19 – Are there other issues that should be considered with regard to market pegged orders?**

Other matters raised were:

- the fact that automatic re-pricing of pegged order at the marketplace level will reduce message traffic
- the fact that fully hidden pegged orders will have less of an impact on market data messaging
- there was a suggestion that the regulators set out a 10% minimum increment for the pegged order's execution price
- there was a suggestion that the regulators analyze who uses marketplace pegged orders and why they are used, and should determine whether investors are disadvantaged by these order types

**Question 20 – What is your view of a marketplace SOR taking into consideration hidden liquidity posted on that marketplace when making routing decisions? Is it appropriate? Should the information be required to be provided to**

**other participants? Should a marketplace's SOR be allowed to take into account hidden liquidity only after all visible liquidity at the same price on all marketplaces is executed against?**

Respondents were generally in agreement that a marketplace SOR should be allowed to take into account hidden liquidity on that marketplace, and most saw no issues with this practice as long as subscribers were fully informed. However, a number of participants felt that visible liquidity across all marketplaces should be exhausted first, and that SORs should not be developed in a way that disadvantages those who post visible orders.

**Question 21 – Is the practice of a SOR taking into account hidden liquidity posted on a marketplace an example of internalization of order flow? What are the similarities and differences with a dealer internalizing order flow?**

A few commenters thought this practice would be akin to internalization of order flow, as the SOR would be accessing information that is not communicated to all marketplace participants. However, most respondents did not think taking into account hidden liquidity posted on a marketplace is internalizing. The latter group noted that internalizing only occurs when orders from the same dealer interact, and that SORs taking into account hidden liquidity do not take into account any specific participant, and crosses are merely coincidental.

**Question 22 – What are your views on internalization generally?**

Most respondents, especially dealer and buy-side representatives, were in support of internalization. They thought the practice reduces latency and trading and clearing costs and improves client fill rates. However, some commenters, especially the marketplaces, thought internalization can harm the quality of the markets by weakening price transparency, liquidity and price discovery. A few thought that internalization should be subject to additional regulatory oversight.

**Question 23 – What is your view on databasing?**

The majority of commenters had no issue with the concept of databasing, and many felt that innovation in technology should be considered a benefit.

**Question 24 – Please comment on whether there are other issues that should be considered in connection to SORs using hidden liquidity in routing decisions.**

Commenters raised a number of points, including:

- regulation should not stifle innovation
- that SORs use of hidden liquidity has occurred in the U.S. without negative impact
- that use of hidden liquidity should be subject to providing clear transparency on how it works

**Question 25 – Are there any other issues not discussed in this paper that should be considered for discussion at the round table that will be convened after the publication of this paper?**

A number of issues were raised for consideration, as follows:

- the need for regulatory scrutiny of high frequency trading and electronic market making
- the need for scrutiny of activities occurring in the upstairs market
- the impact on technologies of increased message traffic due to market pegged orders and certain dark orders
- the need to discuss and review regulatory developments in US and Europe to reduce potential for regulatory arbitrage
- establishing acceptable minimum standards to operate ATs and dark pools

**Question 26 – In what way if any, do you believe that the combined potential of these developments represents a risk to the market?**

There were different responses to this question. Some commenters thought that there is no evidence of systemic risk resulting from dark pools and dark orders, others noted a potential negative impact of dark pools and dark order types on price discovery, market fairness and integrity. One respondent thought that the market developments discussed in the paper may have a unique impact on Canada, where there are a few players managing large pools of liquidity, and stressed the importance of price discovery.

**APPENDIX B**  
**List of Commenters**

1. Alpha ATS
2. BMO Capital Markets
3. Canadian Securities Traders Association
4. CNSX Markets Inc.
5. Chi-X Canada
6. CIBC World Markets
7. Connor, Clark, & Lunn Investment Management Ltd.
8. Greystone Managed Investments Inc.
9. Highstreet Asset Management Inc.
10. Investment Counsel Association of Canada
11. Investment Industry Association of Canada
12. Investment Technology Group
13. Instinet Canada Ltd.
14. Liquidnet Canada Inc.
15. Newedge Canada Inc.
16. National Bank Financial
17. Omega Securities Inc.
18. Penson Financial Services Canada
19. RBC Dominion Securities Inc.
20. RBC Asset Management Inc.
21. TD Asset Management Inc.
22. TD Securities Inc.
23. TMX Group

1.2 Notices of Hearing

1.2.1 Paul Donald – 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  
PAUL DONALD

NOTICE OF HEARING  
(Sections 127 and 127.1)

**TAKE NOTICE THAT** the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Monday, June 7, 2010 at 10 a.m., or as soon thereafter as the hearing can be held,

**TO CONSIDER** whether, in the opinion of the Commission, it is in the public interest, pursuant to ss. 127 and 127.1 of the Act, to order that:

- (a) trading in any securities by the respondent cease permanently or for such period as is specified by the Commission, pursuant to s. 127(1)2 of the Act;
- (b) the acquisition of any securities by the respondent is prohibited permanently or for such other period as is specified by the Commission, pursuant to s. 127(1)2.1 of the Act;
- (c) any exemptions contained in Ontario securities law do not apply to the respondent permanently or for such period as is specified by the Commission, pursuant to s. 127(1)3 of the Act;
- (d) the respondent be reprimanded, pursuant to s. 127(1)6 of the Act;
- (e) the respondent resign one or more positions that he holds as a director or officer of any issuer, pursuant to s. 127(1)7 of the Act;
- (f) the respondent be prohibited from becoming or acting as a director or officer of any issuer, pursuant to s. 127(1)8 of the Act;
- (g) the respondent pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to s. 127(1)9 of the Act;
- (h) the respondent disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to s. 127(1)10 of the Act;
- (i) the respondent be ordered to pay the costs of the Commission investigation and the hearing, pursuant to s. 127.1 of the Act; and
- (j) such other orders as the Commission may deem appropriate;

**BY REASON OF** the allegations as set out in the Statement of Allegations dated May 20, 2010 and such further additional allegations as counsel may advise and the Commission may permit;

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

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

**DATED** at Toronto this 20th day of May, 2010.

"Daisy Aranha"  
per: John Stevenson  
Secretary to the Commission



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

**AND**

**IN THE MATTER OF  
PAUL DONALD**

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

Staff of the Ontario Securities Commission ("Staff") allege that:

**I. THE RESPONDENT**

1. Paul Donald ("Donald") is a resident of Ontario and is a former Vice President of Research In Motion Limited ("RIM"). Donald was Vice President of a RIM division called CDMA (Code Division Multiple Access). In this role, Donald managed relationships in relation to the sale of Blackberry units with telecom carriers that used CDMA technology in Canada, the United States and Latin America.

**II. OVERVIEW**

2. On August 20, 2008, Donald attended a RIM golf and dinner function for officers of RIM. Donald sat at a table with, among others, Chris Wormald ("Wormald"), Vice President of RIM's Strategic Alliances Group. The Strategic Alliances Group was responsible for RIM's corporate development through acquisitions and licensing.

3. At the function, Donald and Wormald engaged in a conversation involving material facts relating to Certicom Corp. ("Certicom") that had not been generally disclosed, including that RIM had been in confidential discussions with Certicom relating to a potential acquisition of Certicom by RIM, that RIM had a continuing interest in an acquisition of Certicom, and that Donald understood from Wormald that Certicom's current share price was dramatically undervalued.

4. On the following day, August 21, 2008, Donald began purchasing securities of Certicom. By September 15, 2008, Donald had purchased 200,000 shares of Certicom (the "Trades"). At the time of the Trades, Donald was in a special relationship with Certicom with knowledge of material facts with respect to Certicom that had not been generally disclosed.

**III. BACKGROUND TO ALLEGATIONS**

**(a) Certicom**

5. Prior to being acquired by RIM, Certicom was a provider of cryptography required by software vendors and device manufacturers, including RIM, to embed security in their products. Certicom's technology was based on elliptical curve cryptography ("ECC"). ECC provides the most security per bit of any known public-key security technology. Devices using ECC require less storage, power, memory and bandwidth than other technologies. Consequently, ECC technology is vital in hand-held communication devices and in providing high-level security assurance.

6. At the time of the Trades, Certicom was a reporting issuer in Ontario and its common shares were listed on the Toronto Stock Exchange (the "TSX").

**(b) RIM**

7. RIM is a designer, manufacturer and marketer of wireless devices for the mobile communications market. Its head office is in Waterloo, Ontario. RIM's common shares are listed on the TSX and the NASDAQ Stock Market.

8. RIM began licensing Certicom's security technology in or about May 2000. Beginning in February 2002, RIM and Certicom signed a series of non-disclosure agreements, which culminated in the signing of a non-disclosure agreement on June 17, 2008.

9. Certicom's ECC technology and intellectual property were vitally important to RIM's core product, the Blackberry, including maintaining its high-security assurance.

**(c) RIM Interest in Acquiring Certicom**

10. In February 2007, members of the senior management and boards of directors of RIM and Certicom, including Jim Balsillie ("Balsillie"), RIM's Co-Chief Executive Officer, Mike Lazaridis, RIM's President and Co-Chief Executive Officer, Herb Little, RIM's Director of Blackberry Security, Wormald, Ian McKinnon, Certicom's then Chief Executive Officer, and Scott Vanstone ("Vanstone"), the founder of Certicom and a member of its board of directors, met to discuss Certicom and its future prospects and the possibility of RIM acquiring Certicom. On or after that meeting, RIM had come to the conclusion that Certicom was a natural fit for RIM.

11. On July 11, 2007, RIM and Certicom entered into a non-disclosure agreement (the "2007 NDA"), which also contained a twelve-month standstill provision. The effect of the standstill provision was to prevent RIM from making an offer to Certicom shareholders without Certicom's consent.

12. Under the 2007 NDA, Certicom provided confidential information to RIM in two tranches prior to September 2008. In September of 2007, Certicom provided RIM with a large package of disclosure pursuant to the 2007 NDA. It included: Certicom's financial year 2008 strategic growth plan and business plan; a detailed list of Certicom patents pending and issued; patent licence agreements, including confidential agreements with Certicom's key customers; a breakdown of Certicom's patent licence revenue; Certicom's patent infringement information; and Certicom's litigation information. The information provided was specifically deemed Confidential Information pursuant to the 2007 NDA and was not publically available.

13. In November of 2007, Certicom's interim Chief Executive Officer put the possible acquisition "on hold" because Certicom anticipated that a permanent CEO would be named by year-end, and the matter should be left to the new CEO.

14. A new CEO of Certicom, Karna Gupta ("Gupta"), was appointed in January of 2008.

15. In February of 2008, Vanstone met with Wormald and asked why RIM appeared disinterested in acquiring Certicom. Vanstone was not aware that Certicom's interim CEO had shut down RIM's due diligence and acquisition discussions. He provided Wormald with an e-mail with a summary of certain licences, and later, a memory stick containing some, but not all, licensing agreements. RIM and Certicom agreed to treat this information as though it was provided pursuant to the 2007 NDA.

16. In March of 2008, Balsillie spoke to Gupta about the potential acquisition. Gupta advised Balsillie he was focusing on fixing the business fundamentals and would only turn his attention to the potential acquisition in a few quarters.

17. Certicom and RIM executed a second non-disclosure agreement on June 17, 2008. This agreement was signed in the ordinary course of their commercial relationship and not in contemplation of an acquisition. It did not contain a standstill provision.

18. The standstill provision of the 2007 NDA expired on July 11, 2008.

**(d) Project Troy**

19. RIM hired Jamie Belcher ("Belcher"), who began work on July 14, 2008 as Manager, Strategic Alliances. Belcher reported to Wormald. Belcher's role, at the time, was mainly to assist in evaluating a potential transaction with Certicom, including a hostile bid.

20. On Wormald's instructions, beginning in early August 2008, Belcher requested the assistance of RIM legal to analyze Certicom's licence agreements. Belcher also chose a code name for the Certicom transaction. The code name selected was Project Troy and was in use prior to August 20, 2008. A code name was assigned by RIM when a potential transaction reached a point of seriousness.

21. Belcher documented background information and findings of his evaluation of Certicom in a Power-Point presentation, entitled "Certicom opportunity – Project Troy" (the "Pitch Book"). Belcher provided daily updates to Wormald as to his progress in evaluating the potential transaction with Certicom and by August 21, 2008, had prepared and circulated a draft Pitch Book, which analyzed the merits of an acquisition of Certicom. The Pitch Book included, among other things:

- a. A number of "value propositions" where the "successful acquisition of Certicom provides RIM with numerous strategic, financial, resource, and product related benefits";
- b. an "acquisition strategy", including both friendly and hostile bid scenarios. The friendly bid scenario was characterized as having a "high" likelihood of success. The hostile bid scenario was characterized as having a "moderate" likelihood of success; and

- c. the following "Next Steps":
- Engage investment bank and legal advice;
  - Begin preparation of take-over circular;
  - Begin approaching institutional holders re: block trade;
  - Complete detailed integration plan; and
  - Approach Certicom BOD.

**(e) The Golf Tournament**

22. On August 20, 2008, RIM hosted a golf tournament for its officers, including vice-presidents. Donald and Wormald attended the event, sitting at the same table during dinner. As stated above, Wormald and Donald discussed Certicom, including that

- a. RIM had been in talks with Certicom about a potential acquisition,
- b. Certicom was not interested in a deal at the time;
- c. RIM was speaking to Vanstone, Certicom's founder and chair of the board of directors;
- d. RIM had an ongoing interest in acquiring Certicom;
- e. Donald knew Certicom's ex-CEO, Philip Deck, and could attempt to arrange for a meeting if it would assist with the talks; and
- f. based on Certicom's licensing agreements, Certicom's share price was dramatically undervalued.

23. On the following day, August 21, 2008, Donald began purchasing securities of Certicom. Donald had never before purchased Certicom securities.

**(f) RIM's Insider Trading Policy**

24. RIM had an insider trading policy (the "Insider Trading Policy"), which Donald certified yearly to having read and understood and with which he agreed to comply. Among other things, the Insider Trading Policy stipulated that a RIM insider (defined as including RIM officers and employees)

May not buy or sell securities of another public company while in possession of material, non-public information regarding that company, which knowledge was gained in the course of the Insider's work at, or affiliation with, RIM.

25. Schedule A to the Insider Trading Policy contained examples of material information such as "proposed acquisitions of other companies, including take-over bids or mergers". Schedule A also instructed as follows:

An Insider who has a question about materiality of information known to him or her should contact the Chief Financial Officer . . . or the Vice President, Legal. . .

**(g) Friendly Discussions Resume**

26. In early September 2008, Certicom approached RIM about renewing their friendly discussions, after Certicom had commenced discussions with an unidentified party. Subsequently, Certicom provided more confidential information to RIM.

**(h) RIM's Hostile Take-over Offer**

27. On December 10, 2008, RIM launched a hostile take-over bid for Certicom. RIM offered to pay \$1.50 per common share for all of the common shares of Certicom.

28. On January 20, 2009, RIM withdrew its offer following an injunction granted to Certicom by the Ontario Superior Court of Justice.

29. After a competing offer from Verisign, Inc. made on January 23, 2009 for \$2.10 per share, RIM and Certicom entered into an arrangement agreement on February 2, 2009, under which RIM would acquire all of Certicom's common shares at \$3.00 per share.

30. On March 23, 2009, Certicom received final court approval for and completed the plan of arrangement with RIM under which RIM acquired all of Certicom's common shares at \$3.00 per share. Certicom's shares were delisted from the TSX on March 25, 2009.

#### **IV. ALLEGATIONS**

##### **(a) Donald in a Special Relationship with Certicom**

31. At the time of the Trades, Donald was in a special relationship with Certicom because

- a. he learned of material facts with respect to Certicom while he was an insider, officer and employee of RIM, when RIM was a company
  - i. proposing to make a take-over bid of Certicom;
  - ii. proposing to become a party to a reorganization, amalgamation, merger or arrangement or similar business combination with Certicom; and/or
  - iii. engaging in business with Certicom; and
- b. he learned of material facts with respect to Certicom from Wormald, who was in a special relationship with Certicom in circumstances where Donald knew or ought reasonably to have known that Wormald was a person in such a relationship.

##### **(b) Donald Purchased Securities of Certicom**

32. Donald acquired 200,000 shares of Certicom during the period August 21 to September 15, 2008 for a total cost of \$305,000.

33. Donald received proceeds of \$600,000 on March 26, 2009 through RIM's offer to acquire all the shares of Certicom. Donald's profit on his trading in shares of Certicom was \$295,000.

##### **(c) Donald Had Knowledge of Material Facts with Respect to Certicom that Had Not Been Generally Disclosed**

34. At the time of the Trades, Donald had knowledge of material facts with respect to Certicom that had not been generally disclosed. Specifically, the material facts were that RIM had been in confidential discussions with Certicom relating to a potential acquisition of Certicom by RIM, that RIM was in talks with Vanstone, and that RIM had a continuing interest in an acquisition of Certicom. In addition, Donald understood from Wormald that Certicom's current share price was dramatically undervalued based on Certicom's licensing agreements.

#### **V. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST**

35. Donald purchased securities of Certicom while in a special relationship with Certicom and with knowledge of material facts about Certicom that had not been generally disclosed, contrary to section 76(1) of the Act.

36. Further, and in any event, in purchasing securities of Certicom in the circumstances, Donald acted contrary to the public interest.

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

**DATED** at Toronto, Ontario, this 20th day of May 2010.

1.3 News Releases

1.3.1 Securities Regulators Help Young Canadians Increase Financial Literacy with the “Financial Fitness Challenge”

FOR IMMEDIATE RELEASE  
May 25, 2010

**SECURITIES REGULATORS HELP  
YOUNG CANADIANS INCREASE  
FINANCIAL LITERACY WITH THE  
“FINANCIAL FITNESS CHALLENGE”**

**Montréal** – More than 17,000 Canadian youth worked to get “financially fit” by participating in the Canadian Securities Administrators’ (CSA) annual “Financial Fitness Challenge”.

From February 15 to April 15, 2010, the CSA challenged Canadian youth aged 15 to 21 to test their knowledge of personal finance concepts including saving and investing at [www.financialfitnesschallenge.ca](http://www.financialfitnesschallenge.ca). Over 39,000 visitors explored the website’s educational resources, used interactive tools, and participated in online discussions. In total 17,305 youth registered on the site to take the Challenge and competed for provincial and national prizes.

“As securities regulators, we believe it’s important for people to understand the fundamentals of saving and investing when participating in Canada’s capital markets,” said Jean

St-Gelais, CSA Chair and President and Chief Executive Officer of the Autorité des marchés financiers (Québec). “We are pleased that young Canadians, their parents and their teachers use the Challenge as a fun and informative learning tool to create good financial habits that will last a lifetime.”

The CSA increased contest engagement and discussion through the social media tools Facebook and Twitter. The contest encouraged youth to share and discuss the Challenge with their Facebook friends and Twitter followers.

Patricia Lee-Kim from Belleville, Ontario, is this year’s national grand prize winner of a \$2,000 cash prize. Thirteen other provincial and territorial winners also demonstrated their financial savvy by participating in the Challenge and were awarded a notebook computer:

Provincial and territorial winners

- Stephanie Ridenour (British Columbia)
- Arielle Boyes (Alberta)
- Ashley Teckchandani-Buziak (Saskatchewan)
- Adrian De Juan (Manitoba)
- Robin Buckley-Cuomo (Ontario)
- Roxanne Bourgoin Ouellet (Québec)
- Jillian Breen (New Brunswick)
- Chauntelle Brewer (Nova Scotia)
- Laura Stewart (Prince Edward Island)
- Tiffany Sceviour (Newfoundland and Labrador)
- Allan Paziuk (Northwest Territories)
- Olivia Ullyot (Nunavut)
- Shellby Fulton (Yukon)

While the Financial Fitness Challenge contest period for 2010 has ended, the educational information and interactive features remain available year-round to youth and teachers who visit [www.financialfitnesschallenge.ca](http://www.financialfitnesschallenge.ca). To see more of the CSA's free investor materials for people of all ages, visit [www.securities-administrators.ca](http://www.securities-administrators.ca).

The CSA, the council of the securities regulators of Canada's provinces and territories, co-ordinates and harmonizes regulation for the Canadian capital markets.

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**1.3.2 CSA and IROC Publish Update of Regulatory Issues and Next Steps to Address Developments in Market Structure in Canada**

**FOR IMMEDIATE RELEASE  
Friday, May 28, 2010**

**CSA AND IROC PUBLISH UPDATE OF  
REGULATORY ISSUES AND NEXT STEPS TO  
ADDRESS DEVELOPMENTS IN  
MARKET STRUCTURE IN CANADA**

**Toronto** – The Canadian Securities Administrators (CSA) and the Investment Industry Regulatory Organization of Canada (IIROC) today published Joint Staff Notice 23-308 *Update on Forum to Discuss Consultation Paper 23-404 Dark Pools, Dark Orders and Other Developments in Market Structure in Canada and Next Steps*. The Notice provides a high-level overview of the key themes raised at a recent forum co-hosted by the CSA and IIROC in Toronto on March 23, 2010, as well as a discussion of regulatory initiatives underway to address the issues raised.

The Forum brought together marketplaces, dealers and buy-side representatives to discuss issues raised in CSA-IIROC Consultation Paper 23-404 *Dark Pools, Dark Orders, and Other Developments in Market Structure in Canada* and in the comment letters submitted in response. The Consultation Paper was issued for public comment on October 2, 2009. A summary of comments received in response to the paper and the list of commenting organizations are included in the Notice.

Themes that emerged during the Forum included issues such as:

- the practice of broker preferencing at the marketplace level;
- dissemination of indication of interest by dark pools;
- the use of certain order types by marketplaces;
- requirements for price improvement;
- use of sub-penny pricing;
- marketplace data fees;
- the impact of high frequency trading on our market; and
- electronic trading and direct market access.

The Notice describes ongoing regulatory initiatives and specifically:

- the consideration of additional transparency requirements for marketplaces;
- a review of sub-penny pricing;
- ongoing reviews of new order types proposed by marketplaces;
- CSA staff's review of fees charged by marketplaces, including data fees;
- a review of electronic trading, including direct market access; and
- monitoring the impact of high frequency trading on the Canadian market.

These regulatory initiatives together form part of a comprehensive examination of market structure in Canada.

The Notice is available on the websites of IIROC and of CSA members.

The CSA, the council of the securities regulators of Canada's provinces and territories, co-ordinates and harmonizes regulation for the Canadian capital markets.

IIROC is the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada.

**For more information:**

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**1.4 Notices from the Office of the Secretary**

**1.4.1 Paul Donald**

**FOR IMMEDIATE RELEASE  
May 20, 2010**

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

**AND**

**IN THE MATTER OF  
PAUL DONALD**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing today setting the matter down to be heard on June 7, 2010, at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated May 20, 2010 and Statement of Allegations of Staff of the Ontario Securities Commission dated May 20, 2010 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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For investor inquiries:

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

**1.4.2 Nelson Financial Group Ltd. et al.**

**FOR IMMEDIATE RELEASE  
May 25, 2010**

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

**AND**

**IN THE MATTER OF  
NELSON FINANCIAL GROUP LTD.,  
NELSON INVESTMENT GROUP LTD.,  
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,  
PAUL MANUEL TORRES, H.W. PETER KNOLL**

**TORONTO** – Take notice that the hearing in the above named matter scheduled to be heard on June 3, 2010, at 11:30 a.m., will be heard on June 3, 2010 at 9:00 a.m.

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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1.4.3 Wilton J. Neale et al.

**FOR IMMEDIATE RELEASE  
May 25, 2010**

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

**AND**

**IN THE MATTER OF  
WILTON J. NEALE,  
MULTIPLE STREAMS OF INCOME (MSI) INC.  
AND 360 DEGREE FINANCIAL SERVICES INC.**

**TORONTO** – The Commission issued an order in the above named matter which provides that (1) the Temporary Order insofar as it relates to the above-named respondents is extended to June 17, 2010 on the same terms as the Order dated March 26, 2010; and (2) a hearing in this proceeding if necessary, will take place commencing on June 16, 2010 at 2:00 p.m.

A copy of the Order dated May 13, 2010 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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1.4.4 Albert Leslie James et al.

**FOR IMMEDIATE RELEASE  
May 25, 2010**

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

**AND**

**IN THE MATTER OF  
ALBERT LESLIE JAMES, EZRA DOUSE  
AND DOMINION INVESTMENTS CLUB INC.**

**TORONTO** – The Commission issued an order in the above named matter which provides that (1) the Temporary Order insofar as it relates to the above-named respondents is extended to June 17, 2010; and (2) a hearing in this proceeding will take place commencing on June 16, 2010 at 2:00 p.m.

A copy of the Order dated May 13, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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1.4.5 Carlton Ivanhoe Lewis et al.

FOR IMMEDIATE RELEASE  
May 25, 2010

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

AND

IN THE MATTER OF  
CARLTON IVANHOE LEWIS,  
MARK ANTHONY SCOTT, SEDWICK HILL,  
LEVERAGEPRO INC., PROSPOREX INVESTMENT  
CLUB INC., PROSPOREX INVESTMENTS INC.,  
PROSPOREX LTD., PROSPOREX INC.,  
PROSPOREX FOREX SPV TRUST,  
NETWORTH FINANCIAL GROUP INC.,  
AND NETWORTH MARKETING SOLUTIONS

**TORONTO** – The Commission issued an order in the above named matter which provides that (1) the Temporary Order insofar as it relates to the above-named respondents is extended to June 17, 2010 on the same terms as the Order dated March 26, 2010; and (2) a hearing in this proceeding will take place commencing on June 16, 2010 at 2:00 p.m.

A copy of the Order dated May 13, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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1.4.6 Chartcandle Investments Corporation et al.

FOR IMMEDIATE RELEASE  
May 26, 2010

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

AND

IN THE MATTER OF  
CHARTCANDLE INVESTMENTS CORPORATION,  
CCI FINANCIAL, LLC, CHARTCANDLE INC.,  
PSST GLOBAL CORPORATION,  
STEPHEN MICHAEL CHESNOWITZ AND  
CHARLES PAULY

**TORONTO** – Following a hearing held today, the Commission issued an Order which provides that the hearing on the merits shall commence on Monday, September 27, 2010 at 10:00 a.m. and continue each day through to Friday, October 1, 2010, or as soon thereafter as may be fixed by the Secretary to the Commission and agreed to by the parties.

A copy of the Order dated May 26, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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1.4.7 Andrew Keith Lech

**FOR IMMEDIATE RELEASE**  
**May 26, 2010**

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

**AND**

**IN THE MATTER OF  
ANDREW KEITH LECH**

**TORONTO** – The Commission issued its Reasons and Decision in the above named matter.

A copy of the Reasons and Decision dated May 25, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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## Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Kulczyk Oil Ventures Inc.

#### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for relief from the requirement in section 3.1 of National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency that financial statements be prepared in accordance with Canadian GAAP – issuer wants to prepare its financial statements in accordance with International Financial Reporting Standards – issuer has implemented a comprehensive changeover plan, has assessed readiness of key persons, and has considered implications of adopting International Financial Reporting Standards – exemption granted, subject to conditions.

#### Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, s. 3.1.

**Citation:** Kulczyk Oil Ventures Inc., Re, 2010 ABASC 231

May 19, 2010

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ALBERTA AND ONTARIO  
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF  
KULCZYK OIL VENTURES INC.  
(the Filer)

DECISION

#### Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement in section 3.1 of National Instrument 52-107 *Acceptable Accounting Principles*,

*Auditing Standards and Reporting Currency (NI 52-107)* that financial statements be prepared in accordance with Canadian GAAP (the **Exemption Sought**), in order that the Filer may prepare its financial statements for financial periods beginning on or after January 1, 2010 in accordance with International Financial Reporting Standards (**IFRS**) as issued by the International Accounting Standards Board (**IFRS-IASB**).

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

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in British Columbia (the Passport Jurisdiction); and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

#### Interpretation

Terms defined in National Instrument 14-101 *Definitions* 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 a corporation incorporated under the *Business Corporations Act* (Alberta).
2. The Filer's head office is located in Calgary, Alberta.
3. The Filer is a reporting issuer in the Jurisdictions and the Passport Jurisdiction.
4. The Filer is not in default of its reporting issuer obligations under the Legislation or the securities legislation of the Passport Jurisdiction.
5. The Filer has recently filed application documents, including a prospectus, to obtain a listing on the Warsaw Stock Exchange (the **WSE**).
6. The Filer is an oil and gas exploration and production company whose principal assets are located in Brunei and Syria.

7. The Filer and its subsidiaries are subject to a diverse set of financial reporting requirements; the Filer prepares its financial statements in accordance with Canadian GAAP; however, Triton Hydrocarbons Pty Ltd., a private Australian company which the Filer acquired in September 2009, prepares its financial statements in accordance with Australian generally accepted accounting standards, which is similar to IFRS-IASB. The majority of the Filer's international operations are conducted through Cyprus entities that apply local IFRS that are also very similar to IFRS-IASB.
8. Upon the completion of its listing on the WSE, which is expected to occur in May 2010, the Filer intends to complete its acquisition of 70% of KUB-Gas LLC (**KUB-Gas**), an oil and gas exploration company located in Ukraine.
9. In connection with the application process for listing on the WSE, the Filer was required to prepare financial statements for KUB-Gas for the years ending December 31, 2006, 2007 and 2008 and the interim period ended September 30, 2009 in accordance with IFRS-IASB, and when the Filer becomes listed on the WSE, it would be beneficial to the Filer and users of its financial statements for the Filer to prepare all of its future financial statements in accordance with IFRS-IASB as other issuers listed on the WSE prepare their financial statements in accordance with IFRS-IASB.
10. The Filer has not previously prepared financial statements that contain an explicit and unreserved statement of compliance with IFRS.
11. The Canadian Accounting Standards Board has confirmed that publicly accountable enterprises will be required to prepare their financial statements in accordance with IFRS-IASB for financial statements relating to fiscal years beginning on or after January 1, 2011.
12. NI 52-107 sets out acceptable accounting principles for financial reporting under the Legislation by domestic issuers, foreign issuers, registrants and other market participants. Under NI 52-107, a domestic issuer must use Canadian GAAP with the exception that an SEC registrant may use US GAAP. Under NI 52-107, only foreign issuers may use IFRS-IASB.
13. In CSA Staff Notice 52-321 *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS-IASB for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so, despite section 3.1 of NI 52-107.
14. Subject to obtaining the Exemption Sought, the Filer intends to prepare its financial statements in accordance with IFRS-IASB for periods beginning on and after January 1, 2010 with a date of transition to IFRSs of January 1, 2009.
15. The Filer believes that the adoption of IFRS-IASB will avoid potential confusion for the users of its financial statements because the reporting requirements of its primary regulators would be satisfied using one accounting standard. Additionally, the use of a single accounting standard would eliminate complexity and cost from the Filer's financial statement preparation process.
16. The Filer has implemented a comprehensive IFRS-IASB conversion plan as part of its listing process for the WSE.
17. The Filer has carefully assessed the readiness of its staff, board of directors, audit committee, auditors, investors and other market participants for the adoption by the Filer of IFRS-IASB for financial periods beginning on and after January 1, 2010 and has concluded that they will be adequately prepared for the Filer's adoption of IFRS-IASB for periods beginning on January 1, 2010.
18. The Filer has considered the implications of adopting IFRS-IASB for financial periods beginning on or after January 1, 2010 on its obligations under securities legislation including, but not limited to, those relating to CEO and CFO certifications, business acquisition reports, offering documents, and previously released material forward looking information.
19. The Filer disclosed relevant information about its conversion to IFRS-IASB as contemplated by CSA Staff Notice 52-320 *Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards* in its management's discussion and analysis for the year ended December 31, 2009, including:
- (a) the key elements and timing of the Filer's changeover plan;
  - (b) the accounting policy and implementation decisions the Filer has made or will have to make;
  - (c) the exemptions available under IFRS 1 *First-time Adoption of International Financial Reporting Standards* that the Filer expects to apply in preparing financial statements in accordance with IFRS-IASB; and

- (d) major identified differences between the Filer's current accounting policies and those the Filer is required or expects to apply in preparing financial statements in accordance with IFRS-IASB.
20. The Filer will update the information set out in paragraph 19 including quantitative information regarding the impact of adopting IFRS-IASB on the key line items in the Filer's interim financial statements for the period ending March 31, 2010.

**Decision**

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Filer prepares its annual financial statements for years beginning on or after January 1, 2010 in accordance with IFRS-IASB;
- (b) the Filer prepares its interim financial statements for interim periods beginning on or after January 1, 2010 in accordance with IFRS-IASB, except that if the Filer files interim financial statements prepared in accordance with Canadian GAAP for one or more interim periods in the financial year in which it adopts IFRS-IASB, the Filer will restate and re-file those interim financial statements in accordance with IFRS-IASB at the time of filing its first IFRS-IASB financial statements together with the related restated interim management's discussion and analysis as well as the certificates required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;
- (c) the Filer provides the communication set out in paragraphs 19 and 20;
- (d) the Filer's first annual IFRS-IASB financial statements and first IFRS-IASB interim financial statements include an opening IFRS statement of financial position as at the date of transition to IFRSs, January 1, 2009, that is presented with equal prominence to other statements that comprise those financial statements;
- (e) in the Filer's first annual IFRS-IASB financial statements, the opening IFRS statement of financial position as at the date of transition to IFRSs is audited;

- (f) if the Filer presents the components of profit or loss in a separate income statement, the separate income statement is displayed immediately before the statement of comprehensive income;
- (g) the Filer's annual IFRS-IASB financial statements disclose an explicit and unreserved statement of compliance with IFRS; and
- (h) the Filer's IFRS-IASB interim financial statements disclose compliance with International Accounting Standard 34 *Interim Financial Reporting*.

Blaine Young  
Associate Director, Corporate Finance

2.1.2 BMO Investments Inc. et al.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds investing, until May 1, 2010, underlying Exchange Traded Funds that track particular broad market indices, but are not Index Participation Units (IPUs). Relief granted allowing sales fees or redemption fees be payable by a mutual fund in relation to its purchases or redemptions of the securities of a related mutual fund that are IPUs, provided that the requirements of section 2.5 of NI 81-102, except for paragraph 2.5(2)(e) – National Instrument 81-102 Mutual Funds are complied.

**Applicable Legislative Provisions**

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

April 16, 2010

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

AND

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

AND

IN THE MATTER OF  
BMO INVESTMENTS INC.  
(the Filer)

AND

BMO MUTUAL FUNDS  
LISTED ON APPENDIX “A”

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 of the principal regulator (the **Legislation**) for an exemption relieving the mutual funds managed by the Filer that are subject to National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Current BMO Funds**) and any future mutual funds managed by the Filer that are subject to NI 81-102 and any current or future mutual funds managed by an affiliate or associate of the Filer that are subject to NI 81-102 (together with the Current BMO Funds, individually, a **Fund** and, collectively, the **Funds**) from:

- (a) paragraph 2.5(2)(a) of NI 81-102 in order to permit the Funds to invest in securities of Underlying ETFs (defined herein) that are not subject to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and do not meet the definition of an “index participation unit” (**IPU**) under NI 81-102 for a limited period of time; and
- (b) paragraph 2.5(2)(e) of NI 81-102 in order to permit the Funds to pay brokerage fees associated with trades in securities of the Underlying ETFs (defined herein),

(collectively, the **Exemption Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, the Yukon Territory and Nunavut Territory.

**Interpretation**

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

**Current BMO ETFs** means exchange traded funds managed by the Filer or an affiliate or associate of the Filer and listed on Appendix “A”.

**Jones Heward** means Jones Heward Investment Counsel Inc.

**Underlying ETFs** means exchange-traded funds managed by the Filer or an affiliate or associate of the Filer, which exist as of the date hereof or which may be created in the future.

**Representations**

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

1. The Filer is a corporation amalgamated under the laws of Canada with its head office in Toronto, Ontario. The Filer acts as the manager of the Current BMO Funds and as the trustee of the Current BMO Funds that are structured as trusts.
2. The Funds are or will be reporting issuers in each of the provinces and territories of Canada and are



- or will be open-end mutual funds that are structured as trusts or as classes of a mutual fund corporation or as mutual fund corporations.
3. The Current BMO ETFs are reporting issuers in each of the provinces and territories of Canada and are established as trusts under the laws of Ontario. In the future, the Filer or an affiliate or associate of the Filer may act as manager in respect of Underlying ETFs that are structured as trusts or as corporations.
  4. The Underlying ETFs are or will be mutual funds, whose securities are listed and traded on the Toronto Stock Exchange in Canada, that attempt to replicate the performance of various indices.
  5. All Current BMO ETFs meet the definition of an IPU under NI 81-102 with the exception of three Current BMO ETFs (as reflected on Appendix "A"), which fail to meet the IPU definition solely on the basis that the disclosure specifying the widely-quoted market indices that these Current BMO ETFs seek to replicate is effective following the close of trading on April 30, 2010.
  6. Jones Heward acts as the manager and trustee of the Current BMO ETFs.
  7. The Filer and Jones Heward are affiliates, as they are both wholly-owned subsidiaries of Bank of Montreal.
  8. Either the Filer or an affiliate or associate of the Filer will be the manager of any future Funds or Underlying ETFs.
  9. The Funds wish to be able to invest in securities of the Underlying ETFs in order to obtain exposure to the underlying indices represented by the Underlying ETFs in a cost efficient manner.
  10. The Filer is in the process of creating new Funds that will invest in Underlying ETFs. In addition to investing in Underlying ETFs that qualify as IPU, the Filer would like the new Funds to be able to invest in the Current BMO ETFs that are not IPU.
  11. The Funds' investment in securities of the Underlying ETFs will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Funds.
  12. As each Underlying ETF is or will be a mutual fund, all investments by a Fund in an Underlying ETF must be made in compliance with section 2.5 of NI 81-102.
  13. As certain Current BMO ETFs will not meet the IPU definition until their new disclosure specifying the underlying indices takes effect after the close of trading on April 30, 2010, and as these Current BMO ETFs are not subject to NI 81-101, the Funds are unable to make use of the exemption in subsection 2.5(3) from paragraph 2.5(2)(a) of NI 81-102 to invest in a non-IPU Underlying ETF.
  14. As Jones Heward is an affiliate of the Filer, the Funds are prohibited by paragraph 2.5(2)(e) of NI 81-102 from purchasing securities of the Current BMO ETFs unless no sales or redemption charges are payable in connection with a purchase or redemption of such securities.
  15. The majority of trading in securities of the Underlying ETFs occurs in the secondary market.
  16. As is the case with the purchase or sale of any other equity security made on an exchange, dealers are typically paid a commission in connection with trading in securities of exchange-traded funds, such as the Underlying ETFs.
  17. Securities of the Underlying ETFs may only be directly purchased or redeemed from an Underlying ETF in large blocks. It is anticipated that many of the trades conducted by the Funds would not be the size necessary for a Fund to be eligible to purchase securities directly from the Underlying ETF.
  18. It is proposed that the Funds will purchase and sell securities of the Underlying ETFs on the applicable exchange and pay commissions to these dealers in connection with the purchase and sale of such securities.
  19. If a Fund makes a trade with or through an affiliate or associate of the Filer acting as dealer, the portfolio manager of the Fund will comply with its "best execution" obligation under the Legislation. In addition, the Filer will comply with its obligations under National Instrument 81-107 *Independent Review Committee for Investment Funds* in respect of the proposed related party transactions. Lastly, all such related party transactions will be disclosed to securityholders of the relevant Fund in the management report of fund performance of the Fund.
  20. Subsection 2.5(5) of NI 81-102 provides that the prohibition against the duplication of sales and redemption fees in paragraph 2.5(2)(f) does not apply to brokerage fees incurred by a mutual fund for the purchase or sale of an IPU issued by a mutual fund. The exemption provided in subsection 2.5(5) does not, however, also extend to the similar prohibition against the payment of sales and redemption fees in paragraph 2.5(2)(e), which applies when a mutual fund purchases or redeems securities of another mutual fund managed by an affiliate or associate of the manager of the mutual fund.

21. All investments by a Fund in an Underlying ETF will be made in compliance with section 2.5 of NI 81-102, with the exception of paragraph 2.5(2)(e) and, for a limited period of time where certain Current BMO ETFs do not yet meet the IPU definition, paragraph 2.5(2)(a).

**Decision**

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the Funds' investments in securities of the Underlying ETFs are made in compliance with the requirements of section 2.5 of NI 81-102, except paragraph 2.5(2)(e) and, until May 1, 2010 paragraph 2.5(2)(a) of NI 81-102.

Vera Nunes  
Assistant Manager, Investment Funds  
Ontario Securities Commission

**Appendix "A"**

**BMO Mutual Funds (Current BMO Funds)**

BMO T-Bill Fund  
BMO Money Market Fund  
BMO Canadian Money Market Fund  
BMO Premium Money Market Fund  
BMO Mortgage and Short-Term Income Fund  
BMO Bond Fund  
BMO Monthly Income Fund  
BMO World Bond Fund  
BMO Diversified Income Fund  
BMO Global Monthly Income Fund  
BMO Global High Yield Bond Fund  
BMO U.S. High Yield Bond Fund  
BMO Global Infrastructure Fund  
BMO Asset Allocation Fund  
BMO Dividend Fund  
BMO U.S. Equity Fund  
BMO Equity Fund  
BMO North American Dividend Fund  
BMO International Index Fund  
BMO U.S. Equity Index Fund  
BMO European Fund  
BMO U.S. Growth Fund  
BMO Equity Index Fund  
BMO Japanese Fund  
BMO Special Equity Fund  
BMO U.S. Special Equity Fund  
BMO Global Science & Technology Fund  
BMO Emerging Markets Fund  
BMO Resource Fund  
BMO Precious Metals Fund  
BMO U.S. Dollar Money Market Fund  
BMO U.S. Dollar Monthly Income Fund  
BMO U.S. Dollar Equity Index Fund  
BMO Short-Term Income Class  
BMO Dividend Class  
BMO Global Dividend Class  
BMO Canadian Equity Class  
BMO Global Equity Class  
BMO Greater China Class  
BMO Sustainable Opportunities Class  
BMO Global Energy Class  
BMO Sustainable Climate Class  
BMO International Value Class  
BMO Select Class Security Portfolio  
BMO Select Class Balanced Portfolio  
BMO Select Class Growth Portfolio  
BMO Select Class Aggressive Growth Portfolio  
BMO LifeStage Plus 2015 Fund  
BMO LifeStage Plus 2017 Fund  
BMO LifeStage Plus 2020 Fund  
BMO LifeStage Plus 2022 Fund  
BMO LifeStage Plus 2025 Fund  
BMO LifeStage Plus 2026 Fund  
BMO LifeStage Plus 2030 Fund  
BMO FundSelect™ Security Portfolio  
BMO FundSelect™ Balanced Portfolio  
BMO FundSelect™ Growth Portfolio  
BMO FundSelect™ Aggressive Growth Portfolio  
BMO American Equity Class

BMO Canadian Large Cap Equity Class  
BMO Emerging Markets Class  
BMO Enterprise Class  
BMO Global Absolute Return Class  
BMO Global Small Cap Class  
BMO Global Technology Class  
BMO Resource Class  
BMO Asian Growth and Income Class  
BMO LifeStage 2017 Class  
BMO LifeStage 2020 Class  
BMO LifeStage 2025 Class  
BMO LifeStage 2030 Class  
BMO LifeStage 2035 Class  
BMO LifeStage 2040 Class  
BMO Guardian Floating Rate Income Fund  
BMO Guardian Global Bond Fund  
BMO Guardian High Yield Bond Fund  
BMO Guardian Monthly Dividend Fund Ltd.  
BMO Guardian Growth & Income Fund  
BMO Guardian Monthly High Income Fund II  
BMO Guardian Canadian Large Cap Equity Fund  
BMO Guardian Dividend Growth Fund  
BMO Guardian Enterprise Fund  
BMO Guardian Global Absolute Return Fund  
BMO Guardian Global Equity Fund  
BMO Guardian Global Small Cap Fund  
BMO Guardian Global Technology Fund  
BMO Guardian Asian Growth and Income Fund  
BMO Guardian Canadian Diversified Monthly Income Fund  
BMO Guardian Global Diversified Fund  
BMO Guardian Income Solution  
BMO Guardian Conservative Solution  
BMO Guardian Balanced Solution  
BMO Guardian Growth Solution  
BMO Guardian Aggressive Growth Solution

**Current BMO ETFs**

BMO Canadian Government Bond Index ETF  
BMO Dow Jones Canada Titans 60 Index ETF  
BMO US Equity Hedged to CAD Index ETF  
BMO International Equity Hedged to CAD Index ETF  
BMO Emerging Markets Equity Index ETF  
BMO Global Infrastructure Index ETF  
BMO Dow Jones Industrial Average Hedged to CAD Index ETF  
BMO Short Federal Bond Index ETF  
BMO Short Provincial Bond Index ETF  
BMO Short Corporate Bond Index ETF  
BMO High Yield US Corporate Bond Hedged to CAD ETF\*  
BMO S&P/TSX Equal Weight Banks Index ETF  
BMO S&P/TSX Equal Weight Oil & Gas Index ETF  
BMO S&P/TSX Equal Weight Global Base Metals Hedged to CAD Index ETF  
BMO China Equity Hedged to CAD ETF\*  
BMO India Equity Hedged to CAD ETF\*  
BMO Equal Weight Utilities Index ETF  
BMO Nasdaq 100 Equity Hedged to CAD ETF  
BMO Junior Gold Index ETF  
BMO Mid Corporate Bond Index ETF  
BMO Long Corporate Bond Index ETF  
BMO Aggregate Bond Index ETF

\* Does not currently meet IPU definition under NI 81-102

### 2.1.3 Intergold Ltd. – s. 1(10)

#### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

#### Applicable Legislative Provisions

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

#### Citation: Intergold Ltd., Re, 2010 ABASC 230

May 19, 2010

Bennett Jones LLP  
4500 Bankers Hall East  
855 - 2 Street SW  
Calgary, AB T2P 4K7

#### Attention: Jonathan Hoyles

Dear Sir:

**Re: Intergold Ltd. (the Applicant) - Application for a decision under the securities legislation of Alberta and Ontario (the Jurisdictions) that the Applicant is not a reporting issuer**

The Applicant has applied to the local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions for a decision under the securities legislation (the **Legislation**) of the Jurisdictions to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

- (a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;
- (b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- (c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- (d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is deemed to have ceased to be a reporting issuer.

"Blaine Young"  
Associate Director, Corporate Finance

#### 2.1.4 Nexx Systems, Inc.

##### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from registration and prospectus requirements in connection with the use of electronic roadshow materials – cross-border offering of securities – compliance with U.S. offering rules leads to non-compliance with Canadian regime – relief required as use of electronic roadshow materials constitutes a distribution requiring compliance with prospectus and registration requirements – relief granted from sections 25 and 53 of the Securities Act (Ontario) in connection with a cross-border offering – decision subject to conditions.

##### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53.  
National Policy 47-201 Trading Securities Using the Internet and Other Electronic Means, s. 2.7.

May 25, 2010

**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  
NEXX SYSTEMS, INC.  
(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 of the principal regulator (the "Legislation") for a decision exempting the Filer from the prospectus requirement to permit the Filer to post certain roadshow materials on the website of one or more commercial services such as [www.retailroadshow.com](http://www.retailroadshow.com) and/or [www.netroadshow.com](http://www.netroadshow.com) during the "waiting period" and the registration requirement under the Legislation (collectively, the "Exemption Sought").

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

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

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

##### Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* and MI 11-102 have the same meaning in this decision unless they are defined in this decision.

##### Representations

This decision is based on the following facts and representations made by the Filer:

1. The Filer was formed as a limited liability company in Delaware in 2001 and converted to a Delaware corporation in 2003 in accordance with the requirements of Delaware General Corporation Law.
2. The principal office of the Filer is located at 900 Middlesex Turnpike, Building #6 Billerica, Massachusetts 01821.
3. On February 11, 2010, the Filer filed a registration statement on Form S-1 (the "Form S-1") under the *Securities Act of 1933* of the United States of America, as amended (the "1933 Act") with the United States Securities and Exchange Commission (the "SEC") relating to the initial public offering (the "Offering") of its shares of common stock (the "Offered Shares").
4. On April 7, 2010, the Filer filed a preliminary base PREP prospectus (the "Preliminary Prospectus") relating to the Offering with the securities regulatory authority in each of the provinces (other than Québec) of Canada and contemporaneously filed Amendment No. 1 to the Form S-1 with the SEC. On May 14, 2010, the Filer filed an amended and restated preliminary prospectus (the "Amended and Restated Preliminary Prospectus") in each of the provinces (other than Québec) of Canada and a preliminary base PREP prospectus in Québec (the "French Preliminary Prospectus" and together with the Amended and Restated Preliminary Prospectus, the "May 14, 2010 Prospectus") and contemporaneously filed Amendment No. 2 to the Form S-1 with the SEC. All of the provinces of Canada are collectively referred to as the "Canadian Jurisdictions". The Filer intends to post certain roadshow materials on the website of one or more commercial services, such as [www.retailroadshow.com](http://www.retailroadshow.com) and/or [www.netroadshow.com](http://www.netroadshow.com), between the date of issuance of the receipts for the May 14, 2010 Prospectus (being May 14, 2010) and the date of issuance of a receipt for a final base PREP

- prospectus (such period being known as the "waiting period"), and during such waiting period, the Filer intends to utilize electronic roadshow materials (the "Website Materials") as part of the marketing efforts for the Offering, as is now typical for an initial public offering in the United States.
5. Because the Filer will not be required to file reports with the SEC pursuant to section 13 or section 15(d) of the U.S. *Securities Exchange Act of 1934*, as amended until the time the Form S-1 has become effective pursuant to the 1933 Act, Rule 433(d)(8)(ii) under the 1933 Act which came into effect in December 2005, requires the Filer to either file the Website Materials with the SEC or make them "available without restriction by means of graphic communication to any person...". The staff of the SEC have taken the position that the requirement to be "available without restriction" means that there cannot be any restrictions on access or viewing imposed, both with respect to persons in and outside of the United States.
6. Compliance with applicable U.S. securities laws thus requires the Filer to either make the Website Materials available in a manner that affords unrestricted access to the public, or file the Website Materials on the SEC's EDGAR system, which will have the same effect of affording unrestricted access; however, doing so is contrary to Canadian securities laws, in particular, the prospectus requirement and activities that are permissible during the waiting period which, when applied together, require that access to the Website Materials be controlled by the Filer or the underwriters by such means as password protection and otherwise, as suggested by National Policy 47-201 – *Trading Securities Using the Internet and Other Electronic Means*.
7. The Filer wishes to comply with applicable U.S. securities laws by posting the Website Materials on the website of one or more commercial services, such as [www.retailroadshow.com](http://www.retailroadshow.com) or [www.netroadshow.com](http://www.netroadshow.com), without any restriction on their accessibility, such as password protection.
8. All information about the Filer's securities is contained in the May 14, 2010 Prospectus..
9. The Website Materials will contain a statement that information conveyed through the Website Materials does not contain all of the information in the May 14, 2010 Prospectus, including any amendments to it, or the final base PREP prospectus including any amendment to it, or the supplemented PREP prospectus including any amendment to it (the "Final Prospectus"), and that prospective purchasers should review all of those prospectuses, in addition to the Website Materials, for complete information regarding the Offered Shares.

10. The Website Materials will be fair and balanced.
11. Canadian purchasers will only be able to purchase the Offered Shares through an underwriter that is registered in the respective Canadian Jurisdiction of residence of the Canadian purchaser under the Final Prospectus.
12. The Filer acknowledges that the Exemption Sought relates only to the posting of the Website Materials on the website of one or more commercial services, such as [www.retailroadshow.com](http://www.retailroadshow.com) and/or [www.netroadshow.com](http://www.netroadshow.com), and not in respect of the Final Prospectus.
13. The Filer is not in default of securities legislation except to the extent that the Filer may be in default for posting the Website Materials before the date of this decision document.

### Decision

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

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

1. The Filer and the Canadian underwriters provide each of the purchasers of the Offered Shares in the Canadian Jurisdictions under the Final Prospectus, including any amendments to it, with a contractual right of action against the Filer and the Canadian underwriters as described in the disclosure required by condition 2.
2. The Preliminary Prospectus, the May 14, 2010 Prospectus including any amendments to it, and the Final Prospectus, including any amendments to it, state that purchasers of the Offered Shares in each of the Canadian Jurisdictions have a contractual right of action against the Filer and the Canadian underwriters, substantially in the following form:

"We may make available certain materials describing the offering (the "Website Materials") on the website of one or more commercial services such as [www.retailroadshow.com](http://www.retailroadshow.com) and/or [www.netroadshow.com](http://www.netroadshow.com) under the heading "NEXX Systems, Inc." in accordance with U.S. securities law during the period prior to obtaining a final receipt for the final long form base PREP prospectus relating to this offering (the "Final Prospectus") from the securities regulatory authorities in each of the provinces of Canada other than for Québec (the "Canadian Jurisdictions"). In order to give purchasers in each of the Canadian Jurisdictions the same unrestricted access to the Website Materials as provided to U.S. purchasers, we have applied for and obtained exemptive relief in a decision dated

May \*, 2010 from the securities regulatory authorities in each of the Canadian Jurisdictions. Pursuant to the terms of that exemptive relief, we and each of the Canadian underwriters signing the certificate contained in the Final Prospectus have agreed that if the Website Materials contained any untrue statement of a material fact or omitted to state a material fact required to be stated or necessary in order to make any statement therein not misleading in the light of the circumstances in which it was made (a "misrepresentation") a purchaser resident in any of the Canadian Jurisdictions who purchases common shares under the Final Prospectus during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, rights against us and each of the Canadian underwriters for the misrepresentations that are equivalent to the rights under section 130 of the Securities Act (Ontario) or the comparable provision of the securities legislation of each of the other Canadian Jurisdictions, as if that misrepresentation was contained in the Final Prospectus."

3. The Website Materials will not include comparables unless the comparables are also included in the May 14, 2010 Prospectus or in an amendment to it that is filed prior to the Website Materials being made available.
4. The Website Materials will also contain a hyperlink to the May 14, 2010 Prospectus, including any amendments to it, and the Final Prospectus, including any amendments to it, as at and after such time as a particular prospectus is filed.
5. At least one underwriter who signed the Preliminary Prospectus and the May 14, 2010 Prospectus was, and at least one underwriter who signs any amendment to the May 14, 2010, the Final Prospectus, including any amendments to it, will be, registered in each of the Canadian Jurisdictions.

"James D. Carnwath"

"Paulette L. Kennedy"

## 2.1.5 Towers Watson & Co.

### Headnote

NP 11-203 – Application seeking exemptive relief from the multijurisdictional disclosure system (MJDS) eligibility requirements – issuer does not meet eligibility requirements due to technical issues relating to a prior merger with a private company – decision exempting issuer from certain MJDS eligibility requirements subject to conditions – decision exempting issuer from the certification requirement confirming compliance with MJDS eligibility requirements subject to conditions – issuer unable to rely upon exemption from formal Canadian bid requirements in local implementing rule as offer made in compliance with this decision and not Part 12 of NI 71-101 – decision exempting issuer from formal bid requirements, subject to conditions – issuer unable to rely upon MJDS exemption from the application of MI 61-101 to issuer bids as offer made in compliance with this decision and not Part 12 of NI 71-101 – decision exempting issuer from MI 61-101, subject to conditions.

### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5., as amended, Part XX.  
MI 61-101 Protection of Minority Security Holders in Special Transactions.

NI 71-101 The Multijurisdictional Disclosure System.  
Rule 71-801 Implementing the Multijurisdictional Disclosure System.

May 14, 2010

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
THE PROVINCE OF ONTARIO  
(the "Jurisdiction")**

AND

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

AND

**IN THE MATTER OF  
TOWERS WATSON & CO.  
(the "Filer")**

**DECISION**

### Background

The principal regulator in the Jurisdiction has received an application from the Filer, in respect of the Offer (as defined below), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "Legislation"):

- a) exempting the Filer from the eligibility requirements in sections 12.3(1)(b) and (c) of NI 71-101– *The Multijurisdictional Disclosure System*

("NI 71-101") to satisfy minimum disclosure and listing requirements with the United States Securities Exchange Commission (the "SEC") and a specified U.S. stock exchange to permit the Filer to make a securities exchange issuer bid under Part 12 of NI 71-101 and exempting the Filer from the certificate requirement in section 12.10(1)(c) of NI 71-101 confirming compliance with such eligibility requirements (the "MJDS Relief");

- b) exempting the Filer from complying with the formal issuer bid requirements contained in the Legislation in connection with the Offer, including the provisions relating to restrictions and requirements regarding acquisitions made prior to, during and after a bid, the delivery of an offer and bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (the "Formal Bid Relief"); and
- c) exempting the Filer from complying with the issuer bid requirements in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("MI 61-101") in connection with the Offer (the "MI 61-101 Relief").

Furthermore, the principal regulator in the Jurisdiction has received a request from the Filer for a decision that the application and this decision be kept confidential and not be made public until the earlier of: (a) the date on which the Filer publicly announces the Offer; (b) the date the Filer advises the principal regulator that there is no longer any need for the application and this decision to remain confidential; and (c) the date that is 30 days after the date of this decision (the "Confidentiality 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 British Columbia, Alberta, and Quebec (each a "Local Jurisdiction").

### Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless they are defined in this decision.

### Representations

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

1. The Filer, a corporation organized under the laws of the State of Delaware, has its head office at 875 Third Avenue, New York, NY, USA. The Filer's principal business is the operation of a global business consultancy.
2. The Filer is not and has never been a reporting issuer in any Canadian jurisdiction.
3. The Filer is not registered or required to be registered as an investment company under the Investment Company Act of 1940 of the United States.
4. The Filer is not a commodity pool issuer.
5. No other application in connection with the same transaction or matter has been filed in Ontario or any other Canadian jurisdiction;
6. The Filer is a successor issuer resulting from the merger of Towers, Perrin, Forster & Crosby, Inc. ("Towers Perrin") and Watson Wyatt Worldwide Inc. ("Watson Wyatt"), which merger was completed on January 1, 2010 (the "Merger").
7. Neither Towers Perrin nor Watson Wyatt was a reporting issuer in any Canadian jurisdiction prior to the Merger.
8. Prior to the Merger, Watson Wyatt's Class A Common Stock ("Class A Common Stock") had been listed on the New York Stock Exchange (the "NYSE") since 2000 and the NASDAQ Stock Market ("NASDAQ") since 2007 and Watson Wyatt was in compliance with the obligations arising from its listings on the NYSE and NASDAQ prior to the Merger.
9. Consistent with securities law requirements of the United States, the Merger approval process required that a proxy statement and prospectus, which was derived from the registration statement under the Securities Act of 1933 of the United States (the "1933 Act") on Form S-4 be sent to stockholders, which materials included 36 months of audited financial statements of Towers Perrin.
10. On January 4, 2010, following the Merger, the Filer's Class A Common Stock was listed on NYSE and NASDAQ. The Filer is in compliance with the obligations arising from the listing on the NYSE and NASDAQ.
11. The Class A Common Stock is registered under section 12(b) of the Securities Exchange Act of 1934 of the United States (the "1934 Act"), and the Filer has filed with the United States Securities and Exchange Commission (the "SEC") all filings required to be made with the SEC under sections 13, 14 and 15(d) of the 1934 Act.



12. The Class A Common Stock is widely held. As of May 7, 2010, 42,882,625 freely tradable shares of Class A Common Stock were issued and outstanding and they had a public float, as defined in NI 71-101, of over US\$2 billion as of that date.
13. The Filer is currently unable to definitively determine how many holders of shares of Class A Common Stock are resident in Canada as over 99% of the Filer's Class A Common Stock is registered in the name of CEDE & Co. as the nominee partnership of the Depository Trust & Clearing Corporation. As at May 6, 2010, only eight of the Filer's registered holders of Class A Common Stock were resident in Canada holding 0.016% of the outstanding shares of that class (based on a stock holdings report generated by the Filer's registrar and transfer agent, American Stock Transfer & Trust Company, LLC, on May 6, 2010). While this number may not be an accurate predictor of the total number of holders and number of shares of Class A Common Stock held by Canadian residents, the Filer believes that less than 5% of its Class A Common Stock is held by residents of Canada.
14. The Filer currently has a class of securities called the Class B Tranche 1 Stock ("Class B-1 Common Stock") all of which was issued exclusively to employees and former employees on January 1, 2010, pursuant to the Merger.
15. The Class B-1 Common Stock are not listed or quoted and, under the terms of the Filer's Amended and Restated Certificate of Incorporation, are restricted from transfer, except in limited circumstances.
16. As at May 7, 2010, there were 12,798,117.77 shares of Class B-1 Common Stock issued and outstanding.
17. Of the 653 holders of Class B-1 Common Stock, 69 are residents of Canada, 37 of these holders are resident in Ontario, 19 are resident in Quebec, 8 are resident in Alberta and 5 are resident in British Columbia. The 37 holders in Ontario represent 5.7% of the total number of Class B-1 Common Stock holders. The 69 Canadian residents in total own 11.35% of the outstanding Class B-1 Common Stock.
18. The Class B-1 Common Stock will automatically convert on a one-to-one basis on January 1, 2011 into shares of freely tradable Class A Common Stock.
19. The Filer will be making a securities tender offer (the "Offer") to exchange its Class B-1 Common Stock for newly issued, unsecured, subordinated notes of the Filer (the "Notes") provided that the aggregate principal amount of Notes to be issued pursuant to the Offer does not exceed USD\$200 million.
20. The Filer proposes to offer to exchange each share of Class B-1 Common Stock for a Note with a principal amount equal to a price indexed to the daily volume weighted average trading price at which a share of the Filer's Class A Common Stock trades during a specified period commencing on or after the date on which the Offer is commenced and ending on a date that is at least two business days prior to the expiration of the Offer. The price would be fixed at least two business days prior to the expiration of the Offer and the Notes would be issued in exchange for the Class B-1 Common Stock promptly thereafter in accordance with applicable rules.
21. If the amount of Class B-1 Common Stock tendered in the Offer would result in the aggregate principal amount of Notes to be issued pursuant to the Offer exceeding USD\$200 million, then tenders will only be accepted on a pro-rata basis and Class B-1 Common Stock not accepted due to prorating will not be exchanged in the Offer.
22. The purpose of the Offer is to enable the Filer to acquire a significant amount of Class B-1 Common Stock in an orderly fashion in order to reduce the impact of any sales or potential sales that may occur on or after January 1, 2011 on the market price of Class A Common Stock or the Filer's ability to raise capital through the sale of additional securities. Sales or potential sales of such Class A Common Stock in the public market after January 1, 2011, primarily as a result of the conversion of Class B-1 Common Stock, could depress the market price of Class A Common Stock at such time.
23. Participation in the Offer will be entirely voluntary.
24. Neither the Filer, nor its Board of Directors, will make any recommendation to holders of the Class B-1 Common Stock as to whether to participate in the Offer. Class B-1 Common Stock that is not exchanged in the Offer will remain outstanding on its current terms and conditions. Class B-1 Common Stock tendered and exchanged for Notes by the Filer in the Offer will be redeemed.
25. The Filer is relying on an exemption in section 3(a)(9) of the 1933 Act, to exempt the issuance of the Notes in the Offer from the registration requirements of the 1933 Act.
26. The Filer has made an application for a no action letter to the SEC to confirm that the pricing mechanisms described above to be used in the Offer comply with the requirements of Rules 13e-4(d)(1), 13e-4(f)(1)(ii), and 14e-1(b) of the 1934 Act. Alternatively, the Filer has requested that the SEC staff confirm that it will not recommend that

the SEC take enforcement action pursuant to Rules 13e-4(d)(1) (solely on the basis of the pricing mechanisms to be used in the Offer), 13e-4(f)(1)(ii) or 14e-1(b) of the 1934 Act with respect to the Offer.

27. The terms of the Offer to Canadian resident holders of Class B-1 Common Stock would be identical to those applicable to U.S. holders except for the fact that an additional requirement applies to non-U.S. participants (each a "Non-U.S. Holder"). In order for a Non-U.S. Holder's Class B-1 Common Stock to be accepted for exchange pursuant to the Offer, a Non-U.S. Holder will be required to transfer to the Company funds sufficient to satisfy applicable U.S. withholding taxes payable in connection with the redemption of such Non-U.S. Holder's shares of Class B-1 Common Stock. The withholding tax, and the amount required to be transferred, will generally equal 30% of the face amount of the Notes, unless the Non-U.S. Holder is eligible to claim, and properly claims, a reduced rate of withholding tax under an applicable tax treaty with the U.S. A Non-U.S. Holder that tenders shares of Class B-1 Common Stock in the Offer but fails to transfer to the Company sufficient cash to satisfy withholding taxes will not have his or her shares of Class B-1 Common Stock accepted for exchange pursuant to the Offer.

**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:

- (a) the MJDS Relief is granted, provided that:
  - (i) the Filer meets the eligibility criteria in sections 12.1, 12.3(1)(a) and (d) of NI 71-101;
  - (ii) the Filer meets the eligibility criteria set out in subparagraphs 3.1(a)(i), (ii), (iv) and (v) of NI 71-101;
  - (iii) the materials sent to holders of Class B-1 Stock in respect of the Offer are prepared in accordance with applicable U.S. federal securities law; and
  - (iv) the Filer satisfies the certificate requirement in section 12.10 of NI 71-101 by filing a modified certificate confirming that but for the criteria in sections 12.3(1)(b)

and (c) of NI 71-101 for which relief is granted, it satisfies the eligibility criteria in sections 12.1 and 12.3 of NI 71-101.

- (b) the MI 61-101 Relief is granted provided that less than 20% of the Class B-1 Common Stock is held by persons or companies whose last address as shown on the books of the Filer is in Canada, as determined in accordance with subsections 12.1(2) through (4) of NI 71-101.

"Michael Brown"  
Assistant Manager  
Ontario Securities Commission

The decision of the principal regulator under the Legislation is that:

- (a) the Formal Bid Relief is granted, provided that the Offer and Filer comply with Part 12 of NI 71-101 (other than sections 12.3(1)(b), 12.3(1)(c) and 12.10(1)(c)) and conditions (i) through (iv) of the MJDS Relief;
- (b) the Confidentiality Relief is granted.

"Wes Scott"  
Commissioner  
Ontario Securities Commission

"Paulette Kennedy"  
Commissioner  
Ontario Securities Commission

## 2.1.6 Tricon Capital Group Inc.

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 52-107, s. 9.1 Acceptable Accounting Principles, Auditing Standards and Reporting Currency – A reporting issuer has adopted IFRS for purposes of the financial statements included in its final long form prospectus and now wants to prepare financial statements going forward using IFRS – The issuer has assessed the readiness of its staff, board, audit committee, auditors and investors.

### Applicable Legislative Provisions

National Instrument 52-107, s. 9.1.

May 25, 2010

**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  
TRICON CAPITAL GROUP INC.  
(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 of the principal regulator (the “**Legislation**”) exempting the Filer from the requirement in section 3.1 of National Instrument 52-107 – *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (“**NI 52-107**”) that financial statements be prepared in accordance with Canadian GAAP (the “**Exemption Sought**”), for so long as the Filer prepares the financial statements in accordance with Part I of the CICA handbook, that is International Financial Reporting Standards (“**IFRS**”) as issued by the International Accounting Standards Board (“**IASB**”) (“**IFRS-IASB**”) for periods beginning on or after January 1, 2010.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

1. the Ontario Securities Commission is the principal regulator for this application, and

2. the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (“**MI 11-102**”) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories, and the Nunavut Territory (the “**Passport Jurisdictions**”).

### 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 a corporation incorporated under the laws of Ontario on June 16, 1997; the registered and head office of the Filer is located at 1067 Yonge Street, Toronto, Ontario M4W 2L2;
2. the Filer is an asset manager of investment funds that participate in the development of real estate in North America by providing financing, typically in the form of participating loans, to developers, with a specific focus on residential land development, single-family homebuilding, multi-family construction and retail in conjunction with residential projects;
3. in anticipation of completing its initial public offering and secondary offering of its common shares under National Instrument 41-101 – *General Prospectus Requirements* (the “**IPO**”), the Filer retained PricewaterhouseCoopers LLP to audit its financial statements for the years ended December 31, 2007, 2008 and 2009 (collectively, the “**Historical Statements**”) for inclusion in the Prospectus (as defined below). The Historical Statements were prepared in accordance with IFRS-IASB;
4. on February 11, 2010, the Filer made a pre-filing application with the Principal Regulator seeking exemptive relief from the requirement set out in Section 3.1 of NI 52-107 that its financial statements, other than acquisition statements, be prepared in accordance with Canadian GAAP as applicable to public enterprises, for so long as the Filer prepares its financial statements in accordance with IFRS-IASB (the “**Pre-Filing Application**”);
5. in connection with the IPO, the Filer filed a preliminary long form prospectus in on March 31, 2010 and a (final) long form prospectus on May 14, 2010 (together, the “**Prospectus**”) and was

- issued a receipt for such filings on April 5, 2010 and May 14, 2010, respectively;
6. the receipt for the Filer's final long form prospectus dated May 14, 2010 constituted evidence of the relief referred to in paragraph 4 above;
7. the Filer completed its IPO on May 20, 2010 and is a reporting issuer in the Jurisdiction and the Passport Jurisdictions; the Filer is not in default of its reporting issuer obligations under the Legislation or the securities legislation of the Passport Jurisdictions;
8. the Filer's common shares are listed on the Toronto Stock Exchange;
9. the Canadian Accounting Standards Board has confirmed that publicly accountable enterprises will be required to prepare their financial statements in accordance with IFRS-IASB for financial statements relating to fiscal years beginning on or after January 1, 2011;
10. NI 52-107 sets out acceptable accounting principles for financial reporting under the securities legislation by domestic issuers, foreign issuers, registrants and other market participants. Under NI 52-107, a domestic issuer must use Canadian GAAP. Under NI 52-107, only foreign issuers may use IFRS-IASB;
11. in CSA Staff Notice 52-321 – *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS-IASB for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so, notwithstanding Section 3.1 of NI 52-107;
12. subject to obtaining the Exemption Sought, the Filer intends to prepare and file its financial statements to be filed for periods beginning on and after January 1, 2010 in accordance with IFRS-IASB;
13. the Filer's financial year-end is December 31 in each calendar year;
14. the Filer expended considerable resources in connection with the preparation and audit of the Historical Statements in accordance with IFRS-IASB and the establishment of the necessary internal controls and procedures required of a reporting issuer. Having already expended these resources and established these controls and procedures, the Filer believes that requiring it to prepare financial statements in accordance with Canadian GAAP for its 2010 financial year only to then convert months later back to IFRS-IASB for the financial year commencing January 1, 2011 would be costly and time-consuming and would create significant inefficiencies with respect to the Filer's financial statement preparation process as well as the establishment and maintenance of its internal controls and procedures. The Filer also believes such a requirement would be confusing for investors;
15. in addition, the Filer believes that the preparation and filing of its financial statements to be filed for periods beginning on and after January 1, 2010 (and its related disclosure practices for its 2010 financial year) in accordance with IFRS-IASB will benefit the Filer and its investors by offering continuity in form, presentation and public disclosure of its financial information consistent with the form, presentation and public disclosure of the Historical Statements;
16. the Board of Directors of the Filer (the "Board") approved early adoption of IFRS-IASB on February 10, 2010 with effect immediately, subject to the Filer obtaining the Exemption Sought;
17. the Filer carefully assessed the readiness of its staff, Board, auditors, investors and other market participants for the immediate adoption by the Filer of IFRS-IASB for the presentation of its financial information in connection with the IPO and for all subsequent financial periods after the IPO, and concluded that all parties are adequately prepared for the Filer's immediate adoption of IFRS-IASB;
18. the Filer considered the implications of early adopting IFRS-IASB on its obligations under securities legislation including, but not limited to, those relating to CEO and CFO certifications, business acquisition reports and offering documents.

#### 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, subject to the condition that the Exemption Sought is granted only for so long as the Filer prepares its financial statements to be filed for periods beginning on and after January 1, 2010 in accordance with IFRS-IASB.

"Jo-Anne Matear"  
Assistant Manager  
Ontario Securities Commission

2.2 Orders

2.2.1 Wilton J. Neale et al. – ss. 127(1), 127(8)

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

AND

IN THE MATTER OF  
WILTON J. NEALE,  
MULTIPLE STREAMS OF INCOME (MSI) INC.  
AND 360 DEGREE FINANCIAL SERVICES INC.

TEMPORARY ORDER  
(Sections 127(1) and (8))

**WHEREAS** on March 11, 2009 the Ontario Securities Commission (the “Commission”) made a Temporary Order pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”) that (a) pursuant to clause 2 of subsection 127(1) of the *Act* all trading in securities of MSI Canada Inc., Prosporex Investment Club Inc. and Dominion Investments Club Inc. shall cease; (b) pursuant to clause 2 of the subsection 127(1) of the *Act* trading in any securities by all of the respondents shall cease; and (c) pursuant to clause 3 of subsection 127(1) of the *Act* any exemptions contained in Ontario securities law do not apply to the respondents (the “Temporary Order”);

**AND WHEREAS** on March 24, 2009 the Commission ordered that the Temporary Order of March 11, 2009 be extended to July 24, 2009, subject to an exception concerning the respondent Sedwick Hill;

**AND WHEREAS**, on July 23, 2009 the Commission extended the Temporary Order to November 25, 2009 and adjourned the hearing to November 24, 2009 at 2:30 p.m.;

**AND WHEREAS** on August 25, 2009 the Commission varied the Temporary Order to remove the exception that had applied to the respondent Sedwick Hill and extended the Temporary Order, as varied to November 24, 2009;

**AND WHEREAS** on November 24, 2009 the Commission added Prosporex Forex SVP Trust as a respondent, extended the Temporary Order, as varied to January 18, 2010 and adjourned the hearing to January 15, 2010 at 10:00 a.m.;

**AND WHEREAS** on January 15, 2010 the Commission extended the Temporary Order to March 26, 2010 and adjourned the hearing to March 25, 2010 at 10:00 a.m.;

**AND WHEREAS** on March 12, 2010, Staff issued Statements of Allegations and Notices of Hearing in the following matters:

(1) with respect to Albert Leslie James (formerly identified as Albert James in the Temporary Order), Ezra Douse and Dominion Investments Club Inc.;

(2) with respect to Wilton J. Neale (formerly identified as Wilton John Neale in the Temporary Order), Multiple Streams of Income (MSI) Inc. (formerly identified as MSI Canada Inc. in the Temporary Order) and 360 Degree Financial Services Inc.; and

(3) with respect to Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc. (formerly identified as LeveragePro Inc. in the Temporary Order), Prosporex Investments Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Network Financial Group Inc., and Network Marketing Solutions;

**AND WHEREAS** the Commission held a hearing in this matter on March 25, 2010, and made an Order governing disclosure and extending the Temporary Order to May 14, 2010;

**AND WHEREAS** on May 13, 2010 the Commission held a hearing in this matter as well as an *in camera* pre-hearing conference;

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

**AND WHEREAS** by Commission order made August 31, 2009, pursuant to subsection 3.5(3) of the *Act*, each of W. David Wilson, James E.A. Turner, David L. Knight, Carol S. Perry, Patrick LeSage, James D. Carnwath and Mary Condon, acting alone, is authorized to make orders under subsection 127(8) of the *Act*;

**IT IS ORDERED THAT** that:

(1) the Temporary Order insofar as it relates to the above-named respondents is extended to June 17, 2010 on the same terms as the Order dated March 26, 2010; and

(2) a hearing in this proceeding if necessary, will take place commencing on June 16, 2010 at 2:00 p.m.

**DATED** at Toronto this 13th day of May, 2010.

“Patrick J. LeSage”

2.2.2 Albert Leslie James et al. – ss. 127(1), 127(8)

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

**AND**

**IN THE MATTER OF  
ALBERT LESLIE JAMES, EZRA DOUSE  
AND DOMINION INVESTMENTS CLUB INC.**

**TEMPORARY ORDER  
(Sections 127(1) and (8))**

**WHEREAS** on March 11, 2009 the Ontario Securities Commission (the "Commission") made a Temporary Order pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act") that (a) pursuant to clause 2 of subsection 127(1) of the Act all trading in securities of MSI Canada Inc., Prosporex Investment Club Inc. and Dominion Investments Club Inc. shall cease; (b) pursuant to clause 2 of the subsection 127(1) of the Act trading in any securities by all of the respondents shall cease; and (c) pursuant to clause 3 of subsection 127(1) of the Act any exemptions contained in Ontario securities law do not apply to the respondents (the "Temporary Order");

**AND WHEREAS** on March 24, 2009 the Commission ordered that the Temporary Order of March 11, 2009 be extended to July 24, 2009, subject to an exception concerning the respondent Sedwick Hill;

**AND WHEREAS**, on July 23, 2009 the Commission extended the Temporary Order to November 25, 2009 and adjourned the hearing to November 24, 2009 at 2:30 p.m.;

**AND WHEREAS** on August 25, 2009 the Commission varied the Temporary Order to remove the exception that had applied to the respondent Sedwick Hill and extended the Temporary Order, as varied to November 24, 2009;

**AND WHEREAS** on November 24, 2009 the Commission added Prosporex Forex SVP Trust as a respondent, extended the Temporary Order, as varied to January 18, 2010 and adjourned the hearing to January 15, 2010 at 10:00 a.m.;

**AND WHEREAS** on January 15, 2010 the Commission extended the Temporary Order to March 26, 2010 and adjourned the hearing to March 25, 2010 at 10:00 a.m.;

**AND WHEREAS** on March 12, 2010, Staff issued Statements of Allegations and Notices of Hearing in the following matters:

- (1) with respect to Albert Leslie James (formerly identified as Albert James in the

Temporary Order), Ezra Douse and Dominion Investments Club Inc.;

- (2) with respect to Wilton J. Neale (formerly identified as Wilton John Neale in the Temporary Order), Multiple Streams of Income (MSI) Inc. (formerly identified as MSI Canada Inc. in the Temporary Order) and 360 Degree Financial Services Inc.; and

- (3) with respect to Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc. (formerly identified as LeveragePro Inc. in the Temporary Order), Prosporex Investments Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Network Financial Group Inc., and Network Marketing Solutions;

**AND WHEREAS** the Commission held a hearing in this matter on March 25, 2010, and made an Order extending the Temporary Order to May 14, 2010;

**AND WHEREAS** on May 13, 2010 the Commission held a hearing in this matter as well as an *in camera* pre-hearing conference;

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

**AND WHEREAS** by Commission order made August 31, 2009, pursuant to subsection 3.5(3) of the Act, each of W. David Wilson, James E.A. Turner, David L. Knight, Carol S. Perry, Patrick LeSage, James D. Carnwath and Mary Condon, acting alone, is authorized to make orders under subsection 127(8) of the Act;

**IT IS ORDERED THAT** that:

- (1) the Temporary Order insofar as it relates to the above-named respondents is extended to June 17, 2010; and
- (2) a hearing in this proceeding will take place commencing on June 16, 2010 at 2:00 p.m.

**DATED** at Toronto this 13th day of May, 2010.

"Patrick J. LeSage"

2.2.3 Carlton Ivanhoe Lewis et al. – ss. 127(1), 127(8)

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

AND

IN THE MATTER OF  
CARLTON IVANHOE LEWIS,  
MARK ANTHONY SCOTT, SEDWICK HILL,  
LEVERAGEPRO INC., PROSPOREX INVESTMENT  
CLUB INC., PROSPOREX INVESTMENTS INC.,  
PROSPOREX LTD., PROSPOREX INC.,  
PROSPOREX FOREX SPV TRUST,  
NETWORTH FINANCIAL GROUP INC.,  
AND NETWORTH MARKETING SOLUTIONS

TEMPORARY ORDER  
(Sections 127(1) and (8))

**WHEREAS** on March 11, 2009 the Ontario Securities Commission (the “Commission”) made a Temporary Order pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”) that (a) pursuant to clause 2 of subsection 127(1) of the Act all trading in securities of MSI Canada Inc., Prosporex Investment Club Inc. and Dominion Investments Club Inc. shall cease; (b) pursuant to clause 2 of the subsection 127(1) of the Act trading in any securities by all of the respondents shall cease; and (c) pursuant to clause 3 of subsection 127(1) of the Act any exemptions contained in Ontario securities law do not apply to the respondents (the “Temporary Order”);

**AND WHEREAS** on March 24, 2009 the Commission ordered that the Temporary Order of March 11, 2009 be extended to July 24, 2009, subject to an exception concerning the respondent Sedwick Hill;

**AND WHEREAS**, on July 23, 2009 the Commission extended the Temporary Order to November 25, 2009 and adjourned the hearing to November 24, 2009 at 2:30 p.m.;

**AND WHEREAS** on August 25, 2009 the Commission varied the Temporary Order to remove the exception that had applied to the respondent Sedwick Hill and extended the Temporary Order, as varied to November 24, 2009;

**AND WHEREAS** on November 24, 2009 the Commission added Prosporex Forex SVP Trust as a respondent, extended the Temporary Order, as varied to January 18, 2010 and adjourned the hearing to January 15, 2010 at 10:00 a.m.;

**AND WHEREAS** on January 15, 2010 the Commission extended the Temporary Order to March 26, 2010 and adjourned the hearing to March 25, 2010 at 10:00 a.m.;

**AND WHEREAS** on March 12, 2010, Staff issued Statements of Allegations and Notices of Hearing in the following matters:

- (1) with respect to Albert Leslie James (formerly identified as Albert James in the Temporary Order), Ezra Douse and Dominion Investments Club Inc.;
- (2) with respect to Wilton J. Neale (formerly identified as Wilton John Neale in the Temporary Order), Multiple Streams of Income (MSI) Inc. (formerly identified as MSI Canada Inc. in the Temporary Order) and 360 Degree Financial Services Inc.; and
- (3) with respect to Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc. (formerly identified as LeveragePro Inc. in the Temporary Order), Prosporex Investments Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Network Financial Group Inc., and Network Marketing Solutions;

**AND WHEREAS** the Commission held a hearing in this matter on March 25, 2010, and made an Order governing disclosure and extending the Temporary Order to May 14, 2010;

**AND WHEREAS** on May 13, 2010 the Commission held a hearing in this matter as well as an *in camera* pre-hearing conference;

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

**AND WHEREAS** by Commission order made August 31, 2009, pursuant to subsection 3.5(3) of the Act, each of W. David Wilson, James E.A. Turner, David L. Knight, Carol S. Perry, Patrick LeSage, James D. Carnwath and Mary Condon, acting alone, is authorized to make orders under subsection 127(8) of the Act;

**IT IS ORDERED THAT** that:

- (1) the Temporary Order insofar as it relates to the above-named respondents is extended to June 17, 2010 on the same terms as the Order dated March 26, 2010; and
- (2) a hearing in this proceeding will take place commencing on June 16, 2010 at 2:00 p.m.

**DATED** at Toronto this 13th day of May, 2010.

“Patrick J. LeSage”

**2.2.4 Canadian National Railway Company – s. 104(2)(c)**

**Headnote**

Clause 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, approximately 3,000,000 of its common shares from one shareholder – due to discounted purchase price, proposed purchases cannot be made through TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Act and in accordance with the TSX rules governing normal course issuer bid purchases – no adverse economic impact on or prejudice to issuer or public shareholders – proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions.

**Applicable Legislative Provisions**

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

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

**AND**

**IN THE MATTER OF  
CANADIAN NATIONAL RAILWAY COMPANY**

**ORDER  
(clause 104(2)(c))**

**UPON** the application (the "**Application**") of Canadian National Railway Company (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from the requirements of sections 94 to 94.8 and 97 to 98.7 of the Act (the "**Issuer Bid Requirements**") in respect of the proposed purchases by the Issuer of up to 3,000,000 (collectively, the "**Subject Shares**") of its common shares (the "**Common Shares**") in one or more trades from BMO Nesbitt Burns Inc. (the "**Selling Shareholder**");

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

**AND UPON** the Issuer having represented to the Commission that:

1. The Issuer is a corporation governed by the *Canada Business Corporations Act*.

2. The head office and registered office of the Issuer are at 935 de La Gauchetière Street West, Montréal, Quebec H3B 2M9.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada and the Common Shares of the Issuer are listed for trading on the TSX and the New York Stock Exchange under the symbol "CNR" and "CNI", respectively. The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized common share capital of the Issuer consists of an unlimited number of Common Shares, of which approximately 470,566,057 were issued and outstanding as of April 22, 2010.

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

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

7. The Selling Shareholder has advised the Issuer that it is the beneficial owner of at least 3,000,000 Common Shares.

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

9. On January 26, 2010, the Issuer commenced a normal course issuer bid (its "Normal Course Issuer Bid") for up to 15,000,000 Common Shares through the facilities of the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX NCIB Rules**"). As of the date of this application, 2,300,000 Common Shares have been purchased under the Issuer's Normal Course Issuer Bid.

10. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an "**Agreement**") pursuant to which the Issuer will agree to acquire the Subject Shares from the Selling Shareholder by one or more purchases each occurring before the end of June 2010 (each such purchase, a "**Proposed Purchase**") for a purchase price (the "**Purchase Price**") that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price will be at a discount to the



prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase.

11. 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.
12. The purchase of the Subject Shares by the Issuer pursuant to each Agreement will constitute an "issuer bid" for purposes of the Act, to which the applicable Issuer Bid Requirements would apply.
13. Because the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase, each Proposed Purchase cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.
14. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a "**Block Purchase**") in accordance with the block purchase exception in section 629(1)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act. The notice of intention to make a normal course issuer bid filed with the TSX by the Issuer contemplates that purchases under the bid may be made by such other means as may be permitted by the TSX, including by private agreements pursuant to an issuer bid exemption order issued by a securities regulatory authority.
15. For each Proposed Purchase, the Issuer will be able to acquire the Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.
16. The Issuer is of the view that it will be able to purchase the Subject Shares at a lower price than the price at which it would be able to purchase the Shares under the Bid through the facilities of the TSX and the Issuer is of the view that this is an appropriate use of the Issuer's funds.
17. The purchase of the Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's securityholders and it will not materially affect the control of the Issuer. The

Proposed Purchases will be carried out with a minimum of cost to the Issuer.

18. To the best of the Issuer's knowledge, as of the date of this application, the "public float" for the Common Shares represented more than 99% of all issued and outstanding Common Shares for purposes of the TSX NCIB Rules.
19. The market for the Common Shares is a "liquid market" within the meaning of section 1.2 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.
20. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.
21. At the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor the Trading Products Group of the Selling Shareholder, nor personnel of the Selling Shareholder that have negotiated such Agreement or have made or participated in the making of or provided advice in connection with the decision to enter into such 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.
22. The Selling Shareholder owns the Subject Shares and the Subject Shares were not acquired in anticipation of resale pursuant to the Proposed Purchases.

**AND UPON** the Commission being satisfied to do so would not be prejudicial to the public interest;

**IT IS ORDERED** pursuant to clause 104(2)(c) of the Act that the Issuer be exempt from the Issuer Bid Requirements in connection with each Proposed Purchase, provided that:

- (a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;
- (b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX NCIB Rules during the calendar week that it completes each Proposed Purchase and may not make any further purchases under its Normal Course Issuer Bid for the remainder of that calendar day;
- (c) the Purchase Price is not higher than the last "independent trade" (as that term is

used in paragraph 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of each Proposed Purchase;

- (d) the Issuer will otherwise acquire any additional Common Shares pursuant to its Normal Course Issuer Bid and in accordance with the TSX NCIB Rules, including by means of open market transactions and by other means as may be permitted by the TSX, including private agreements under an issuer bid exemption issued by a securities regulatory authority;
- (e) immediately following each Proposed Purchase of the Subject Shares from the Selling Shareholder, the Issuer will report the purchase of the Subject Shares to the TSX;
- (f) At the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor the Trading Products Group of the Selling Shareholder, nor personnel of the Selling Shareholder that have negotiated such Agreement or have made or participated in the making of or provided advice in connection with the decision to enter into such 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; and
- (g) the Issuer will issue a press release in connection with the Proposed Purchases.

**DATED** at Toronto this 14th day of May, 2010.

"Wes M. Scott"  
Commissioner  
Ontario Securities Commission

"Mary Condon"  
Commissioner  
Ontario Securities Commission

**2.2.5 Chartcandle Investments Corporation et al.**

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

**AND**

**IN THE MATTER OF  
CHARTCANDLE INVESTMENTS CORPORATION,  
CCI FINANCIAL, LLC, CHARTCANDLE INC.,  
PSST GLOBAL CORPORATION,  
STEPHEN MICHAEL CHESNOWITZ AND  
CHARLES PAULY**

**ORDER**

**WHEREAS** on February 17, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Statement of Allegations pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

**AND WHEREAS** on March 22, 2010, Staff of the Commission ("Staff") advised the Commission panel that all of the Respondents had been properly served with the Notice of Hearing and Statement of Allegations dated February 17, 2010 and that the Respondents, Charles Pauly and Stephen Michael Chesnowitz, were aware of the hearing date but were unable to attend;

**AND WHEREAS** on March 22, 2010 the matter was adjourned to May 26, 2010 at 10:00 a.m. for a pre-hearing conference to determine the status of disclosure, if any motions will be brought by any of the parties and to set dates for the hearing on the merits;

**AND WHEREAS** on April 26, 2010, the Commission approved a Settlement Agreement between Staff and Charles Pauly dated April 26, 2010;

**AND WHEREAS** on May 26, 2010 at 10:00 a.m. a prehearing conference was held and Staff advised the panel that the Respondent, Chesnowitz was aware of the pre-hearing conference but did not attend;

**IT IS ORDERED THAT** the hearing on the merits shall commence on Monday, September 27, 2010 at 10:00 a.m. and continue each day through to Friday, October 1, 2010, or as soon thereafter as may be fixed by the Secretary to the Commission and agreed to by the parties.

**DATED** at Toronto this 26th day of May 2010.

"Carol S. Perry"

**2.2.6 Andrew Keith Lech – 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  
ANDREW KEITH LECH**

**ORDER**

**(Pursuant to subsections 127(1) and 127(10))**

**WHEREAS** on May 1, 2003, the Ontario Securities Commission (the “Commission”) ordered pursuant to subsections 127(1) and (6) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), that all trading in securities by Andrew Keith Lech (“Lech”) cease, and the exemptions contained in Ontario securities law do not apply to Lech.

**WHEREAS** on May 7, 2003, the Commission issued a Notice of Hearing, in relation to the Statement of Allegations, of the same date, issued by Staff of the Commission (“Staff”);

**WHEREAS** on May 16, 2003, the Commission issued an Order that all trading in securities by Lech cease pending further order of the Commission, pursuant to clause 2 of subsection 127(1) of the Act, and that the exemptions contained in Ontario securities law do not apply to Lech pending further order of the Commission, pursuant to clause 3 of subsection 127(1) (the “May 16, 2003 Order”);

**AND WHEREAS** on March 23, 2009, the Commission issued a second Notice of Hearing, pursuant to section 127, including subsection 127(10), of the Act in relation to the Amended Statement of Allegations issued by Staff, dated March 20, 2009, with respect to Lech;

**AND WHEREAS** the hearing before the Commission was scheduled to be held on June 5, 2009, at 10:00 a.m.;

**AND WHEREAS** on May 29, 2009, the Commission conducted a hearing in writing with respect to this matter;

**AND WHEREAS** on May 29, 2009, the Commission adjourned the hearing to July 22, 2009, at 10:00 a.m.;

**AND WHEREAS** on July 20, 2009, Lech sent a letter to Staff requesting an adjournment so that he could retain counsel, which letter Staff provided to the Commission;

**AND WHEREAS** a hearing was held before the Commission on July 22, 2009, which Staff attended but Lech, though properly served with the Notice of Hearing, did not attend;

**AND WHEREAS** Staff made submissions with respect to Lech’s non-attendance;

**AND WHEREAS** the Commission adjourned the hearing, on a peremptory basis, to August 19, 2009, at 11:00 a.m.;

**AND WHEREAS** a hearing in this matter took place on August 19, 2009;

**AND WHEREAS** Staff attended the hearing, but Lech, though properly served, was neither in attendance nor represented;

**AND WHEREAS** the Commission finds that Lech was convicted of a criminal offence arising from a course of conduct related to securities;

**AND WHEREAS** the Commission finds that it is in the public interest to make an order pursuant to subsections 127(1) and 127(10) of the Act;

**IT IS ORDERED THAT:**

1. pursuant to section 127(1) clause 2 of the Act, trading in any securities by Lech cease permanently;
2. pursuant to section 127(1) clause 2.1 of the Act, acquisition of any securities by Lech is prohibited permanently;
3. pursuant to section 127(1) clause 3 of the Act, any exemptions contained in Ontario securities law do not apply to Lech permanently;
4. pursuant to section 127(1) clause 6 of the Act, Lech is reprimanded;
5. pursuant to section 127(1) clause 7 of the Act, Lech resign all positions that Lech holds as a director or officer of an issuer;
6. pursuant to section 127(1) clause 8 of the Act, Lech is prohibited from becoming or acting as director or officer of any issuer;
7. pursuant to section 127(1) clause 8.4 of the Act, Lech is prohibited from becoming or acting as a director or officer of an investment fund manager; and
8. pursuant to section 127(1) clause 8.5 of the Act, Lech is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

**DATED** at Toronto this 25th day of May, 2010.

“Mary G. Condon”

“Carol S. Perry”

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## Chapter 3

# Reasons: Decisions, Orders and Rulings

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### 3.1 OSC Decisions, Orders and Rulings

#### 3.1.1 Andrew Keith Lech – s. 127

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

**AND**

**IN THE MATTER OF  
ANDREW KEITH LECH**

**REASONS AND DECISION  
Section 127 of the *Securities Act*, R.S.O. 1990 c. S.5**

**Hearing:** August 19, 2009

**Decision:** May 25, 2010

**Panel:** Mary G. Condon – Commissioner (Chair of the Panel)  
Carol S. Perry – Commissioner

**Counsel:** Jonathon Feasby – for Staff of the Ontario Securities Commission  
Andrew Keith Lech – did not appear

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  - E. Should sanctions be imposed to protect the public interest?
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#### **REASONS AND DECISION**

### I. OVERVIEW

#### A. Background

[1] This was a hearing before the Ontario Securities Commission (the "Commission") on August 19, 2009, pursuant to section 127 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 certain sanctions against Andrew Keith Lech ("Lech").

[2] This matter arose out of a Temporary Order issued by the Commission on May 1, 2003, which ordered, for a period of fifteen days that all trading in securities by Lech cease and the exemptions contained in Ontario securities law do not apply to Lech.

[3] On May 16, 2003, the Commission held a hearing pursuant to a Notice of Hearing and related Statement of Allegations, both issued on May 7, 2003. On Lech's consent, and having regard to submissions made by Staff of the Commission ("Staff"), the Commission ordered that all trading in securities by Lech cease pending further order of the Commission, all of the exemptions contained in Ontario securities law do not apply to Lech pending further order of the Commission and the hearing be adjourned *sine die*.

[4] On October 18, 2007, Lech pleaded guilty to the criminal offence of fraud over \$5,000, pursuant to subsection 380(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 (the "*Criminal Code*"), before Ontario's Superior Court of Justice (the "Fraud Conviction").

[5] An Amended Statement of Allegations was issued by Staff on March 20, 2009, followed by the Commission's issuance of a second Notice of Hearing on March 23, 2009. A hearing was held on July 22, 2009, which was adjourned until August 19, 2009.

[6] Staff submits that Lech's conduct, which was the basis for his guilty plea and conviction, was contrary to the public interest and contrary to sections 25, 38, 53 and 126.1 of the *Act*.

[7] Lech was not present at the hearing. We consider Lech's non-attendance below.

#### **B. The Respondent**

[8] Lech is an individual ordinarily residing in Toronto, Ontario. At the time of this hearing, Lech was an inmate at Fenbrook Institution in Ontario.

[9] Lech was registered with the Commission between April 10, 1987 and June 15, 1987 as a salesperson with B.M. Young & Partners Securities Inc. His registration was restricted to soliciting expressions of interest from prospective clients to receive company advertising. Lech has never been registered with the Commission in any other capacity, or at any other time.

#### **C. Non-attendance**

[10] Lech was not present at the hearing held on July 22, 2009, despite having been properly served. Two days prior to that hearing, Lech faxed a request for an adjournment. Staff submitted that Lech chose not to attend, and that his request for an adjournment was merely an attempt to delay the proceedings. The Commission determined that though Lech was properly served, it was in the public interest to adjourn the matter on a peremptory basis.

[11] Lech was entitled to notice of this hearing pursuant to subsection 6(3) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "*SPPA*"). However, where such notice has been given the Commission may proceed in a respondent's absence (*SPPA* at s. 7):

[w]here notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[12] We are satisfied that it was appropriate to proceed in Lech's absence. We considered Staff's submissions, the materials before us, the fact that Vice-Chair Ritchie adjourned this matter peremptorily at the previous hearing, and the various correspondences between Staff and Lech. We also note that Lech had the opportunity to attend this hearing and, as is his right, chose not to do so, according to a letter dated August 19, 2009, from a Parole Officer at Fenbrook Institution.

#### **D. Evidence**

[13] Staff relies upon the procedure created by subsection 127(10) of the *Act* and the Fraud Conviction, in seeking an order in the public interest pursuant to subsection 127(1) of the *Act*. Therefore, rather than calling witnesses to prove the allegations, Staff relies on the findings of fact made in the course of the Fraud Conviction.

[14] Staff did not conduct a full investigation into this matter, and instead focused on the Fraud Conviction when producing evidence and making written and oral submissions. Specifically, Staff provided evidence from a Staff investigator relating to the Fraud Conviction through the Affidavit of Jody Sikora (the "Sikora Affidavit"). The Sikora Affidavit includes three documents pertaining to the Fraud Conviction on which Staff relies: a certified copy of the indictment, a certified copy of the Agreed Statement of Facts (the "Agreed Facts") and a transcript of the guilty plea.

[15] The inter-jurisdictional enforcement provision, at subsection 127(10) of the *Act*, came into force on November 27, 2008, after the Fraud Conviction on which Staff relies. It is therefore necessary to consider whether it is appropriate for Staff to rely upon subsection 127(10) of the *Act*.

[16] Staff submits that an order can be issued which relies on subsection 127(10). Staff argues alternate grounds in support of that submission: (1) the application of subsection 127(10) is not retrospective and simply recognizes the Commission's existing authority; (2) public interest provisions may always operate retrospectively; and (3) purely procedural provisions may operate retrospectively. We consider these arguments in our analysis below.

#### **E. Issues**

[17] Staff alleges that Lech has violated sections 25, 38, 53 and 126.1 of the *Act*, in addition to engaging in conduct that is contrary to the public interest. Relying on evidence related to the Fraud Conviction, in accordance with section 127(10) of the *Act*, Staff seeks the following sanctions against Lech:

- an order pursuant to section 127(1) clause 2 of the *Act* that trading in securities by Lech cease permanently;
- an order pursuant to section 127(1) clause 2.1 of the *Act* that acquisition of any securities by Lech be prohibited permanently;
- an order pursuant to section 127(1) clause 3 of the *Act* that any exemptions in Ontario securities law do not apply to Lech permanently;
- an order pursuant to section 127(1) clause 6 of the *Act* that Lech be reprimanded by the Commission;
- an order pursuant to section 127(1) clause 7 of the *Act* that Lech resign any position that Lech holds as a director or officer of an issuer;
- an order pursuant to section 127(1) clause 8 of the *Act* that Lech be prohibited from becoming or acting as an officer or director of any issuer;
- an order pursuant to section 127(1) clause 8.4 of the *Act* that Lech be prohibited from becoming or acting as a director or officer of an investment fund manager; and
- an order pursuant to section 127(1) clause 8.5 of the *Act* that Lech be prohibited from becoming or acting as a registrant, investment fund manager or promoter.

[18] Given an ongoing class action in the civil courts for recovery and distribution of investor funds, Staff seeks neither disgorgement nor an administrative penalty in this matter.

[19] In considering Staff's allegations and the evidence before us, we address the following issues in our analysis:

- A. Does subsection 127(10) recognize the Commission's pre-existing authority?
- B. Can subsection 127(10) operate retrospectively?
- C. The Fraud Conviction evidence.
- D. Has Lech been convicted of an offence arising from a transaction, business or course of conduct related to securities?
- E. Should sanctions be imposed to protect the public interest?
- F. What sanctions are appropriate and in the public interest?

## **II. ANALYSIS**

### **A. Does subsection 127(10) recognize the Commission's pre-existing authority?**

[20] Staff argues that section 127(10) of the *Act* merely gives legislative recognition to an existing authority of the Commission to make orders in the public interest, based on the orders of other regulators and courts. In support of this proposition Staff refers us to *Re Biller* (2005), 28 O.S.C.B. 10131 ("*Biller*"), *Re Foreign Capital Corp.* (2005), 28 O.S.C.B. 4221 ("*Foreign Capital*"), and in oral submissions Staff cited *Re Euston Capital Corp.* (2009), 32 O.S.C.B. 6313 ("*Euston*"). Staff

submits that it would be antithetical to the purpose of section 127(10) for the enactment of a provision recognizing a pre-existing authority to curtail the exercise of that authority in relation to events prior to its passage.

[21] In both *Biller* and *Foreign Capital* the Commission relied upon evidence from proceedings brought pursuant to section 380(1) of the *Criminal Code*, with respect to securities related fraud (*Biller*, at para. 22 and *Foreign Capital*, at para. 15). In *Biller* the Commission relied upon findings by the British Columbia Securities Commission and the British Columbia Supreme Court.

[22] In *Foreign Capital* at para. 23, the Commission concluded that Staff was entitled to rely on documents from a related criminal proceeding brought against one of the respondents:

[s]taff was entitled to rely on the Transcript (in which Montpellier entered the guilty plea) as evidence of Montpellier's admission of the facts which he admitted in the criminal proceeding. Staff was also entitled to rely on Montpellier's conviction as proof of the facts which supported the conviction. See *Woods, Re* (1995), 18 O.S.C.B. 4625 (Ont. Securities Comm.) at 4626, and section 15.1 of the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22, as amended.

[23] In *Euston*, careful consideration was given to the authorities discussed above. We agree with the Commission's statement in *Euston* at para. 46:

[a]ccordingly, we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the *Act* on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario's capital markets.

#### **B. Can subsection 127(10) operate retrospectively?**

[24] On July 31, 2009, Staff provided Lech and the panel with the Commission's recent decision in *Euston*, which was released on July 29, 2009. During oral submissions, Staff argued that the issue of retrospective operation of subsection 127(10) falls squarely within the *Euston* decision, there are no distinguishing factors and the Commission's decision in *Euston* resolves the question of whether subsection 127(10) is capable of operating retrospectively. In particular, Staff relies upon *Euston* at para. 56, where the Commission states that, "the presumption against retrospectivity is not applicable, and subsection 127(10) may operate retrospectively".

[25] In *Euston*, the Commission considered the divergent decisions of the British Columbia Court of Appeal and the Alberta Court of Appeal, with respect to the retrospective application of an increased maximum administrative penalty.

[26] In *Alberta Securities Commission v. Brost*, 2008 ABCA 326 ("*Brost*"), the Court of Appeal concluded that,

[t]he Commission was correct to conclude that the presumption against retrospective application did not apply in this case because administrative penalties under the *Act* are not punitive but are instead designed to protect the public: *Barry v. Alberta (Securities Commission)*, [1989] 1 S.C.R. 301, 57 D.L.R. (4th) 458 (S.C.C.) at 471-3, cited in *Morrison Williams Investment Management Ltd., Re* (2000), 9 A.S.C.S. 2888 (Alta. Securities Comm.). Moreover, contrary to what *Brost* and Alternatives suggest, it is well settled that "[e]xcept for criminal law, the retrospectivity and retroactivity of which is limited by s. 11(g) of the Charter, there is no requirement of legislative prospectivity embodied in ... any provision of our Constitution": *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473 (S.C.C.) at para. 69.

(*Brost*, at para. 57. See also, *Euston*, at para. 50. *Barry v. Alberta* is alternately cited as *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301.)

[27] In *Thow v. B.C. (Securities Commission)*, 2009 BCCA 46 ("*Thow*"), at para. 41, Groberman J.A. noted that while the Supreme Court's decision in *Brosseau* "may be interpreted as supporting a very broad 'protection of the public' exception to the presumption against retrospectivity, I do not think that was the Court's intention". (*Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301 ("*Brosseau*")) In explaining the Court's conclusion that the B.C. Securities Commission erred in finding that the presumption against retrospectivity was inapplicable, the Court in *Brosseau* stated, at para. 49:

... the Commission's imposition of the fine was arguably not "punitive" in the narrow sense of the word; that is, it may not have been imposed as a punishment for Mr. Thow's moral failings, and it may not have been motivated by a desire for retribution or to denounce his conduct. Nonetheless, it was "punitive" in the broad sense of the word; it was designed to penalize Mr. Thow and to deter others from similar conduct. It was not merely a prophylactic measure designed to limit or eliminate the risk that Mr. Thow might pose in the future.



It is not necessary for us to reconcile the *Brost* and *Thow* decisions because all of the sanctions sought in this case, with the exception of the reprimand, are forward looking in the sense that they seek to restrict Lech's ability to participate in Ontario's capital markets. This matter falls squarely within the narrower interpretation of the exception to the presumption against retrospectivity envisioned in *Thow*.

[28] As the Commission noted in *Euston* at para. 52, the divergence in the decisions of the Alberta Court of Appeal and B.C. Court of Appeal can be traced back to differing interpretations of *Brosseau*. The Supreme Court discusses the applicability of the presumption against retrospectivity, where the purpose of the sanction is the protection of the public, in *Brosseau* at paras. 50-53:

[t]he so-called presumption against retrospectivity applies only to prejudicial statutes. It does not apply to those which confer a benefit. As Elmer Driedger, *Construction of Statutes*, 2nd ed. (1983), explains at p. 198:

... there are three kinds of statutes that can properly be said to be retrospective, but there is only one that attracts the presumption. First, there are the statutes that attach benevolent consequences to a prior event; they do not attract the presumption. Second, there are those that attach prejudicial consequences to a prior event; they attract the presumption. Third, there are those that impose a penalty on a person who is described by reference to a prior event, but the penalty is not intended as further punishment for the event; these do not attract the presumption.

A subcategory of the third type of statute described by Driedger is enactments which may impose a penalty on a person related to a past event, so long as the goal of the penalty is not to punish the person in question, but to protect the public. This distinction was elaborated in the early case of *R. v. Vine* (1875), L.R. 10 Q.B. 195, where Cockburn C.J. wrote at pp. 199-200:

If one could see some reason for thinking that the intention of this enactment was merely to aggravate the punishment for felony by imposing this disqualification in addition, I should feel the force of Mr. Poland's argument, founded on the rule which has obtained in putting a construction upon statutes – that when they are penal in their nature they are not to be construed retrospectively, if the language is capable of having a prospective effect given to it and is not necessarily retrospective. But here the object of the enactment is not to punish offenders, but to protect the public against public-houses in which spirits are retailed being kept by persons of doubtful character ... the legislature has categorically drawn a hard and fast line, obviously with a view to protect the public, in order that places of public resort may be kept by persons of good character; and it matters not for this purpose whether a person was convicted before or after the Act passed, one is equally bad as the other and ought not to be intrusted with a licence.

...

Elmer Driedger summarizes the point in "Statutes: Retroactive Retrospective Reflections" (1978), 56 Can. Bar Rev. 264, at p. 275:

In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply.

[29] In *Brosseau* at para. 57, the Supreme Court went on to note, with respect to retrospectivity, that:

[t]he provisions in question are designed to disqualify from trading in securities those persons whom the commission finds to have committed acts which call into question their business integrity. This is a measure designed to protect the public, and it is in keeping with the general regulatory role of the commission. Since the amendment at issue here is designed to protect the public, the presumption against the retrospective effect of statutes is effectively rebutted.

[30] The purpose of the *Act* is clearly established at section 1.1, as being: "(a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets". More specifically, the Supreme Court has clearly articulated the purpose of section 127 of the *Act* in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("*Asbestos*"), at para. 43:

... [t]he administrative sanctions are the most frequently used sanctions and are grouped together in s. 127 as "Orders in the public interest". Such orders are not punitive: *Re Albino* (1991), 14 O.S.C.B. 365. Rather,

the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets: *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600. In contradistinction, it is for the courts to punish or remedy past conduct under ss. 122 and 128 of the *Act* respectively: see D. Johnston and K. Doyle Rockwell, *Canadian Securities Regulation* (2nd ed. 1998), at pp. 209-11.

[31] Having carefully considered the above authorities, we adopt the conclusion of the Commission in *Euston*, at para. 56:

[b]ased on a plain reading of subsection 127(10) in the context of section 127 as a whole, and after taking into account the Supreme Court of Canada's decisions in *Brosseau* and *Asbestos*, we conclude that the purpose of purpose of [sic] subsection 127(10) is to protect the public. Hence, the presumption against retrospectivity is not applicable, and subsection 127(10) may operate retrospectively.

[32] Given our conclusion that subsection 127(10) of the *Act* is capable of retrospective operation, it is unnecessary for us to consider whether subsection 127(10) is procedural or substantive in nature and the implications that follow from that determination.

### C. The Fraud Conviction evidence

[33] We rely on the materials submitted by Staff with respect to the Fraud Conviction, and in particular the documents contained in the Sikora Affidavit: a certified copy of the indictment, a certified copy of the Agreed Statement of Facts and a transcript of the guilty plea.

[34] The investigation leading up to Lech being charged was lengthy and complex. It took over three years and involved over a hundred interviews of victims, witnesses and involved parties, the execution of 52 search warrants, the assignment of an accountant to work almost exclusively on this investigation for two years, and the examination of 36 bank accounts and 18 investment accounts.

[35] On March 2, 2007, Lech was charged with 88 counts of fraud over \$5,000 pursuant to subsection 380(1) of the *Criminal Code*, which states:

380. (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

- (a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or
- (b) is guilty
  - (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
  - (ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

[36] Voluntarily and with the benefit of legal advice, on October 18, 2007, Lech pleaded guilty to count 86 before Ontario's Superior Court of Justice. Lech pleaded guilty to the following charge:

... ANDREW LECH STANDS CHARGED THAT he, between the 1st day of January in the year 2001 and the 1st day of May in the year 2003 at the City of London, in the said region or elsewhere in the Province of Ontario did by deceit, falsehood or other fraudulent means defraud Public of money in excess of \$5,000 contrary to Section 380, Sub-section (1) of the Criminal Code of Canada.

[37] The nature of Lech's fraud on the public of Ontario is outlined in the Agreed Facts, which were presented to the Superior Court of Justice as part of Lech's guilty plea. Lech reviewed the Agreed Facts, and acknowledged in Court that the facts are substantially correct.

[38] Though a specific number of investors is not provided, the Agreed Facts state that the investment scheme appears to have started with a very small group of investors, and expanded rapidly over a number of years to include hundreds of investors located primarily in Ontario.

[39] The Agreed Facts state that while Lech ran the investment scheme, he was assisted by a number of intermediaries (the "Intermediaries"). The Intermediaries managed groups of investors for Lech, for which they received bonuses in the form of extra interest or additional payments. According to the Agreed Facts, the four main Intermediaries were Gary McNaughton, Dennis Yacnowiec, Dan Shuttleworth and Joseph Vandervelden.

[40] Investors in the scheme were sought by Lech and the Intermediaries using word of mouth and community ties. For example, the Agreed Facts state that, "[t]he Baptist investors were lead [sic] to believe that LECH was a fellow Baptist and he was allowing fellow Baptists to invest with him as a service to fellow Christians".

[41] As part of the investigation, a forensic audit was conducted that examined the period between January 2001 to September 2003 (the "Forensic Audit"). While the figures remain somewhat approximate, the Agreed Facts confirm the results of the Forensic Audit, which found that \$35.9 million CAD and \$10.0 million USD of investors' money was received by Lech.

[42] The funds were received on the basis of Lech's representation that he had expertise as an investor in securities, and that he would use that expertise to generate high returns for his investors with little risk. The Agreed Facts describe the investment scheme as follows:

[t]he investment operated through LECH. The investors were told that LECH was managing this large family fortune and he would allow individual investors to piggyback on his family investment and also generate high rates of returns on their investments. There was no documentation provided to investors by LECH with any investment details and as time went on investors were provided with promissory notes or guarantees signed by LECH. The investors were told that LECH was a futures trader who could generate large returns even in times when the stock market lost money. LECH was said to be a genius who invested in nothing but very large blocks of blue chip corporate stocks. Investors were led to believe that LECH was trading daily in the millions of dollars.

[43] Lech made a number of representations to investors, including that he: had a net worth of \$500 million; is the grandson of an owner of Richardson Greenshields, a well known financial services firm; personally guaranteed the principal invested; and had paid the tax on investment income and therefore the money received by an investor was not subject to further taxation.

[44] Representations made with respect to the rate of return on the investment varied over time, and were in part a function of the size and source of the financial commitment made by investors. In the Agreed Facts the range of returns promised, typically through the Intermediaries, are summarized as follows:

... [e]arly in the scheme LECH was typically paying interest rates of 15% for investments of \$50,000 or less, 18% for investments of \$50,000 - \$100,000 and 20% for investments of \$100,000 or greater. Intermediaries were told that if the investor was a pastor or other member of the clergy, LECH would pay the investor a higher rate of interest.

... Just before the collapse of the scheme LECH was accepting investments into 3 month short term contracts that were paying 40% return in 3 months...

[45] The Forensic Audit revealed that of the approximately \$35.9 million CAD and \$10 million USD in investor funds received by Lech, \$35.1 million CAD (97.7%) and \$9.5 million USD (95%) was not invested. This finding of the Forensic Audit was subsequently confirmed by Lech's approval of the Agreed Facts.

[46] The findings of the Forensic Audit with respect to the structure of the investment scheme are summarized and confirmed in the Agreed Facts, which state that:

... LECH was using a multitude of bank accounts and numerous financial institutions to run a combined Ponzi and cheque-kiting scheme by taking in victims money, [sic] depositing the funds and then circulating the same money back to the victims through the intermediaries.

[47] The Forensic Audit further reveals that Lech made personal withdrawals of \$1.1 million CAD and \$1,800 USD, while additional withdrawals of \$3.8 million CAD and \$0.3 million USD could not be accounted for. These figures were confirmed by Lech's adoption of the Agreed Facts.

[48] Additional funds were paid out to the Intermediaries as bonuses in the form of extra interest or additional payments. For example, according to the Agreed Facts adopted by Lech, Shuttleworth was paid between \$1.4 million and \$1.6 million from the investment scheme.

[49] Following Lech's guilty plea before the Superior Court of Justice, he was sentenced to serve six years in a penitentiary. In accepting the recommended sentence of six years Justice Templeton noted that given time served, pursuant to a contempt order in a related civil proceeding, Lech would be effectively deprived of his liberty for a period of nine years, "which is in the range for this kind of massive, massive fraud". Further, Templeton J. emphasized that the "massive fraud" perpetrated by Lech was financially and emotionally devastating to the victims.

**D. Has Lech been convicted of an offence arising from a transaction, business or course of conduct related to securities?**

[50] Section 127(10) of the *Act* provides:

(10) 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:

1. 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.

...

[51] Lech pleaded guilty to the criminal offence of fraud over \$5,000, pursuant to section 380(1) of the *Criminal Code*, before the Superior Court of Justice. The Agreed Facts, discussed in detail above, clearly establish that the fraudulent course of conduct was related to securities.

**E. Should sanctions be imposed to protect the public interest?**

[52] In deciding whether to exercise our public interest jurisdiction we are guided by the purposes of the *Act*, at section 1.1:

- (a) to provide protection to investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in capital markets.

[53] In pursuing the objects of the *Act*, the Commission's primary means of achieving the purposes of the *Act* include: "restrictions on fraudulent and unfair market practices and procedures", and "requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants". (*Act*, s. 2.1)

[54] In furtherance of the purposes of the *Act* the Commission imposes minimum standards. As the Commission stated in *Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 at para. 46:

[i]n order to ensure that there is fairness and confidence in Ontario's capital markets, it is critical that brokers, dealers and other market participants in the business of selling or promoting securities meet the minimum registration, qualification and conduct requirements of the *Act*.

[55] In making an order in the public interest, pursuant to section 127 of the *Act*, the Commission seeks to exercise its jurisdiction in a protective and preventative manner. As the Commission stated in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at p. 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 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.

[56] We considered the following factors in determining whether or not sanctions against Lech are appropriate in order to protect the public interest, in accordance with our mandate:

- Lech has pleaded guilty to, and been convicted of, fraud over \$5,000;
- the Fraud Conviction involved investments in securities, and representations made to investors about the investment of their funds in securities;
- as part of Lech's investment scheme, fraudulent statements were made to investors concerning matters such as the nature of the proposed investment, the risk and return of the investment, Lech's credentials as an investor, and how investors' funds would be invested;
- approximately \$35.9 million CAD and \$10 million USD in investor funds were received by Lech, less than 5% of which were invested;
- significant amounts of money could not be accounted for, were withdrawn by Lech, or were paid out to the Intermediaries;
- the complexity of the investment scheme is evident from the Forensic Audit, which examined 54 bank and investment accounts, finding that both aggregate deposits and aggregate withdrawals were in excess of \$150 million CAD and \$20 million USD;
- the investment scheme relied on new investor funds, in order to make pay-outs related to existing investments;
- there were hundreds of investors involved in the investment scheme, most of whom were located in Ontario;
- many of the investors shared community ties with Lech or the Intermediaries; and
- the fraud occurred over a significant period of time.

[57] Based on the Fraud Conviction and the Agreed Facts we are satisfied that we can make an order pursuant to subsection 127(10) paragraph 1 of the *Act*.

[58] Given the factors summarized above, we find that sanctions against Lech are appropriate in order to protect the capital markets in Ontario.

**F. What sanctions are appropriate and in the public interest?**

[59] In determining the appropriate sanctions in this matter, it is necessary to consider the specific circumstances of the case before us. As the Commission stated in *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at paras. 9-10:

... [w]e have a duty to consider what is in the public interest. To do that, we have to take into account what sanctions are appropriate to protect the integrity of the marketplace...

In doing this, we have to take into account circumstances that are appropriate to the particular respondents. This requires us to be satisfied that proposed sanctions are proportionately appropriate with respect to the circumstances facing the particular respondents. We should not just look at absolute values, e.g. what has been paid voluntarily in other settlements, or what has been found to be appropriate sanctions by way of cease trade orders in other cases.

[60] In determining the nature and duration of the appropriate sanctions, the Commission may consider a number of factors including:

- (a) the seriousness of the allegations proved;
- (b) the respondents' experience in the marketplace;
- (c) the level of a respondent's activity in the marketplace;
- (d) whether or not there has been a recognition of the seriousness of the improprieties;
- (e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets; and
- (f) any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at paras. 25-26.)

[61] In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60, the Supreme Court of Canada affirmed that the Commission may properly impose sanctions which are a general deterrent, stating "... it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

[62] In *Erikson v. Ontario (Securities Commission)* (2003), 26 O.S.C.B. 1622 (Ont. Div. Ct.), at para. 56, it was held that participation in Ontario's "capital markets is a privilege and not a right" (see also: *Re E.A. Manning Ltd.* (1996), 19 O.S.C.B. 5557 (Ont. Div. Ct.)).

[63] Through the Fraud Conviction, Lech has admitted to conducting a fraudulent scheme characterized by a level of deceitfulness, complexity, dollar value and number of investors that place it at the most serious end of the continuum of unfair, improper and fraudulent market practices. The magnitude of the fraud perpetrated by Lech is clear from the Agreed Facts, but is also reflected by the severity of the sentence imposed in spite of his guilty plea.

[64] We note that Lech is not a registered market participant. Further, the sanctions proposed by Staff are prospective and protective in nature.

[65] Therefore we find that the sanctions proposed by Staff are consistent with the purposes of the *Act*, and appropriate and proportionate given the evidence of Lech's conduct.

[66] Submissions were not made requesting a carve-out from the order proposed by Staff, to allow for restricted trading by Lech. In the present case, the conduct at issue is criminal fraud related to securities. Lech's conduct was egregious and demonstrates a serious risk to the public. In this case, it is better to err on the side of caution. We therefore find that it is neither appropriate nor in the public interest to provide such a carve-out.

### **III. CONCLUSION**

[67] Pursuant to our public interest jurisdiction under section 127 of the *Act*, and for the aforementioned reasons, we find it is in the public interest to make an order that:

- pursuant to section 127(1) clause 2 of the *Act*, trading in any securities by Lech cease permanently;
- pursuant to section 127(1) clause 2.1 of the *Act*, acquisition of any securities by Lech is prohibited permanently;
- pursuant to section 127(1) clause 3 of the *Act*, any exemptions contained in Ontario securities law do not apply to Lech permanently;
- pursuant to section 127(1) clause 6 of the *Act*, Lech is reprimanded;
- pursuant to section 127(1) clause 7 of the *Act*, Lech resign all positions that Lech holds as a director or officer of an issuer;
- pursuant to section 127(1) clause 8 of the *Act*, Lech is prohibited from becoming or acting as director or officer of any issuer;
- pursuant to section 127(1) clause 8.4 of the *Act*, Lech is prohibited from becoming or acting as a director or officer of an investment fund manager; and
- pursuant to section 127(1) clause 8.5 of the *Act*, Lech is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

Dated at Toronto this 25th day of May, 2010.

"Mary G. Condon"

"Carol S. Perry"

## 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
AAER Inc.	10 May 10	21 May 10	21 May 10	
Greentree Gas & Oil Ltd.	10 May 10	21 May 10	21 May 10	
Aspen Group Resources Corporation	10 May 10	21 May 10	21 May 10	
Immunall Science Inc.	10 May 10	21 May 10	21 May 10	
Orbus Pharma Inc.	10 May 10	21 May 10	21 May 10	
Champion Communication Services, Inc.	12 May 10	25 May 10	25 May 10	
CCR Technologies Ltd.	12 May 10	25 May 10	25 May 10	
Zaruma Resources Inc.	13 May 10	25 May 10	25 May 10	
EnQuest Energy Services Corp.	13 May 10	25 May 10	25 May 10	
Dynamic Resources Corp.	14 May 10	26 May 10	26 May 10	
Hydralogic Systems Inc.	14 May 10	26 May 10	26 May 10	
SeaMiles Limited	14 May 10	26 May 10	26 May 10	
Richards Oil & Gas Limited	14 May 10	26 May 10	26 May 10	
Disenco Energy PLC	20 May 10	01 June 10		

### 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
Homeland Energy Group Ltd.	06 April 10	19 Apr 10	19 Apr 10	25 May 10	
Ecosse Energy Corp.	13 May 10	25 May 10	25 May 10		
Diamond International Exploration Inc.	14 May 10	26 May 10	26 May 10		

### 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
Coalcorp Mining Inc.	07 Oct 09	19 Oct 09	19 Oct 09		
Axiotron Corp.	12 Feb 10	24 Feb 10	24 Feb 10		

**Cease Trading Orders**

<b>Company Name</b>	<b>Date of Order or Temporary Order</b>	<b>Date of Hearing</b>	<b>Date of Permanent Order</b>	<b>Date of Lapse/ Expire</b>	<b>Date of Issuer Temporary Order</b>
Homeland Energy Group Ltd.	06 April 10	19 Apr 10	19 Apr 10	25 May 10	
Redline Communications Group Inc.	07 April 10	19 Apr 10	19 Apr 10		
Synergex Corporation	08 Apr 10	20 Apr 10	20 Apr 10		
Phonetime Inc.	15 Apr 10	27 Apr 10	27 Apr 10		
Freeport Capital Inc.	05 May 10	17 May 10	17 May 10		
SonnenEnergy Corp.	06 May 10	18 May 10	18 May 10		
Newlook Industries Corp.	06 May 10	18 May 10	18 May 10		
TriNorth Capital Inc.	07 May 10	19 May 10	19 May 10		
Win-Eldrich Mines Limited	07 May 10	19 May 10	19 May 10		
Ecosse Energy Corp.	13 May 10	25 May 10	25 May 10		
Diamond International Exploration Inc.	14 May 10	26 May 10	26 May 10		
MedX Health Corp.	17 May 10	28 May 10			



## Chapter 7

# Insider Reporting

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This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see [www.carswell.com](http://www.carswell.com)).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website ([www.sedi.ca](http://www.sedi.ca)).

## Chapter 8

# Notice of Exempt Financings

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### REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price (\$)	# of Securities Distributed
04/30/2010	42	Abitex Resources Inc. - Common Shares	2,344,422.00	12,179,058.00
12/31/2009	14	Acero-Martin Exploration Inc. - Units	783,000.00	4,000,000.00
04/30/2010	54	ACM Commercial Mortgage Fund - Units	1,558,464.52	N/A
04/29/2010	3	Alpha and Omega Semiconductor Limited - Common Shares	995,346.00	55,000.00
05/05/2010	18	Altus Energy Services Ltd. - Common Shares	6,052,647.75	8,070,197.00
05/07/2010	4	Ambit Energy Corporation - Units	165,000.00	25,000.00
03/12/2010	5	ArcticAx Inc. - Units	146,325.00	48,775.00
04/19/2010	1	Assetize Inc. - Preferred Shares	125,000.00	N/A
04/07/2010	1	Axela Inc. - Debentures	125,250.00	N/A
04/08/2010	7	Benafuel Inc. - Preferred Shares	2,266,070.55	N/A
04/16/2010	7	Birch Hill Equity Partners IV, LP - Limited Partnership Interest	31,000,000.00	N/A
04/16/2010	2	Birch Hill Equity Partners (Entrepreneurs) IV LP - Limited Partnership Interest	1,500,000.00	1,500,000.00
04/30/2010	4	Caldera Geothermal Inc. - Units	140,000.00	N/A
04/15/2010	17	Canadian Horizons First Mortgage Investment Corporation - Preferred Shares	871,839.00	871,839.00
04/28/2010	43	Canadian Horizons First Mortgage Investment Corporation - Preferred Shares	1,879,269.00	1,879,269.00
05/01/2010	4	Capital Direct I Income Trust - Trust Units	280,000.00	28,000.00
04/28/2010 to 04/30/2010	33	CareVest Blended Mortgage Investment Corporation - Preferred Shares	876,330.00	776,330.00
04/28/2010	24	CareVest Capital Blended Mortgage Investment Corp - Preferred Shares	1,257,798.00	1,257,798.00
04/15/2010	21	CareVest Capital Blended Mortgage Investment Corp. - Preferred Shares	1,010,385.00	1,010,385.00
04/28/2010	14	CareVest Horizons Blended Mortgage Investment Corporation - Preferred Shares	238,732.00	238,732.00
04/28/2010	15	CareVest Second Mortgage Investment Corporation - Preferred Shares	724,072.00	524,072.00
04/29/2010	2	Cavet Holdings Limited - Notes	600,000.00	N/A

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
04/15/2010	1	Collus Power Corp. - Debentures	3,000,000.00	N/A
05/05/2010	49	Crown Point Ventures Ltd. - Units	3,217,000.50	N/A
03/23/2010 to 03/31/2010	198	Dacha Capital Inc. - Warrants	22,000,050.85	N/A
05/06/2010	94	Decade Resources Ltd. - Units	2,562,500.00	10,250,000.00
05/05/2010	1	Development Notes Limited Partnership - Units	500,000.00	500,000.00
04/28/2010 to 04/30/2010	18	Eagle Landing Retail Limited Partnership - Units	462,000.00	462,000.00
05/20/2010	7	East Asia Minerals Corporation - Common Shares	18,850,000.00	2,500,000.00
05/03/2010	93	Edleun Inc. - Receipts	33,612,500.00	N/A
04/23/2010	1	Emgold Mining Corporation - Units	350,000.00	1,400,000.00
04/30/2010	5	Erin Ventures Inc. - Units	210,000.00	2,625,000.00
04/09/2010	34	ETPH Acquisition LLC - Notes	8,044,000.00	N/A
04/12/2010	1	Excalibur Limited Partnership - Limited Partnership Units	100,000.00	4,272.00
05/03/2010	6	Fem Med Formulas Limited Partnership - Notes	320,000.00	1.00
05/07/2010	17	First Leaside Fund - Units	785,755.00	785,755.00
04/27/2010	1	First Leaside Ultimate Limited Partnership - Units	80,577.28	79,207.00
04/27/2010	1	First Leaside Visions Limited Partnership - Units	150,000.00	150,000.00
04/08/2010	103	First Uranium Corporation - Notes	128,200,000.00	N/A
04/28/2010	1	Foundation Group Capital Trust - Units	100,490.00	10,049.00
04/06/2010 to 04/20/2010	37	Hard Creek Nickel Corporation - Units	1,000,000.00	4,000,000.00
04/16/2010	12	HIP Energy Corporation - Common Shares	610,328.80	2,416,000.00
05/04/2010	21	Huldra Silver Inc. - Units	779,000.00	3,895,000.00
04/26/2010 to 04/30/2010	38	IGW Real Estate Investment Trust - Units	1,260,864.08	1,259,256.24
04/13/2010	39	International PBX Ventures Ltd. - Units	932,000.00	5,160,000.00
05/04/2010	1	Kansas City Southern - Common Shares	2,390,544.00	5,016,722.00
04/20/2010	2	Kilroy Realty Corporation - Common Shares	2,037,144.00	9,200,000.00
04/13/2010	20	Kimco North Trust III - Notes	150,000,000.00	150,000,000.00
04/20/2010 to 04/26/2010	5	Knight Resources Ltd. - Units	567,621.06	150,000.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
04/28/2010	28	Macarther Minerals Limited - Units	9,000,000.00	N/A
04/08/2010 to 04/12/2010	12	MediaTube Corp. - Units	1,972,810.21	2,818,303.00
03/08/2010	2	Merrill Lynch International & Co. C.V. - Units	979,091.50	N/A
04/26/2010	1	Merrill Lynch International & Co. C.V. - Warrants	4,796,492.00	N/A
03/30/2010	1	Merrill Lynch International & Co. C.V. - Warrants	10,000,000.00	281.00
03/02/2010	1	Merrill Lynch International & Co. C.V. - Warrants	10,000,000.00	1,200.00
04/11/2010	6	Montero Mining and Exploration Ltd. - Common Shares	87,757.30	650,054.00
05/01/2010 to 05/03/2010	28	New World Lenders Corp. - Bonds	1,315,830.00	N/A
04/01/2010	1	North American Capital Inc. - Preferred Shares	550,000.00	1.00
04/01/2010	9	North American Financial Group Inc. - Debt	492,000.00	9.00
05/04/2010	83	North Country Gold Corp. - Common Shares	6,025,000.00	24,000,000.00
05/03/2010	68	Northern Tiger Resources Inc. - Units	2,971,500.00	N/A
04/15/2010	11	Northern Oil & Gas Inc. - Common Shares	4,386,132.00	292,000.00
05/05/2010	41	OurStage Inc. - Preferred Shares	2,710,543.53	N/A
03/03/2008 to 12/01/2008	5	Overstone Fund plc - Common Shares	147,748,622.70	1,320,654.58
01/02/2009 to 12/01/2009	6	Overstone Fund plc - Common Shares	53,799,201.54	570,887.95
04/06/2010 to 04/16/2010	66	PAKIT Inc. - Common Shares	1,339,900.00	1,339,900.00
04/15/2010	11	Pan Terra Industries Inc. - Units	247,500.00	4,950,000.00
03/12/2010	2	Parallel Resources Ltd. - Units	375,000.00	1,500,000.00
03/10/2010 to 03/24/2010	56	PetroGlobe Inc. - Common Shares	1,882,140.04	2,125,000.00
04/28/2010	7	Phillips-Van Heusen Corporation - Common Shares	3,636,964.80	5,000,000.00
04/19/2010 to 04/28/2010	39	Porto Energy Inc. - Units	6,396,006.50	2,630,000.00
02/25/2010	1	Primal Fusion Inc. - Preferred Shares	500,000.00	568,182.00
05/04/2010	1	Reynolds Group Issuer LLC/ Reynolds Group Issuer Inc. - Notes	10,200,000.00	1.00
04/19/2010 to 04/23/2010	1	Rogers Oil & Gas Inc. - Debentures	10,000.00	N/A

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
04/09/2010	3	Second Skin & Otis Ltd. - Preferred Shares	500,000.00	N/A
02/26/2010	2	Solara Development Limited Partnership - Limited Partnership Units	525,000.00	21.00
03/31/2010	1	Sprott Foundation Unit Trust - Units	16,250.00	273.30
04/20/2010	32	St. Elias Mines Ltd. - Units	1,909,311.00	2,545,748.00
05/03/2010	23	Superior Mining International Corporation - Common Shares	500,000.00	2,000,000.00
05/04/2010	15	Syncapse Corp. - Common Shares	637,160.00	N/A
11/13/2009 to 04/29/2010	27	Tartisan Resources Corp. - Common Shares	495,000.00	4,050,000.00
05/03/2010	17	THEMAC Resources Group Limited - Receipts	837,383.40	5,582,556.00
03/31/2010	1	Torch River Resources Ltd. - Units	100,000.00	N/A
04/26/2010	29	Touchdown Resources Inc. - Common Shares	581,400.00	N/A
04/21/2010 to 04/23/2010	28	Tres-Or Resources Ltd. - Units	1,000,000.00	N/A
04/15/2010	1	Uken Studios Inc. - Preferred Shares	250,000.00	N/A
04/23/2010	99	United Hydrocarbon Corporation - Units	9,000,000.00	45,000,000.00
04/13/2010	1	United Mexican States - Notes	488,620.00	N/A
04/21/2010	49	Virginia Energy Resources Inc. - Warrants	2,523,000.00	N/A
05/03/2010	1	VMS Ventures Inc. - Common Shares	51,000.00	150,000.00
05/03/2010 to 05/04/2010	55	Vulcan Minerals Inc. - Units	4,210,000.00	N/A
04/16/2010	55	Walton Southern U.S. Land Investment Corporation - Common Shares	1,092,200.00	109,220.00
05/07/2010	65	Walton Southern U.S. Land Investment Corporation - Common Shares	1,690,580.00	169,058.00
04/16/2010	12	Walton Southern U.S. Land LP - Units	1,867,794.10	187,718.00
05/07/2010	9	Walton Southern U.S. Land LP - Units	1,979,567.80	191,800.00
04/16/2010	22	Walton TX Austin Land Investment Corporation - Common Shares	620,260.00	62,026.00
04/26/2010	53	Wavefront Technology Solutions Inc. - Units	21,920,157.00	10,438,170.00
02/05/2010	13	Western Uranium Corporation - Units	435,000.00	N/A
02/25/2010	3	Wi2W1 Corporation - Common Shares	587,125.00	7,333,332.00
10/06/2009	8	Wi2Wi Corporation - Common Shares	1,374,230.00	24,000,000.00
04/02/2010	3	Wi2Wi Corporation - Common Shares	371,520.00	6,000,000.00

**Notice of Exempt Financings**

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<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
04/26/2010	1	Wimberly Fund - Trust Units	150,000.00	150,000.00
05/05/2010 to 05/10/2010	2	Wimberly Fund - Trust Units	290,000.00	290,000.00
04/28/2010	13	Xinergy Ltd. - Common Shares	0.00	3,000,000.00

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## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

Atis Group Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Long Form Prospectus dated May 19, 2010  
NP 11-202 Receipt dated May 19, 2010

**Offering Price and Description:**

\$ \* - \* Common Shares Price: \$ \* per Common Share

**Underwriter(s) or Distributor(s):**

Scotia Capital Inc.  
National Bank Financial Inc.  
BMO Nesbitt Burns Inc.  
RBC Dominion Securities Inc.  
Desjardins Securities Inc.  
GMP Securities L.P.

**Promoter(s):**

-

**Project #1584186**

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**Issuer Name:**

Canso Credit Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated May 20, 2010  
NP 11-202 Receipt dated May 20, 2010

**Offering Price and Description:**

Maximum \$ \* - (Maximum \* Class A Units and/or Class F Units) Price: \$10.00 per Class A Unit and \$10.00 per Class F Unit

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
National Bank Financial Inc.  
GMP Securities L.P.  
Dundee Securities Corporation  
Canaccord Genuity Corp.  
HSBC Securities (Canada) Inc.  
Macquarie Capital Markets Canada Inc.  
Raymond James Ltd.  
Wellington West Capital Markets Inc.

**Promoter(s):**

Lysander Funds Limited

**Project #1584604**

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**Issuer Name:**

CHIP Mortgage Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Base Shelf Prospectus dated May 19, 2010  
NP 11-202 Receipt dated May 20, 2010

**Offering Price and Description:**

\$750,000,000.00: Medium Term Notes (secured) Fully and Unconditionally guaranteed as to payment of principal, premium (if any) and interest by HOMEQ CORPORATION

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.  
Scotia Capital Inc.

**Promoter(s):**

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**Project #1584478**

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**Issuer Name:**

Dacha Capital Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated May 21, 2010  
NP 11-202 Receipt dated May 21, 2010

**Offering Price and Description:**

\$22,000,050.00 - 48,889,001 Common Shares on Exercise of 48,889,001 Special Warrants

**Underwriter(s) or Distributor(s):**

Mackie Research Capital Corporation  
Dundee Securities Corporation  
CIBC World Markets Inc.

**Promoter(s):**

-

**Project #1585065**



**Issuer Name:**

DELPHI ENERGY CORP.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated May 19, 2010  
NP 11-202 Receipt dated May 19, 2010

**Offering Price and Description:**

\$27,500,000.00 - 10,000,000 Common Shares \$2.75 per  
Common Share

**Underwriter(s) or Distributor(s):**

National Bank Financial Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
Canaccord Genuity Corp.  
GMP Securities L.P.  
Macquarie Capital Markets Canada Ltd.  
Peters & Co. Limited  
Thomas Weisel Partners Canada Inc.

**Promoter(s):**

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**Project #1584136**

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**Issuer Name:**

HOMEQ Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Base Shelf Prospectus dated May 19, 2010  
NP 11-202 Receipt dated May 20, 2010

**Offering Price and Description:**

\$150,000,000.00:  
Common Shares  
Preferred Shares and Convertible Securities

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #1584479**

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**Issuer Name:**

Mackenzie All-Sector Canadian Balanced Fund  
Mackenzie Saxon Balanced Class  
Mackenzie Saxon Small Cap Class  
Mackenzie Saxon Stock Class  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectuses dated May 20, 2010  
NP 11-202 Receipt dated May 21, 2010

**Offering Price and Description:**

(Series A, F, J, O, F6, F8, J6, J8 T6, I T8 Securities)

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Mackenzie Financial Corporation  
**Project #1584853**

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**Issuer Name:**

Mandalay Resources Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated May 20, 2010  
NP 11-202 Receipt dated May 25, 2010

**Offering Price and Description:**

\$40,000,000.00 - \* Subscription Receipts Price: \$ \* per  
Subscription Receipt

**Underwriter(s) or Distributor(s):**

GMP Securities L.P.  
BMO Nesbitt Burns Inc.

**Promoter(s):**

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**Project #1585632**

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**Issuer Name:**

Sobeys Inc.  
Principal Regulator - Nova Scotia

**Type and Date:**

Preliminary Base Shelf Prospectus dated May 25, 2010  
NP 11-202 Receipt dated May 25, 2010

**Offering Price and Description:**

\$500,000,000.00 - Medium Term Notes (unsecured)

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.  
TD Securities Inc.

**Promoter(s):**

-

**Project #1585774**

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**Issuer Name:**

Sunward Resources Ltd.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated May 21, 2010  
NP 11-202 Receipt dated May 21, 2010

**Offering Price and Description:**

\$25,000,000 - 20,833,333 Common Shares Issuable on  
Exercise of 20,833,333 Special Warrants Price: \$1.20 per  
Special Warrant

**Underwriter(s) or Distributor(s):**

Cormark Securities Inc.  
GMP Securities L.P.  
Canaccord Genuity Corp.

**Promoter(s):**

-

**Project #1585317**

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**Issuer Name:**

The Consumers' Waterheater Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated May 25, 2010  
NP 11-202 Receipt dated May 25, 2010

**Offering Price and Description:**

\$25,008,000.00 -5,210,000 Units; and \$25,000,000 - 6.25%  
Convertible Unsecured Subordinated Debentures Price:

\$4.80 per Unit and \$1,000 per Debenture

**Underwriter(s) or Distributor(s):**

TD Securities Inc.  
Scotia Capital Inc.  
Canaccord Genuity Corp.  
RBC Dominion Securities Inc.  
National Bank Financial Inc.  
Desjardins Securities Inc.  
HSBC Securities (Canada) Inc.

**Promoter(s):**

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**Project #1585692**

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**Issuer Name:**

Allied Nevada Gold Corp.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated May 25, 2010  
NP 11-202 Receipt dated May 25, 2010

**Offering Price and Description:**

C\$273,000,000.00 - 13,000,000 Shares of Common Stock  
Price: C\$21.00 per Share of Common Stock

**Underwriter(s) or Distributor(s):**

Cormark Securities Inc.  
GMP Securities L.P.  
Canaccord Genuity Corp.  
Dundee Securities Corporation  
Desjardins Securities Inc.  
National Bank Financial Inc.

**Promoter(s):**

-

**Project #1582727**

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**Issuer Name:**

CANADIAN RESOURCES INCOME TRUST  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated May 21, 2010  
NP 11-202 Receipt dated May 25, 2010

**Offering Price and Description:**

Warrants to Subscribe for up to 2,340,400 Units at a  
Subscription Price of \$12.30

**Underwriter(s) or Distributor(s):**

Scotia Capital Inc.

**Promoter(s):**

-

**Project #1572526**

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**Issuer Name:**

Emera Incorporated  
Principal Regulator - Nova Scotia

**Type and Date:**

Final Base Shelf Prospectus dated May 19, 2010  
NP 11-202 Receipt dated May 19, 2010

**Offering Price and Description:**

\$500,000,000.00  
Debt Securities (unsecured)

First Preferred Shares  
Second Preferred Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

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**Project #1574428**

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**Issuer Name:**

Friedberg Asset Allocation Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated May 21, 2010  
NP 11-202 Receipt dated May 25, 2010

**Offering Price and Description:**

Redeemable Trust Units @ Net Asset Value

**Underwriter(s) or Distributor(s):**

Friedberg Mercantile Group Ltd.

**Promoter(s):**

-

**Project #1563629**

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**Issuer Name:**

Nova Scotia Power Incorporated  
Principal Regulator - Nova Scotia

**Type and Date:**

Final Base Shelf Prospectus dated May 21, 2010  
NP 11-202 Receipt dated May 21, 2010

**Offering Price and Description:**

\$500,000,000.00 - Debt Securities (unsecured)

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #1574454**

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**Issuer Name:**

Porter Aviation Holdings Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form PREP Prospectus dated May 21, 2010  
NP 11-202 Receipt dated May 21, 2010

**Offering Price and Description:**

\$120,000,000.00 - \* Common Voting Shares and Variable  
Voting Shares (depending on the residency of the  
purchaser)

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.  
National Bank Financial Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
TD Securities Inc.  
GMP Securities L.P.  
Credit Suisse Securities (Canada) Inc.  
Raymond James Ltd.  
Versant Partners Inc.

**Promoter(s):**

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**Project #1564941**

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**Issuer Name:**

Primaris Retail Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated May 21, 2010  
NP 11-202 Receipt dated May 21, 2010

**Offering Price and Description:**

\$85,202,500.00 - 4,925,000 Units at \$17.30 per Unit

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
Canaccord Genuity Corp.  
National Bank Financial Inc.  
Macquarie Capital Markets Canada Ltd.  
Raymond James Ltd.

**Promoter(s):**

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**Project #1581628**

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**Issuer Name:**

Sprott Physical Gold Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated May 25, 2010  
NP 11-202 Receipt dated May 25, 2010

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.  
Morgan Stanley Canada Limited

**Promoter(s):**

Sprott Asset Management LP

**Project #1581593**

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**Issuer Name:**

UBS (Canada) Global Allocation Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form  
(NI 81-101) dated May 20, 2010  
NP 11-202 Receipt dated May 25, 2010

**Offering Price and Description:**

Series D units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #1564577**

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Registration Category	Tralucant Asset Management Inc.	From: Exempt Market Dealer and Portfolio Manager  To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	May 19, 2010
New Registration	Kinsale Private Wealth Inc.	Exempt Market Dealer Portfolio Manager Investment Fund Manager	May 20, 2010
New Registration	FSX Securities Canada, Inc.	Portfolio Manager	May 21, 2010
Change in Registration Category	BSM Capital Corporation	From: Exempt market Dealer  To: Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager	May 25, 2010
Change in Registration Category	Innerkip Capital Management Inc.	From: Exempt Market Dealer and Portfolio Manager  To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	May 25, 2010
Change in Registration Category	Sinclair-Cockburn Financial Services Inc.	From: Mutual Fund Dealer  To: Mutual Fund Dealer Exempt Market Dealer	May 25, 2010

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## Chapter 13

# SROs, Marketplaces and Clearing Agencies

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### 13.1 SROs

#### 13.1.1 IIROC Rules Notice – Request for Comments - Proposed Rule on Personal Financial Dealings with Clients and Amendments to IIROC Dealer Member Rule 18.14

##### IIROC RULES NOTICE – REQUEST FOR COMMENTS – PROPOSED RULE ON PERSONAL FINANCIAL DEALINGS WITH CLIENTS AND AMENDMENTS TO IIROC DEALER MEMBER RULE 18.14

#### The nature and purpose of the proposed Rule

On April 30, 2010, the Board of Directors (“the Board”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) approved the publication for comment of the proposed Personal Financial Dealing Rule and proposed amendments to Dealer Member Rule 18.14 (the “Proposals”).

The Proposals set out in Attachment A will expressly prohibit personal financial dealings with clients. The Proposals will clarify that, subject to specific exemptions, personal financial dealing with clients includes the following types of arrangements:

- Receiving any direct or indirect benefit or consideration from clients, other than through the Dealer Member;
- Entering into any private settlement agreements with clients;
- Lending money to clients;
- Borrowing any money from clients; and
- Having any control or authority over the financial affairs of clients.

The primary objective of the proposed Personal Financial Dealing Rule is to clearly articulate that any personal financial dealing with clients, subject to limited exemptions, is considered inappropriate conduct, a conflict of interest and a violation of the general business conduct standards.

The secondary objective is to codify the current IIROC expectations relating to personal financial dealing with clients, some of which are currently set out in the Conduct and Practices Handbook.

In addition to the prohibition against personal financial dealing with clients, the Proposals in Attachment A will codify, in Dealer Member Rule 18.14, IIROC’s current expectations regarding outside business activities by imposing a specific and positive obligation on Registered Representatives and Investment Representatives to:

- disclose any outside business activity to the Dealer Member; and
- obtain the Dealer Member’s approval

before engaging in any outside business activity in order for the Dealer Member to ensure that they are not inappropriate and do not give rise to a conflict of interest. The objective of these amendments is to codify current expectations relating to disclosure and approval of outside business activities.

#### Issues and specific proposed amendments

##### I. Personal Financial Dealing with Clients

IIROC Dealer Member Rule 29.1 currently requires Approved Persons and employees of a Dealer Member to observe high standards of ethics. Dealer Member Rule 29.1 also prohibits such persons from engaging in conduct or practice that is unbecoming or detrimental to the public interest. Furthermore, pursuant to National Instrument 31-103 (NI 31-103) *Registration Requirements and Exemptions*, Dealer members are required to take reasonable steps to identify existing and potential material conflicts of interest that the firm reasonably expects to arise between the firm and a client. The Companion Policy of NI 31-103

explains that a firm's policies and procedures for managing conflicts should allow the firm and its staff to, among other things, identify conflicts of interest that should be avoided and to respond appropriately. It is the position of IIROC Staff that any personal financial dealing with a client creates an unacceptable conflict of interest between the Dealer Member's employee or agent and the client. Having said that, the issue of personal financial dealing is not specifically addressed within the current IIROC Dealer Member Rules. The only specific guidance on the matter is set out in the Conduct and Practices Handbook, a handbook used widely within the industry that provides guidance on various ethical and conduct issues.

It is the position of IIROC staff that a specific rule which prohibits personal financial dealing with clients is important to enhancing IIROC's ability to meet its investor protection objective.

The provisions set out in the Proposals will codify IIROC's current expectations with respect to this issue. The Proposals will specifically prohibit Registered Representatives, Investment Representatives, Executives, Supervisors or employees of a Dealer Member from, directly or indirectly, engaging in any personal financial dealing with clients. Furthermore, the proposed Rule will prohibit such individuals from permitting their associates to engage in personal financial dealings with clients. The Proposals set out in Appendix 2 will represent an extension of these general business conduct standards by specifically prohibiting personal financial dealing with clients.

Furthermore, the Proposals will specify that the following types of arrangements, subject to specific exemptions, are considered to be personal financial dealing with a client and subject to the general prohibition set out above:

- **Benefit or other consideration:** We will be introducing new requirements which will specify that receiving any material consideration from any person, other than the through the Dealer Member, for the activity conducted on behalf of a client is deemed to be personal financial dealing with a client. The proposed provision is consistent with current IIROC Dealer Member Rule 18.15 which states that a Registered Representative or Investment Representative may not accept or permit any associate to accept, directly or indirectly, any remuneration, gratuity, benefit or any other consideration from any person other than the Dealer Member or its affiliates or related companies, for the securities related activities he or she conducts on behalf of the Dealer Member or its affiliates or its related companies. The Proposals do however, provide for a specific exemption if the consideration is non-monetary, of minimal value and sufficiently infrequent such that it will not cause a reasonable person to question whether it created a conflict of interest. The exemption noted above is consistent with current IIROC expectations relating to gifts that an Approved Person or employee may receive from others, including clients.
- **Private settlement agreements:** The Proposals will also clarify that a private settlement agreement between a client and an Approved Person or employee is considered to be personal financial dealing and is therefore prohibited. Current IIROC Dealer Member Rule 3100 prohibits registrants from entering into any settlement agreement with a customer, without the prior written consent of the Dealer Member. This proposed provision is not a substantive amendment to that rule but rather clarifies that a settlement agreement entered into without the consent of the Dealer Member will be considered personal financial dealing with the client.
- **Borrowing from clients:**

The inappropriateness of borrowing money from clients is not specifically addressed in the IIROC Dealer Member Rules<sup>1</sup> currently. The Proposals will specify that borrowing from clients is deemed to be personal financial dealing and therefore generally prohibited. Having said that, the Proposals do provide specific exemptions under which borrowing from a client will be allowed. These exemptions, which are similar to exemptions used by the Law Society of Upper Canada in their Rules of Professional Conduct, consist of:

- borrowing from a client, whose business includes lending money to the public, if the borrowing is in the normal course of the client's business. The purpose of this exemption is to recognize limited circumstances under which borrowing from a client would not be considered as inappropriate conduct; or
- borrowing from a client who is a Related Person, as defined by the Income Tax Act, as long as the transaction is addressed in accordance with the Dealer Member's policies and procedures.

The latter exemption recognizes that some clients may be related to Approved Persons or employees of a Dealer Member and that such borrowing is appropriate within the context of the personal relationship between the client and the employee or Approved Person. Having said that, in order to effectively identify and address potential conflicts of interest that may arise in these circumstances, Dealer Members need to have policies and procedures to address such borrowing arrangements. The Proposals will expressly require disclosure to and approval of the Dealer Member for any borrowing by a Registered

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<sup>1</sup> The inappropriateness of borrowing from client or lending to clients is addressed in the CPH.

Representative or Investment Representative from a client who is a Related Person. In situations where other employees or Approved Persons, such as back office staff, are borrowing from a Related Person, firms may choose to impose less stringent disclosure requirements as there is a lower risk of inappropriate arrangements due to the type and nature of the activity engaged in by such employees and Approved persons.

- **Lending money to clients:** The current IROC Dealer Member Rules do not specifically prohibit Approved Persons from lending money to a client. The Proposals specify that lending to clients is deemed to be personal financial dealing and therefore prohibited, unless:
  - the Approved Person or employee is lending to a client who is a Related Person as defined by the Income Tax Act; and
  - the transaction is executed in accordance with the Dealer Member's policies and procedures.

The rationale and scope of this exemption is the same as the one set out above with respect to borrowing from clients.

- **Power of attorney:** The current Dealer Member Rules prohibit Registered Representatives from having any control over a client's accounts unless that control relates to a Discretionary Account or Managed Account. Discretionary authority over a client's account is similar to having a power of attorney and control over the client's financial affairs. Currently, the inappropriateness of possessing a Power of Attorney or any control or authority over a client's financial affairs is not specifically addressed in the IROC Dealer Member Rules. The Proposals will specify that acting as a power of attorney, trustee, executor or otherwise having full or partial control or authority over the financial affairs of a client is deemed to be personal financial dealing with the client and is, therefore prohibited unless the control or authority is granted pursuant to a managed account or discretionary account arrangement. This proposal is consistent with current IROC expectations and industry practices.

The Proposals will also provide an exemption for situations where the control or authority is exercised over the financial affairs of a client who is a Related Person under the Income Tax Act.

In order to effectively identify and address potential conflicts of interest, each Dealer Member's policies and procedures must include disclosure requirements relating to an employee or Approved Person exercising any power or control over the financial affairs of a client who is a Related Person. The Proposals will expressly require, in addition to the aforementioned disclosure, approval of the Dealer Member for any such control or authority granted to a Registered Representative or Investment Representative by a client who is a Related Person. When such control is exercised by other employees or Approved Persons, such as back office staff, firms may choose to impose less stringent disclosure requirements, as there is a lower risk of inappropriate arrangements due to the type and nature of the activity engaged in by such employees and Approved persons.

## **II. Other conduct that may be detrimental to the public interest**

In addition to the prohibition against personal financial dealing with clients, the following amendments have been proposed in order to clarify that certain activities require disclosure to, and approval by the Dealer Member in order for the Dealer Member to ensure that they are not inappropriate, detrimental to the public interest or such that they would bring the securities industry into disrepute:

- **Outside business activities:** Current IROC Dealer Member Rule 18.14 sets out the conditions under which Registered Representatives and Investment Representatives may obtain or continue in another gainful occupation. The conditions include:
  - i) that the occupation is in compliance with any conditions set out by the applicable provincial securities commission;
  - ii) that the Dealer Member possesses policies and procedures that ensure continuous service to clients and identify and address potential conflicts of interest; and
  - iii) that the occupation is not one that would bring the securities industry into disrepute.

One of the conditions currently included is whether the Registered Representative or Investment Representative is in a remote area. In practice, the "remote area" condition is currently not being used by registrants. Our records indicate that currently there are not any Registered Representatives or Investment Representatives relying on this condition/exemption and that the provision was included based on old practices and/or requirements previously imposed by some securities commissions. Accordingly, IROC staff propose the removal of this provision.



In addition to the requirements set out in Dealer Member Rule 18.14, on November 17, 2006 a notice was issued by the Corporation (MR-0434) which states that any outside employment must be compatible with IIROC Dealer Member Rule 29.1, the requirement that Approved Persons and employees adhere to high standards of ethical conduct, not engage in any activity that is unbecoming or detrimental to the public interest and be of a character and business repute consistent with the foregoing. MR0434 explains that, among other things, in order for the Dealer Member to ensure compliance with Dealer Member Rule 29.1, they must be aware of all other business activities engaged in by the Approved Person and therefore, the firms must have policies and procedures requiring that all other business activities are disclosed to and approved by the firm. The current practice adopted by Dealer Members, in order to manage conflicts of interests, is consistent with the disclosure and approval suggested in MR0434. Furthermore, the current practice is consistent with the requirements set out in NI31-103. In particular, the Companion Policy explains that before approving any outside business activities, the firms should consider potential conflicts of interest and if the firm cannot properly control a potential conflict of interest, then it should not permit the outside activity.

It is the position of IIROC staff that it is important and appropriate to codify the above noted disclosure and approval requirements within the IIROC Dealer Member Rules. In particular, Dealer Member Rule 18.14 is proposed to be amended in order to better align the IIROC requirements with those set out in NI 31-103. The Proposed amendments will require that all outside business activities be disclosed to and approved by the Dealer Member.

Consistent with the current expectation and practices established through National Instrument 33-109 *Registration Information*, particularly the information currently disclosed under item 10 of 33-109F4, IIROC staff propose an amendment to Dealer Member Rule 18.14 which will require disclosure of all outside business activities to IIROC within the time limits set out in the applicable National Instrument. These time limits are currently set out in NI 33-109; a registered individual must notify the regulator within 7 days of the change.

Furthermore, consistent with Dealer Member Rule 18.14 and the expectations and practices that have been created through MR0434, it is proposed that the conditions set out in IIROC Dealer Member Rule 18.14 should not be limited to other gainful occupations. Rather, these conditions would apply to any outside business activity that a Registered Representative or Investment Representative engages in.

MR0434 sets out some approval considerations for Dealer members in determining whether an Approved Person's outside activities should be approved. Dealer Members may continue to use those suggested factors as part of their approval criteria.

The above noted amendments to Dealer Member Rule 18.14 will not have any significant impact on the Dealer Member's operations as it is consistent with the current IIROC expectations and current Dealer Member practices.

#### **Rule-making process**

IIROC Staff involved representatives of Dealer Members in the rule development process. A copy of the proposed Personal Financial Dealing Rule was circulated for discussion with the members of the Compliance and Legal Section (CLS) Executive committee. A copy of the same was also made available to all CLS members and presented at the general quarterly CLS meeting for discussion. IIROC staff also circulated for discussion a copy of the amendments to Dealer Member Rule 18.14 to the CLS Executive committee.

A number of changes to the draft proposal were made in response to the comments IIROC received through these consultations.

The Proposals were approved for publication by the IIROC Board of Directors on April 30, 2010.

The text of proposed Rules is set out in Attachment A.

#### **Issues and alternatives considered**

Given the importance of these issues in better achieving IIROC's investor protection objective, IIROC staff believe that rule amendments are the only appropriate means of addressing the issues. No other alternatives were considered.

#### **Proposed Rule classification**

The purposes of the Proposals are to:

- Prevent fraudulent and manipulative acts and practices;
- Promote just and equitable principles of trade and emphasize the duty to act fairly, honestly and in good faith;
- Foster fair, equitable and ethical business standards and practices; and
- Promote the protection of investors.

It is the position of IIROC staff that the Proposals reflect current IIROC expectations. The Board has determined that the Proposals are not contrary to the public interest.

Due to the extent and substantive nature of the Proposals, they have been classified as Public Comment Rule proposals.

**Effects of proposed Rule on market structure, Dealer Members, non-members, competition and costs of compliance**

The Proposals will not have any significant effects on Dealer Members or non-Dealer Members, market structure or competition. Furthermore, it is not expected that the Proposed Rules will give rise to any significant, incremental costs of compliance. Rather, the proposed Rules will provide necessary clarity to Dealer Members and registrants regarding personal financial dealing with clients and outside business activities.

The Proposals do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in accordance with IIROC's mandate. The Proposals do not impose costs or restrictions on the activities of market participants that are disproportionate to the goals of the regulatory objectives sought to be realized.

**Technological implications and implementation plan**

There should not be significant technological implications for Dealer Members as a result of the proposed amendments. The proposed Rule will be implemented upon approval by the recognizing regulators.

**Request for public comment**

Comments are sought on the Proposals. Comments should be made in writing. Two copies of each comment letter should be delivered within 90 days of the publication of this notice. One copy should be addressed to the attention of:

Sherry Tabesh-Ndreka  
Policy Counsel  
Investment Industry Regulatory Organization of Canada  
Suite 1600, 121 King Street West  
Toronto, Ontario  
M5H 3T9  
[stabesh@iiroc.ca](mailto:stabesh@iiroc.ca)

A second copy should be addressed to the attention of:

Manager of Market Regulation  
Ontario Securities Commission  
20 Queen Street West  
19th Floor, Box 55  
Toronto, Ontario  
M5H 3S8  
[marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the IIROC website ([www.iiroc.ca](http://www.iiroc.ca) under the heading "IIROC Rulebook - Dealer Member Rules - Policy Proposals and Comment Letters Received").

Questions may be referred to:

Sherry Tabesh-Ndreka  
Policy Counsel, Member Regulation Policy  
Investment Industry Regulatory Organization of Canada  
416-943-4656  
[stabesh@iiroc.ca](mailto:stabesh@iiroc.ca)

**Attachments**

Attachment A - Proposed Personal Financial Dealing Rule and amendments to IIROC Dealer Member Rule 18.14

**Proposed Rule "X"****PERSONAL FINANCIAL DEALINGS WITH CLIENTS**

- X.1 A Registered Representative, Investment Representative, Director, Executive, Supervisor, or employee of a Dealer Member must not, directly or indirectly, engage in or permit any associate to engage in, any personal financial dealings with clients.
- X.2. Personal financial dealings include the following types of dealings:
- (1) Benefits or other consideration**
    - (i) Accepting any material consideration, including remuneration, gratuity or benefit, from any person other than the Dealer Member for any activities conducted on behalf of a client.
    - (ii) Consideration that is non-monetary, of minimal value, and infrequent such that it will not cause a reasonable person to question whether it created a conflict of interest or otherwise improperly influenced the Dealer Member, its employees or agents would not be considered to be material consideration.
  - (2) Private settlement agreements**
    - (i) Entering into a private settlement agreement with a client; or
    - (ii) Paying for client account losses out of personal funds without the Dealer Member's written consent.
  - (3) Borrowing from clients**
    - (i) Borrowing money, securities or any other assets from a client, unless:
      - (a) The client is a financial institution whose business includes lending money to the public and the borrowing is in the normal course of the institution's business; or
      - (b) The client is a Related Person as defined by the Income Tax Act (Canada) and the transaction is addressed in accordance with the Dealer Member's policies and procedures; and
      - (c) In the case of Registered Representatives and Investment Representatives, the arrangement set out in paragraph (b) is disclosed to and approved by the Dealer Member.
  - (4) Lending to clients**
    - (i) Lending money, securities or any other assets to a client or incurring any other liabilities for a client, unless:
      - (a) the client is a Related Person as defined by the Income Tax Act (Canada) and the transaction is addressed in accordance with the Dealer Member's policies and procedures; and
      - (b) In the case of Registered Representatives and Investment Representatives, the arrangement is disclosed to and approved by the Dealer Member.
  - (5) Power of Attorney**
    - (i) Acting as a power of attorney, trustee, executor or otherwise having full or partial control or authority over the financial affairs of a client, unless:
      - (a) The account is a discretionary or managed account and the authority exercised is consistent with the Corporation's applicable requirements; or

- (b) The client is a Related Person as defined by the Income Tax Act (Canada) and the existence of such control is addressed in accordance with the Dealer Member's policies and procedures; and
- (c) In the case of Registered Representatives and Investment Representatives, the arrangement in Paragraph (b) is disclosed to and approved by the Dealer Member.

**Amendments to IROC Dealer Member Rule 18.14**

Attachment A

18.14.

- (1) ~~\_\_\_\_\_~~ A Registered Representative or Investment Representative may have, and continue in, any business activity outside of the Dealer Member, including another gainful occupation if:
- ~~(a) \_\_\_\_\_~~
- (i) ~~\_\_\_\_\_~~ Either the Registered Representative's or Investment Representative's other gainful occupation is in a remote area where there is no office of a broker or dealer in securities and the Registered Representative's or Investment Representative's activities as such are limited to such remote area in which he or she resides; or (ii) The securities commission in the jurisdiction in which the Registered Representative or Investment Representative acts or proposes to act as a Registered Representative or Investment Representative, or the securities legislation or policies administered by such securities commission, specifically permit him or her to devote less than his or her full time to the securities business of the Dealer Member employing him or her;
- ~~(b) \_\_\_\_\_~~ Repealed. ~~(c) \_\_\_\_\_~~ The Dealer Member establishes and maintains procedures acceptable to the Corporation to ensure continuous service to clients and to address potential problems of conflict of interest;
- ~~(d) \_\_\_\_\_~~ Any other occupation of the ~~(c) \_\_\_\_\_~~ The Registered Representative or Investment Representative informs the Dealer Member of the outside business activity and obtains the Dealer Member's approval to engage in such outside business activity;
- ~~(d) \_\_\_\_\_~~ The Dealer Member notifies the Corporation of the outside business activity within the time period and manner required by the applicable National Instrument; and
- ~~(e) \_\_\_\_\_~~ The outside business activity is not
- (i) One which would bring the securities industry into disrepute; or
- (ii) With another dealer that is a member of a recognized self-regulatory organization unless
- (1) Such dealer is a related company of the Dealer Member employing the Registered Representative or Investment Representative and the Dealer Member and related company provide cross-guarantees pursuant to Rule 6.6, and
- (2) Such dual employment outside business activity is not contrary to the provisions of the applicable securities legislation or any policy made pursuant thereto.

### 13.3 Clearing Agencies

#### 13.3.1 CDS Notice and Request for Comments – Material Amendments to CDS Procedures – TRAX

##### CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

##### MATERIAL AMENDMENTS TO CDS PROCEDURES

##### TRAX

##### NOTICE AND REQUEST FOR COMMENTS

#### A. DESCRIPTION OF THE PROPOSED AMENDMENTS TO CDS PROCEDURES

CDS is proposing amendments to its Procedures to enable the implementation of TRAX™. TRAX is a newly developed web application to facilitate communications between transfer agents and participants. TRAX will promote dematerialization, as transactions will be processed electronically to reduce the need to issue, handle and cancel physical certificates.

TRAX will be linked to CDSX® in order to provide enhanced processing for deposit and withdrawal of CDSX securities. For deposits, TRAX can be used to facilitate treasury order transactions such as the exercise of stock options and global registry transfers (the movement of a position between registries maintained by the same transfer agent in two countries). For withdrawals, TRAX will facilitate the processing of transactions such as buy-backs.

For a deposit, the transfer agent will initiate the process with a message through TRAX to the participant that includes details of the anticipated deposit (such as the securities to be issued on exercise of an option) and client details. If the participant accepts the transaction (agreeing that the securities should be deposited into its CDSX account), then the securities will be directly registered into CDS nominee name and the deposit will be confirmed. If the particular security is NC<sup>1</sup>, then no certificate will be issued; if the issue is certificated, the certificate in CDS nominee name will be delivered to CDS. This replaces the current process, where the exercise of an option may require the transfer agent to issue a certificate in the name of the client, delivery of the certificate to the participant, re-delivery of the certificate by the participant for transfer into CDS nominee name on a deposit, and the subsequent cancellation of the certificate. For a global registry transfer, the transfer agent will use the same process to ensure the participant's CDSX position is updated on the effective date; the issuer's register will then be in balance with the CDSX position.

For a withdrawal, the participant initiates the process. On a buy-back, for example, the issuer's agent can use TRAX to manage its anticipated trades associated with the buy-back; the participant creates a withdrawal notice corresponding to each of its trades; as those trades settle, the participant confirms the withdrawal notice and the details are sent to the transfer agent through TRAX, including data indicating that the withdrawal is associated with the issuer buy-back. A withdrawal request is also created in CDSX by confirming the withdrawal notices. When the withdrawal request is received, the transfer agent confirms the withdrawal, and reduces the security position on the issuer's ledger (rather than issuing a certificate on withdrawal that would then have to be cancelled).

For any transaction request made through TRAX, the recipient may accept or reject the request. If the recipient does not take any action, the request is purged from the system after a few days. Notifications will be provided to the submitter and receiver and the status of the transaction will be available for review during the life cycle.

The information on pending transactions available through TRAX will also benefit CDS. For example, the identification of buy-back transactions will enable CDS to manage discrepancies that can arise between its records and the records of the transfer agent if a corporate event occurs during a buy-back.

#### B. NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

The amendments proposed pursuant to this Notice are considered material amendments as they support new functionality in CDSX.

The proposed amendments to the Participating in CDS Services are intended to describe the transaction requests in TRAX and the alerts which are available to participants and transfer agents, which notify them of activities occurring.

The CDSX Procedure and User Guide and Transfer Agent Procedures are intended to describe the changes to the deposit and withdrawal processing in relation to certificate handling. They also include the changes made to the CDSX deposit and withdrawal online screens to identify the new transactions related to TRAX.

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<sup>1</sup> Non-certificated inventory.

## **C. IMPACT OF THE PROPOSED AMENDMENTS**

The proposed Procedure amendments will affect only those participants who decide to use TRAX.

### **C.1 Competition**

The Procedure amendments and system changes are expected to have no impact on competition.

### **C.2 Risks and Compliance Costs**

CDS has incurred costs in designing the new web application. Transfer agents will incur costs to integrate the new web application with their operating systems. Use of TRAX is not mandatory, so such costs will only be incurred by transfer agents who determine that the benefits of TRAX outweigh any costs. There is expected to be a reduction in both risk and costs for those participants and transfer agents who use TRAX, due to enhanced communication and the reduction in physical security movements.

### **C.3 Comparison to International Standards**

TRAX is a messaging system that does not alter the functionality of CDSX; international standards for clearing agencies are not relevant.

## **D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS**

### **D.1 Development Context**

CDS developed TRAX in response to a request from the transfer agent community to develop solutions to improve communication with participants and to reduce the handling of physical certificates. CDS convened a working group including representatives of participants and of transfer agents. The working group set parameters for TRAX to ensure that it met the objectives, that all necessary data could be communicated and that the TRAX processing could be readily integrated into the operations of participants and transfer agents.

### **D.2 Drafting Process**

Amendments to CDS's Procedures are reviewed and approved by CDS's Strategic Development Review Committee (SDRC). The SDRC prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from the CDS Participant community and it meets on a monthly basis. The TRAX Procedures were reviewed and approved by the SDRC on April 29, 2010.

### **D.3 Issues Considered**

A primary concern was to ensure that CDSX would process withdrawal and deposit transactions generated as a result of the use of TRAX in a manner identical to the processing of such transactions generated by other means, so that the roles and responsibilities of participants and transfer agents are not changed. In addition, the process for issuer buy-backs was designed to give participants control over the withdrawal request, to ensure that withdrawals were directly linked to the settlements of buy-back trades. At the request of transfer agents, the buy-back processing also includes identifying information to enable the withdrawal to be specially handled, so that the withdrawn securities are canceled and not transferred. The deposit process was designed to enable the exchange of client data between transfer agent and participant, and to enable direct registration into CDS nominee name, to eliminate the issuance of unnecessary physical certificates.

### **D.4 Consultation**

CDS consulted with the joint working group in designing TRAX, and in developing the amended Procedures to implement the link between CDSX and TRAX.

### **D.5 Alternatives Considered**

As TRAX is a new system, designed in response to input from the users, no alternatives were considered.

### **D.6 Implementation Plan**

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX<sup>®</sup>, a clearing and

settlement system designated by the Bank of Canada pursuant to section 4 of the Payment Clearing and Settlement Act. The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Procedures will become effective upon approval of the amendments by the Recognizing Regulators, following public notice and comment. The target date for implementation is July 26, 2010.

**E. TECHNOLOGICAL SYSTEMS CHANGES**

**E.1 CDS**

In designing TRAX, CDS has created a web-based application that is available through the CDS website. The messaging link between TRAX and CDSX uses the Interlink messaging system, which is already well established as a messaging system for CDSX. Using this link, TRAX messages can generate pending deposit or withdrawal requests within CDSX.

**E.2 CDS Participants**

The new TRAX web-based application uses established systems and communication links with CDSX. As a result, there will be a limited impact on participant systems, and only for those participants who choose to use TRAX; there are no external development impacts for other CDS participants.

**E.3 Other Market Participants**

TRAX may be used by a transfer agent that either participates in CDSX as a limited purpose transfer agent and is subject to the rules and transfer agent procedures or that has a transfer agent agreement with CDS and is subject to the transfer agent procedures. The use of TRAX is optional. There are no external development impacts to other participants in the Canadian financial markets.

**F. COMPARISON TO OTHER CLEARING AGENCIES**

There is no direct comparison with clearing agencies in other jurisdictions.

**G. PUBLIC INTEREST ASSESSMENT**

CDS has determined that the proposed amendments are not contrary to the public interest. Issuers, transfer agents and participants will benefit from the more direct communication between participants and transfer agents, the ability to monitor pending securities transfer requests, and the reduction in the risks and costs of issuing and handling security certificates.

**H. COMMENTS**

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin to:

Deanna Crofts  
Senior Product Manager, CSPD  
CDS Clearing and Depository Services Inc.  
85 Richmond Street West  
Toronto, Ontario M5H 2C9  
Phone: 416-365-8455  
Fax: 416-365-0842  
e-mail: dcrofts@cds.ca



Copies should also be provided to the Autorité des marchés financiers and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M<sup>e</sup> Anne-Marie Beaudoin  
Secrétaire de l'Autorité  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal, Québec  
H4Z 1G3

Télécopieur: (514) 864-6381  
Courrier électronique: consultation-en-  
cours@lautorite.qc.ca

Manager, Market Regulation  
Market Regulation Branch  
Ontario Securities Commission  
Suite 1903, Box 55,  
20 Queen Street West  
Toronto, Ontario  
M5H 3S8

Fax: 416-595-8940  
e-mail: marketregulation@osc.gov.on.ca

CDS will make available to the public, upon request, all comments received during the comment period.

#### **I. PROPOSED CDS PROCEDURE AMENDMENTS**

Appendix "A" contains text of current CDS Participant Procedures marked to reflect proposed amendments as well as text of these procedures reflecting the adoption of the proposed amendments.

Appendix "B" contains the clean copy of the CDS Participant Procedures reflecting the adoption of the proposed amendments.

The Procedures marked for the amendments may be accessed at the CDS website at:

<http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open>

**Appendix A - Proposed CDS Procedure Amendments – Blackline version**

Text of CDS Participant Procedures marked to reflect proposed amendments

<b>Alert</b>	<b>Received by</b>
Corporate action option modified	Both initiator and counterparty to confirm that they have active CA liability records related to a modified option
Participant merge – your CUID merging	The merging CUID (either counterparty or initiator) to confirm that they have active CA liability records
Participant merge – other CUID merging	Either counterparty or initiator to confirm that they have active CA liability records with a merging CUID
CUID inactive – your CUID inactive	The inactive CUID (either counterparty or initiator) to confirm that they have active CA liability records
CUID inactive – other CUID inactive	Either counterparty or initiator to confirm that they have active CA liability records with an inactive CUID
Security delivery due today	Both initiator and counterparty of active CA liability records to confirm that securities are due today
Security delivery past due	Both initiator and counterparty of active CA liability records to confirm that the security delivery is past due

**Note:** Email alerts are not encrypted so the confidentiality or security of the information is not guaranteed.

**3.8 TRAX – transfer requests**

TRAX transfer requests provides participants and transfer agents with the ability to process securities transfer instructions through a web-based application.

For more information, see TRAX – transfer requests alerts on page 41.

Securities transfer records are maintained in TRAX for seven years. If required, each record can be printed to PDF.

To request access to this application, use the IBM Tivoli Identity Manager self-care interface ([www.cdsservices.ca/itim/self](http://www.cdsservices.ca/itim/self)).

Users can request the following roles per CUID within TRAX.

<b><u>Role</u></b>	<b><u>Description</u></b>
<u>User</u>	<u>Maintain personal subscription profiles</u> <u>Process security instructions</u> <u>View web alerts</u>
<u>Supervisor</u>	<u>Maintain user and group subscription profiles</u> <u>Process security instructions</u> <u>View web alerts</u>
<u>Viewer</u>	<u>Maintain personal subscription profiles</u> <u>View security instructions</u> <u>View web alerts</u>

**3.8.1 TRAX – transfer requests alerts**

The following securities transfer requests are processed using TRAX.

<u>Transfer instruction</u>	<u>Deposit</u>	<u>Withdrawal</u>	<u>Description</u>
<u>Buy-back (BB)</u>		<input type="checkbox"/>	<u>Identifies that a security has been bought back by the issuer, for cancellation. The issuer's register is reduced by the quantity of the transfer instruction</u>
<u>Global transfer (GT)</u>	<input type="checkbox"/>		<u>Identifies that a security is being moved from an international register to a Canadian register</u>
<u>Treasury order (TO)</u>	<input type="checkbox"/>		<u>Identifies that a security is being issued from a company's treasury. The issuer's register is increased by the quantity of the transfer instruction</u>

The following security transfer instruction record web/email alerts are available.

**Transfer request alerts**

<u>Alert</u>	<u>Available to</u>		<u>Description</u>
	<u>Transfer agent</u>	<u>Participant</u>	
<u>Transfer request record entered</u>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Confirms the entry of a transfer request record with sub-types TO and GT</u>
<u>Transfer request record modified</u>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Confirms the modification of a transfer request record with sub-types TO or GT</u>
<u>Transfer request record cancelled</u>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Confirms the cancellation of a transfer request record with sub-types TO or GT</u>
<u>Transfer request record rejected</u>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Confirms the rejection of a transfer request record with sub-types TO or GT</u>

<u>Alert</u>	<u>Available to</u>		<u>Description</u>
	<u>Transfer agent</u>	<u>Participant</u>	
<u>Transfer request record rejected by system</u>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Confirms the rejection of a transfer request record with sub-types TO or GT</u>
<u>Transfer request record rejected by system</u>		<input type="checkbox"/>	<u>Confirms the rejection of a transfer request record with sub-type BB</u>
<u>Transfer request record deleted by system</u>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Confirms the deletion of a transfer request record with sub-types TO or GT</u>

**Date triggered alerts**

<u>Alert</u>	<u>Available to</u>		<u>Description</u>
	<u>Transfer agent</u>	<u>Participant</u>	
<u>Record date today</u>	<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Confirms that an unconfirmed transfer request record has been created for a security that has a confirmed distribution event with a record date equal to the current business date</u>  <u>Generated at the time of record creation</u></p> <p><u>Confirms that an unconfirmed transfer request record exists for a security that has a confirmed distribution event with a record date equal to the current business date</u>  <u>Generated at the beginning of each day</u></p>

**CDSX processing alerts**

<u>Alert</u>	<u>Available to</u>		<u>Description</u>
	<u>Transfer agent</u>	<u>Participant</u>	
<u>CDSX deposit entered by transfer requests</u>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Confirms the creation of a deposit entry in CDSX by transfer requests</u>
<u>CDSX withdrawal entered by transfer requests</u>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Confirms the creation of a deposit withdrawal in CDSX by transfer requests</u>

**Note:** Email alerts are not encrypted so the confidentiality or security of the information is not guaranteed.

**CHAPTER 4****Processing security deposit requests**

Participants can submit security deposit requests in the following ways:

- Direct online entry into CDSX – Participants submit a security deposit request online in CDSX. The online request triggers a Security Deposit Notice – Entry to print at both the participant's and the transfer agent's location. Participants then deliver the certificates in a sealed envelope with the attached Security Deposit Notice – Entry to CDS or to the transfer agent for those securities. For more information, refer to *CDS Reporting Procedures*.
- TRAX transfer requests – Participants who subscribe to the TRAX transfer requests application can transmit deposit requests to CDSX using a web-based interface. For more information, see *Participating in CDS Services*.

When making an online security deposit request, a participant provides the information indicated in the table below and any information that is required by the transfer agent. The transfer agent's requirements are described in the individual transfer agent's service level bulletin.

Information	Explanation
Service level	Indicates to the transfer agent the priority of the request. The choices are REG (regular) or INS (instant). There is no CDSX functionality associated with the service level information other than to capture the participant selection and display it on the appropriate screens and reports <u>Transactions created through TRAX default to REG (regular)</u>
Request date	The date that the deposit is normally entered into CDSX. The deposit request can be future-dated by no more than one business day
Window location	Depending on the transfer agent's setup in CDSX, the valid window location can be designated by one of the following means: Separate CUID for each location Window locations in the WINDOW LOCATION field Memo The transfer agent service level bulletin identifies the method for identifying the delivery or receipt location
Release location	The location where the participant wants their rejected security deposits to be sent for pickup
Serial number and denominations	The serial number and denominations of the certificates
Additional information	This may include additional certificate details or routing information required by the transfer agent. This information can be indicated in the MEMO lines

Once the participant saves the deposit request, the system assigns a unique deposit ID to the deposit request. The deposit request is saved with a status of unconfirmed. CDSX does not allow the participant to delete or modify a security deposit request once a deposit ID has been generated. If the deposit request needs to be modified after a deposit ID has been generated, the participant must contact CDS and request that CDS inform the transfer agent to modify or reject the deposit.

For information that is shared by both security deposits and withdrawals, including processing security deposit and withdrawal adjustments, see Security deposits and withdrawals on page 23.

#### 4.1 Receiving security deposit requests and envelopes from participants

When the participant enters and saves the deposit request, CDS sends the deposit request information to the transfer agent.

**Note:** Participants do not submit certificates or documentation if the deposit request was made through TRAX. For more information on TRAX, see *Participating in CDS Services*.

Transfer agents can choose to receive the deposit request information in one or more of the following ways:

- An InterLink real-time message
- A batch file
- A printed Security Deposit Notice - Entry.
- A transfer request alert.

#### **Receiving the certificates from the participant**

The participant prepares an envelope with the certificates for delivery to CDS or the transfer agent. The envelope is accompanied by at least one Security Deposit Notice – Entry, signed by the participant. The envelope and attached Security Deposit Notice – Entry are sent either to CDS, which will then forward the documents to the transfer agent, or directly by the participant to the transfer agent.

The time frames and locations for making deposits are indicated in the transfer agent service level bulletins.

#### **4.2 Verifying security deposits and updating registers**

Upon receipt of the deposit envelope, do the following:

1. Review the Security Deposit Notice – Entry
2. Verify the certificates against the Security Deposit Notice – Entry as follows:
  - Count the face value of the certificates and compare the total with the total on the Security Deposit Notice – Entry.
  - Ensure that the certificates are correct by verifying the issuer, security type, interest rate and maturity date, and compare those details with the information on the Security Deposit Notice – Entry.
  - Ensure that each certificate has been duly authorized and issued by the issuer.
  - Ensure that each certificate is genuine and is in proper form.
  - Validate the positions on the register.
  - Ensure that the deposited securities are processed within the time frames of the requested service level.  
**Note:** CDSX does not enforce service levels. The service levels are the result of industry standards developed by participants and transfer agents.
  - Verify that the window location is correct. If the window location is not the confirmation location, set up a process to support the communication of authorization results between both locations.
3. Record the certificate registration in CDS's nominee name in the issuer's register and update all required in-house systems.
4. Confirm the security deposit request (see Confirming or rejecting security deposits on page 32).

#### **4.3 Inquiring on security deposits in CDSX**

Transfer agents can monitor security deposits using the Inquire Security Deposit function and display information about all confirmed, unconfirmed and rejected deposits.

Transfer agents can display information on security deposit requests to help them schedule deliveries and pickups of securities or arrange for resubmission of rejected requests.

Transfer agents use this function to determine if they have:

- Not yet reviewed the security request (unconfirmed)
- Accepted the request (confirmed)
- Rejected the request.

Confirmed and rejected security deposits are displayed until the end of the day.

A transaction SUBTYPE field is displayed if the deposit was created using TRAX. For more information on TRAX, see [Participating in CDS Services](#).

The CHANGE INDICATOR field indicates if a transfer agent has made a change to one of the allowable fields on the security request at the time of the confirmation:

- S indicates that the security number has been changed
- P indicates that the par/quantity has been changed
- B indicates that both the security number and the par/quantity have been changed
- N indicates that no change has been made.

To inquire on security deposit requests:

1. Access the Deposit and Withdrawal Menu on page 26. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 25.
2. Type the number identifying Inquire Security Deposit in the SELECTION field and press ENTER. The Deposit Selection screen on page 31 displays.

Deposit Selection screen

Screen to be added when available

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*

3. Enter the deposit ID (appearing on the Security Deposit Notice) or other selection criteria and press ENTER. The Deposit List screen on page 32 displays.

Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

#### **4.4 Confirming or rejecting security deposits**

Transfer agents can confirm or reject the deposit in CDSX in any of the following ways:

- Using the online Confirm Security Deposit function in CDSX

- By creating a confirmation/rejection message record in a batch file and transmitting the file to CDS
- By issuing a confirmation/rejection InterLink message.

When confirming or rejecting a deposit request, transfer agents may update the fields listed in the table below.

<b>Field</b>	<b>Description</b>
STATUS	Enter either C (confirm) or R (reject)
PAR QUANTITY	If the request is confirmed, this field can be modified
ISIN	If the request is confirmed, this field can be modified
TRANSFER FEE	If the request is confirmed or rejected, enter the appropriate transfer fees
EFFECTIVE DATE	If necessary, backdate this date as far as 30 days in the past. This field defaults to the current date. The effective date should always be the transfer date
REASON CODE	If the request is rejected, enter a reason for the rejection or leave it blank. If a code is entered, it must be a valid reason code. Refer to <i>CDSX Procedures and User Guide</i>
MEMO	If necessary, change or add any information about the confirmation or rejection of the request

To confirm or reject the security deposit request in CDSX, see [Confirming or rejecting security deposit requests in CDSX](#) on page 33.

If a transfer agent confirms the deposit request, the following occurs:

- A Security Deposit Notice – Confirmation is printed at the participant’s location.
- CDSX automatically updates the transfer agent’s CDS system ledger and the participant’s position.
- The deposit details can no longer be modified in CDSX. Any modifications will have to be done as a manual adjustment (see [Making adjustments to confirmed deposits and withdrawals](#) on page 27).

If a transfer agent rejects the deposit, a Security Deposit Notice - Rejection prints at the transfer agent’s and the participant’s location. There are no changes to the transfer agent’s or the participant’s positions in CDSX.

**4.4.1 Confirming or rejecting security deposit requests in CDSX**

To confirm or reject a security deposit request:

1. Access the Deposit and Withdrawal Menu on page 26. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 25.
2. Type the number identifying Confirm Security Deposit in the SELECTION field and press ENTER. The Deposit Selection screen on page 33 displays.

Deposit Selection screen

Screen to be added when available

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*



3. Enter the deposit ID (appearing on the Security Deposit Notice) or other selection criteria and press ENTER. The Deposit List screen on page 34 displays.

Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

4. To confirm a security deposit request, type C in the STATUS field. If necessary, modify the following fields:
  - SECURITY NUMBER
  - PAR/QUANTITY
  - TRANSFER FEE
  - EFFECTIVE DATE
  - MEMO.
5. To reject a security deposit request, type R in the STATUS field. If necessary, modify the following fields:
  - REJECTION REASON CODE (refer to *CDSX Procedures and User Guide*).
  - TRANSFER FEE
  - MEMO.
6. Press ENTER to validate the information and press PF10 to save.

#### **4.5 Processing the certificates after confirming the deposit**

Once the deposit is confirmed, maintain the deposited securities in a format selected in accordance with the *Transfer Agent Agreement*.

**CHAPTER 5**  
**Processing security withdrawal requests**

Participants can submit security withdrawal requests in the following ways:

- Direct online entry into CDSX – The Request Security Withdrawal function enables participants to withdraw eligible securities from CDSX by submitting a security withdrawal request to the transfer agent for those securities.
- TRAX transfer requests – Participants who subscribe to the TRAX transfer requests application can transmit withdrawal requests to CDSX using a web-based interface. For more information, see *Participating in CDS Services*.

When making an online security withdrawal request, a participant provides the information indicated in the table below and any information that is required by the transfer agent. The transfer agent’s requirements are described in the individual transfer agent’s service level bulletin.

Information	Explanation
Service level	Indicates to the transfer agent the priority of the request should be processed. The choices are REG (regular) or INS (instant). There is no CDSX functionality associated with the service level information other than to capture the participant selection and display it on the appropriate screens and reports <u>Transactions created through TRAX default to REG (regular)</u>
Request date	The date that the withdrawal is entered into CDSX. The withdrawal request can be future-dated by no more than one business day
Window location	Depending on the transfer agent’s setup in CDSX, the valid window location can be designated by one of the following means: Separate CUID for each location Window locations in the WINDOW LOCATION field Memo The transfer agent service level bulletin identifies the method for identifying the delivery or receipt location
Release location	The location where the participant wants their securities to be sent for pickup
Registration and distribution address	The registration and distribution address may be provided
Additional information	This may include any special information required by the transfer agent. This information can be indicated in the MEMO lines

Once the participant has entered the security withdrawal details, CDSX verifies that the following conditions exist:

- The participant has sufficient position available in the specified participant account
- No withdrawal restrictions apply to the requested security which would preclude the request for withdrawal.

CDSX will not allow the participant to save the security withdrawal request in the system if there is insufficient position or if such a restriction exists.

If neither condition exists, CDSX does the following:

- Saves the security withdrawal request as U (unconfirmed)
- Assigns a unique withdrawal ID to the request

- Reserves the securities by moving the positions to the participant's withdrawal account (WD).

CDSX does not allow the participant to delete or modify a security withdrawal request once the withdrawal ID has been generated. If the withdrawal request needs to be modified after a withdrawal ID has been generated, the participant must request that the transfer agent reject the withdrawal request and modify the EFFECTIVE DATE, TRANSFER FEE and/or REASON CODE fields.

If a transfer agent discovers an error after confirmation, they must submit a written request for a deposit or withdrawal adjustment to CDS. For more information, see [Making adjustments to confirmed deposits and withdrawals](#) on page 27.

For information that is shared by both security deposits and withdrawals, including processing security deposit and withdrawal adjustments, see [Security deposits and withdrawals](#) on page 23.

### **5.1 Receiving security withdrawal requests and declaration documents from participants**

When the participant enters and saves the request, CDS sends the withdrawal request information to the transfer agent.

**Note:** Registration instructions are not required if the withdrawal request was made through TRAX. For more information on TRAX, see [Participating in CDS Services](#).

Transfer agents can choose to receive the withdrawal request information in one or more of the following ways:

- An InterLink real-time message
- A batch file
- A Security Withdrawal Notice – Entry printed at the transfer agent's site.

**Note:** The registration details are not displayed online in CDSX. These details are available on the printed notices, in InterLink messages or in batch files.

For more information, refer to *CDS Reporting Procedures*.

### **5.3.2 Inquiring on security withdrawal requests in CDSX**

To inquire on security withdrawal requests:

1. Access the Deposit and Withdrawal Menu on page 26. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 25.
2. Type the number identifying Inquire Security Withdrawal in the SELECTION field and press ENTER. The Withdrawal Selection screen on page 38 displays.

Withdrawal Selection screen

Screen to be added when available

*The withdrawal selection screen remains the same with the addition of the Transaction subtype field for selection criteria.*

3. Enter the withdrawal ID (appearing on the Security Withdrawal Notice) or other selection criteria and press ENTER. The Withdrawal List screen on page 39 displays based on the selection criteria entered.

Withdrawal List screen

Screen to be added when available

*The withdrawal list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

**5.4 Confirming or rejecting security withdrawals**

Transfer agents are responsible for confirming or rejecting withdrawals entered by participants. They can confirm or reject security withdrawal requests in any of the following ways:

- Using the online Confirm Security Withdrawal function in CDSX
- By creating a confirmation or rejection message record in a batch file and transmitting the file to CDS
- By issuing a confirmation or rejection InterLink message.

When confirming or rejecting a withdrawal request, transfer agents may update the fields listed in the table below.

Field	Description
STATUS	Enter either C (confirm) or R (reject)
TRANSFER FEE	If the request is confirmed or rejected, enter the appropriate transfer fees
EFFECTIVE DATE	If necessary, backdate this date up to 30 days. This field defaults to the current date. The effective date cannot be earlier than the request date
REASON CODE	If necessary, enter a reason for the rejection or leave it blank. If a code is entered, it must be a valid reason code. Refer to <i>CDSX Procedures and User Guide</i>
MEMO	If necessary, change or add any information about the confirmation or rejection of the request

A transaction SUBTYPE field is displayed if the withdrawal was created using TRAX. For more information on TRAX, see [Participating in CDS Services](#).

2. Type the number identifying Confirm Security Withdrawal in the SELECTION field and press ENTER. The Withdrawal Selection screen on page 41 displays.

Withdrawal Selection screen

Screen to be added when available

*The withdrawal selection screen remains the same with the addition of the Transaction subtype field for selection criteria.*

3. Enter the withdrawal ID (appearing on the Security Withdrawal Notice) or other selection criteria and press ENTER. The Withdrawal List screen on page 41 displays.

If a mandatory event (e.g., a maturity) was processed on the security after the customer entered the withdrawal, the withdrawal is automatically assigned a status of R (rejected).

Withdrawal List screen

Screen to be added when available

*The withdrawal list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

4. To confirm a security withdrawal request, type C in the STATUS field. If necessary, modify the following fields:
  - TRANSFER FEE
  - EFFECTIVE DATE
  - MEMO.
5. To reject a security withdrawal request, type R in the STATUS field. If necessary, modify the following fields:
  - REJECTION REASON CODE (refer to *CDSX Procedures and User Guide*)
  - TRANSFER FEE
  - MEMO.
6. Press ENTER to validate the information and press PF10 to save.

#### **5.5 Preparing certificates after confirmation**

If the security withdrawal request is confirmed, the transfer agent must register the certificates according to the participant's instructions. If there is a physical inventory, the certificates must be updated.

Once the withdrawal is confirmed, the transfer agent must issue certificates in the denominations and the form of registration as instructed by the participant.

If the withdrawal request is created through TRAX, and has a subtype of BB (buy-back), the security has been bought back by the issuer for cancellation. The transfer agent does not issue certificates for these requests.

## CHAPTER 6

### Deposit activities

Participants can deposit the following in CDSX:

- Funds – Deposit Canadian or U.S. funds into their funds account only. For more information, see [Funds deposits](#) on page 100.
- Securities – Deposit only CDSX-eligible instruments into their general, segregated or RSP account. For more information, see [Security deposits](#) on page 103. Aggregate Collateral Value (ACV) is subject to sector limits and increases when a security is deposited to the general account. For more information, refer to *Participating in CDS Services*.
- Physical strip bonds – Deposit only physical strip bonds derived from bonds issued or guaranteed by a government. For more information, see [Depositing book-entry physical strips](#) on page 93.

Transactions entered after the deposit cutoff times are processed the next business day.

#### 6.1 Deposit functions

Participants can process deposit requests by accessing the following functions on the Deposit Menu on page 100:

- Request Funds Deposit – Enter details of a funds deposit to the participant's funds account.
- Inquire Funds Deposit – View all confirmed, unconfirmed or rejected requests for funds deposits that have been made during the day.
- Request Security Deposit – Request the deposit of eligible securities into CDSX.
- Inquire Security Deposit – View all confirmed, unconfirmed, or rejected requests for security deposits that have been made during the day.

**Note:** Participants who subscribe to the InterLink service can transmit security deposit requests to CDSX using InterLink messaging. For more information, see [Security deposits](#) on page 103.

Participants who subscribe to the TRAX transfer requests application can transmit deposit requests to CDSX using a web-based interface. For more information, see [Participating in CDS Services](#).

CDS provides reports for monitoring the deposit of funds and securities in CDSX. For more information, refer to *CDS Reporting Procedures*.

Due to formatting issues the screens can be accessed by clicking on the following link:  
[http://www.cds.ca/cdsclearinghome.nsf/Downloads/-EN-TRAX/\\$File/TRAX\\_erbl.pdf?OpenElement](http://www.cds.ca/cdsclearinghome.nsf/Downloads/-EN-TRAX/$File/TRAX_erbl.pdf?OpenElement)  
(Page 103)

3. Review the STATUS field to determine if the request is unconfirmed (U), confirmed (C) or rejected (R).

#### 6.4 Security deposits

Participants can enter security deposit requests in CDSX in the following ways:

- Direct online entry into CDSX
- InterLink message CDS010 – Participants who subscribe to the InterLink service can transmit deposit requests to CDSX using InterLink messaging. For more information, refer to *CDS Batch and Interactive Services – Technical Information*.

Participants register for this service by completing the InterLink/SWIFT Service – Messages Request (CDSX377).

- TRAX transfer requests – Participants who subscribe to the TRAX transfer requests application can transmit deposit requests to CDSX using a web-based interface. The service level of deposit transactions created through TRAX defaults to REG (regular). For more information, see *Participating in CDS Services*.

Security deposits are entered in CDSX and, if required, the certificates are then forwarded to the custodians of the issues. For some issues, transfer agents may assume the system role of custodian (i.e., validator) in CDSX.

The current cutoff times for security deposit activities appear in the Timetables-Deposits and Withdrawals bulletins. To view these bulletins, access CDS Bulletins on the CDS website (www.cds.ca).

Field	Description
SUPPORT DOC INCLUDED	Identifies whether the participant has included supporting documentation for the deposit: Y – Yes N – No
MEMO	A contact name and telephone number (transfer agent requirement) The market value of the security deposit (CDS requirement) For intercity deposits, include the word "INTERCITY" (CDS requirement)

4. Enter the certificate details if required by the transfer agent.
5. If the CERTIFICATE NUMBER field is completed, the DENOMINATION field must also be completed (and vice versa).
6. Press ENTER to validate the information and press PF10 to save. CDSX saves the request with a status of U (unconfirmed) and assigns a deposit ID.

Once the deposit request has been entered and saved in CDSX, prepare the securities for physical deposit as follows:

**Note:** Certificates and documentation are not required if the deposit request was made through TRAX. For more information on TRAX, see *Participating in CDS Services*.

1. Endorse registered securities to CDS & CO.
2. Put two copies of the Security Deposit Notice - Entry, along with the securities, in an envelope. Seal it with an Envelope Seal (CDSX001).
3. Depending on the type of deposit, follow the procedures indicated in the table below.

Type of deposit	Description
Government of Canada issues	Complete the Inter-City Batch Control form (CDSX184) and attach an envelope seal to the envelope. Both documents must be addressed to the custodian

To inquire on security deposit requests:

1. Access the Deposit Menu on page 100. For more information, see Accessing the Deposit Menu on page 100.
2. Type the number identifying Inquire Security Deposit in the SELECTION field and press ENTER. The Deposit Selection screen on page 108 displays.

Deposit Selection screen

Screen to be added when available

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*

3. Enter the deposit ID or other selection criteria.
4. Press ENTER. The Deposit List screen on page 108 displays showing the deposits that match the selection criteria.

Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

5. Review the STATUS field to determine if the request is unconfirmed (U), confirmed (C) or rejected (R).



## CHAPTER 7 Withdrawal activities

Participants request the withdrawal of eligible securities from CDSX by submitting a security withdrawal request to the custodian or transfer agent of those securities. Paying agents may initiate a withdrawal request once an issue has matured and the maturity is paid.

Custodians are responsible for confirming or rejecting withdrawal requests, and reconciling their holdings on a daily basis with the records of CDS. For some securities, transfer agents may assume the system role of custodian (and are called validators) in CDSX. To view details on the custodian or transfer agent for a security, see [Viewing security agent information](#) on page 60.

Withdrawals cannot be made against the general account.

For securities that have been reconstituted beyond the quantity stripped by book-entry, withdrawals are allowed only to the extent that the custodian has certificates available.

If a withdrawal is found to be unacceptable after it has been confirmed, CDS informs the participant involved and makes an adjustment to resolve the problem. For more information, see [Modifying confirmed deposits or withdrawals](#) on page 111.

CDS charges a fee if the participant does not value the withdrawal. When entering a withdrawal request in CDSX, indicate the market value of the security withdrawal in the MEMO field.

For issuer buy-backs, if a withdrawal or TRAX transaction is not processed prior to the record date, CDS will upon reconciliation with the transfer agent, charge the non-reporting participant a non-compliance fee. For more information on TRAX, see [Participating in CDS Services](#).

The conditions for submitting withdrawals using the Remote Transfer Withdrawal Service are the same as those for other withdrawals with one exception. CDS does not accept withdrawals for securities that are within one month of their next entitlement date.

### 7.1 Withdrawal functions

Participants can process security withdrawal requests by accessing the following functions on the Withdrawal Menu on page 115:

- Request Security Withdrawal – Enter details about a security withdrawal.
- Inquire Security Withdrawal – View details for a security withdrawal.
- Enter Registration Instruction – Enter registration instructions.
- Maintain Registration Instruction – Modify registration instructions.
- Inquire Registration Instruction – View registration instructions.

**Note:** Participants who subscribe to the InterLink service can transmit security withdrawal requests to CDSX using InterLink messaging. For more information, see [Requesting security withdrawals](#) on page 120.

Participants who subscribe to the TRAX transfer requests application can transmit withdrawal requests to CDSX using a web-based interface. The service level of withdrawal transactions created through TRAX defaults to REG (regular). For more information, see [Participating in CDS Services](#).

CDS provides reports for monitoring security withdrawals in CDSX. For more information, refer to *CDS Reporting Procedures*.

#### 7.1.1 Accessing the Withdrawal Menu

To access the Withdrawal Menu:

1. Log on to CDS systems. For more information, refer to *Participating in CDS Services*.
2. On the CDS Clearing and Depository Services Inc. Main Menu, type the number identifying CDSX - Customer Functions in the SELECTION field and press ENTER. The CDSX – Customer Functions Menu on page 19 displays.

3. Type the number identifying Withdrawal Menu in the SELECTION field and press ENTER. The Withdrawal Menu on page 115 displays.

Due to formatting issues the screens can be accessed by clicking on the following link:  
[http://www.cds.ca/cdsclearinghome.nsf/Downloads/-EN-TRAX/\\$File/TRAX\\_erbl.pdf?OpenElement](http://www.cds.ca/cdsclearinghome.nsf/Downloads/-EN-TRAX/$File/TRAX_erbl.pdf?OpenElement)  
(Page 115)

Participants register for this service by completing the InterLink/SWIFT Service – Messages Request (CDSX377).

- TRAX transfer requests – Participants who subscribe to the TRAX transfer requests application can transmit withdrawal requests to CDSX using a web-based interface. For more information, see *Participating in CDS Services*.

Security withdrawals are entered in CDSX and declarations, if required, are submitted to CDS for delivery to the transfer agent.

Although withdrawal requests may be entered and confirmed any time from system startup to system shutdown, the times for custodial services for the withdrawal (i.e., delivery and receipt) of physical certificates depend on agreements in place between transfer agents and participants.

Out-of-town instant withdrawals are not available for issues requiring declarations.

Only certificated issues may be withdrawn from CDSX prior to maturity, provided that the custodian has access to a sufficient quantity. Uncertificated issues may only be withdrawn after processing of the entitlement event by the paying agent.

Confirmed and rejected securities withdrawal requests are purged from CDSX at close-of-business on the day the confirmation or rejection is made. Unconfirmed securities requests remain in CDSX until they are confirmed or rejected.

For securities that are required to process an entitlement event (e.g., maturity), unconfirmed withdrawals are rejected and purged by CDSX on close-of-business on the payable date, and the requestor receives the corresponding entitlement.

**Note:** The procedure for withdrawing issues using the Remote Transfer Withdrawal Service is the same as for other withdrawals with one exception. If CDS does not have sufficient quantity on hand to service the withdrawal request (i.e., the needed quantity is in transit from the transferor), CDS rejects the withdrawal.

To request a security withdrawal in CDSX:

1. Access the Withdrawal Menu on page 115. For more information, see Accessing the Withdrawal Menu on page 115.
2. Type the number identifying Request Security Withdrawal in the SELECTION field and press ENTER. The Request Security Withdrawal screen on page 122 displays.
11. Press PF3 twice to return to the Request Security Withdrawal screen on page 122.
12. Press PF10 to save the withdrawal request. If CDSX accepts the request, a blank Request Security Withdrawal screen on page 122 displays with the transaction ID for the withdrawal request.

When a withdrawal request is saved, CDSX creates two events. The first event moves the securities from the settlement account to the withdrawal account. When confirmed or rejected by the custodian, the second event removes the positions from the withdrawal account. If rejected, the positions are returned to the settlement account.

### **7.3.1 Preparing and receiving security withdrawals**

To prepare and receive security withdrawals complete the following steps. For more information on the listed reports refer to *CDS Reporting Procedures*.

1. For issues that require declarations, attach them to the Security Withdrawal Notice – Entry.

For non-certificated issues, attach an irrevocable power of attorney to the Security Withdrawal Notice – Entry.

For security withdrawal requests created through TRAX, no documentation is required.

2. Prepare and submit envelopes containing any required declarations to CDS for delivery to the transfer agent.

Once the request is entered in CDSX and any required declarations are received, CDS or the custodian confirms the request in CDSX and makes the certificates available for pickup at the CDS window or the transfer agent's office, as identified in the REL LOCATION field.

For securities where CDS is the custodian, CDS confirms requests for both instant and regular withdrawals only when the transfer agent returns the completed certificates to CDS, or when confirmation is received from the transfer agent indicating that the holdings have been recorded on the register as transferred out of CDS & CO.

When CDS or the custodian confirms a security withdrawal, the Security Withdrawal Notice - Confirmation prints at the participant's location. When CDS or the custodian rejects a security withdrawal, the Security Withdrawal Notice - Rejection prints at the participant's location.

If a withdrawal request cannot be satisfied, CDS rejects the withdrawal and indicates the reason in the MEMO field. Participants may submit a request at a later date when the inventory may be available or request a depository acknowledgement (for non-transferable issues only).

For non-certificated issues, the transfer agent sends the original transfer confirmation to the beneficial holder and CDS forwards a copy of the transfer confirmation to the participant who requested the withdrawal.

3. CDS batches all completed withdrawal transfer certificates. The certificates and the Unconfirmed Withdrawals report are placed in an envelope affixed with a CDS envelope seal.
4. Pick-If applicable, pick up the envelope at the CDS window and sign for it.
5. Match the certificates received to those expected and immediately report any shortages to CDS.

If the registration on the certificates is incorrect, forward the certificates to the transfer agent directly for correction.

#### **7.4 Monitoring security withdrawals**

Information about all confirmed, unconfirmed and rejected withdrawals may be displayed by accessing the Inquire Security Withdrawal function. Confirmed and rejected security withdrawals are displayed until the end of the day only.

To inquire on security withdrawal requests:

1. Access the Withdrawal Menu on page 115. For more information, see Accessing the Withdrawal Menu on page 115.
2. Type the number identifying Inquire Security Withdrawal in the SELECTION field and press ENTER. The Withdrawal Selection screen on page 126 displays.

Withdrawal Selection screen

Screen to be added when available

*The withdrawal selection screen remains the same with the addition of the Transaction subtype field for selection criteria.*

3. Enter the withdrawal ID or other selection criteria.
4. Press ENTER. The Withdrawal List screen on page 127 displays with the entered selection criteria.

Withdrawal List screen

Screen to be added when available

*The withdrawal list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

5. Review the STATUS field to determine if the request is unconfirmed (U), confirmed (C) or rejected (R).
6. Review the TRANSFER FEE field to determine if any transfer fees have been charged by the transfer agent.

Alternatively, review the Deposit/Withdrawal Transfer Fees Summary Report - Participant to determine all transfer fees incurred for deposits and withdrawals during a particular billing period. For more information, refer to *CDS Reporting Procedures*.

To monitor the security withdrawal request on reports, review the Settled Transactions report and Unsettled Transactions report for the following:

- When the withdrawal is incomplete, the first event is settled, while the second is unsettled. The withdrawal displays on both the Settled Transactions report and Unsettled Transactions report.
- When the withdrawal is confirmed, both events are settled (the positions have been moved out of CDSX). The withdrawal displays in the Settled Transactions report.
- When the withdrawal is rejected, both events are settled (the positions have been moved from the withdrawal account back to the originating account). The withdrawal displays in the Settled Transactions report.

For more information, refer to *CDS Reporting Procedures*.

Deposit Selection screen

Screen to be added when available

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*

3. Enter the deposit ID or other selection criteria.
4. Press ENTER. The Deposit List screen on page 60 displays with a list of the deposits that match the selection criteria.

Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

5. Review the STATUS field to determine if the request is unconfirmed (U), confirmed (C) or rejected (R).

#### 5.4 Confirming or rejecting security deposits

The security validator is responsible for confirming deposits.

The user who entered, modified or confirmed the preliminary issue cannot confirm or reject the security deposit for the money market issue. Also, the user who entered the deposit cannot confirm or reject the deposit.

The service access administrator (SAA) cannot confirm or reject a deposit. To confirm or reject a deposit request:

1. Access the Deposit and Withdrawal Menu (custodian) on page 57. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 56.
2. Type the number identifying Confirm Security Deposit in the SELECTION field and press ENTER. The Deposit Selection screen on page 61 displays.

Deposit Selection screen

Screen to be added when available

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*

3. Enter the deposit ID or other selection criteria.
4. Press ENTER. The Deposit List screen on page 62 displays. Only the custodian can change the details of a security deposit request for issues.

Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

The CHANGE INDICATOR field indicates whether a change was made to the security at the time of confirmation:

- S indicates that the security number has been changed
  - P indicates that the par/quantity has been changed
  - B indicates that both the security number and the par/quantity have been changed.
5. To confirm a security deposit request, type C in the STATUS field. If necessary, modify any of the following fields:
    - SECURITY NUMBER
    - PAR/QUANTITY
    - TRANSFER FEE
    - EFFECTIVE DATE.
  6. To reject a security deposit request, type R in the STATUS field. If necessary, modify any of the following fields:
    - REJECTION REASON CODE
    - TRANSFER FEE.

7. Press ENTER to validate the information and press PF10 to save.

### **5.5 Modifying confirmed deposits**

Security validators must request a deposit adjustment in writing when they discover an error after confirmation. CDS makes all deposit adjustments in CDSX.

Deposit Selection screen

Screen to be added when available

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*

3. Enter the deposit ID or other selection criteria.
4. Press ENTER. The Deposit List screen on page 60 displays with a list of the deposits that match the selection criteria.

Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

5. Review the STATUS field to determine if the request is unconfirmed (U), confirmed (C) or rejected (R).

### **5.4 Confirming or rejecting security deposits**

The security validator is responsible for confirming deposits.

The user who entered, modified or confirmed the preliminary issue cannot confirm or reject the security deposit for the money market issue. Also, the user who entered the deposit cannot confirm or reject the deposit.

The service access administrator (SAA) cannot confirm or reject a deposit. To confirm or reject a deposit request:

1. Access the Deposit and Withdrawal Menu (custodian) on page 57. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 56.
2. Type the number identifying Confirm Security Deposit in the SELECTION field and press ENTER. The Deposit Selection screen on page 61 displays.

Deposit Selection screen

Screen to be added when available

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*

3. Enter the deposit ID or other selection criteria.

4. Press ENTER. The Deposit List screen on page 62 displays. Only the custodian can change the details of a security deposit request for issues.

Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

The CHANGE INDICATOR field indicates whether a change was made to the security at the time of confirmation:

- S indicates that the security number has been changed
  - P indicates that the par/quantity has been changed
  - B indicates that both the security number and the par/quantity have been changed.
5. To confirm a security deposit request, type C in the STATUS field. If necessary, modify any of the following fields:
    - SECURITY NUMBER
    - PAR/QUANTITY
    - TRANSFER FEE
    - EFFECTIVE DATE.
  6. To reject a security deposit request, type R in the STATUS field. If necessary, modify any of the following fields:
    - REJECTION REASON CODE
    - TRANSFER FEE.
  7. Press ENTER to validate the information and press PF10 to save.

### **5.5 Modifying confirmed deposits**

Security validators must request a deposit adjustment in writing when they discover an error after confirmation. CDS makes all deposit adjustments in CDSX.

- Inquire Security Withdrawal – View all confirmed or rejected security withdrawal requests that have been made during the day or any security withdrawal requests that have not been confirmed. For more information, see [Inquiring on security withdrawals](#) on page 65.
- Custodian Reconciliation Position – Reconcile holdings with CDS on a daily basis. For more information, see [Reconciliation](#) on page 90.

### **6.2 Inquiring on security withdrawals**

Security validators monitor security withdrawals using the Inquire Security Withdrawal function. This function enables the security validator to display information about all confirmed, unconfirmed and rejected withdrawals.

Confirmed and rejected security withdrawals are displayed until the end of the day. To inquire on security withdrawals:

1. Access the Deposit and Withdrawal Menu (custodian) on page 57. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 56.
2. Type the number identifying Inquire Security Withdrawal in the SELECTION field and press ENTER. The Withdrawal Selection screen on page 65 displays.

Withdrawal Selection screen

Screen to be added when available

*The withdrawal selection screen remains the same with the addition of the Transaction subtype field for selection criteria.*

3. Enter the withdrawal ID or other selection criteria.
4. Press ENTER. The Withdrawal List screen on page 66 displays with a list of the withdrawals that match the selection criteria.

Withdrawal List screen

Screen to be added when available

*The withdrawal list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX*

5. Review the STATUS field to determine if the request is unconfirmed (U), confirmed (C) or rejected (R).

**6.3 Confirming or rejecting security withdrawals**

The security validator is responsible for confirming withdrawals entered by the entitlements processor.

To confirm or reject a security withdrawal:

1. Access the Deposit and Withdrawal Menu (custodian) on page 57. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 56.
2. Type the number identifying Confirm Security Withdrawal in the SELECTION field and press ENTER. The Withdrawal Selection screen on page 67 displays.

Withdrawal Selection screen

Screen to be added when available

*The withdrawal selection screen remains the same with the addition of the Transaction subtype field for selection criteria.*

3. Enter the withdrawal ID or other selection criteria.
4. Press ENTER. The Withdrawal List screen on page 67 displays.

If a security has matured since the customer entered the withdrawal, it is automatically assigned a status of R (rejected).



Withdrawal List screen

Screen to be added when available

*The withdrawal list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

5. To confirm a security withdrawal request, type C in the STATUS field. If necessary, modify any of the following fields:
- TRANSFER FEE
  - EFFECTIVE DATE.

**Appendix B - Proposed CDS Procedure Amendments – Changes accepted version**

Text of CDS Participant Procedures reflecting the adoption of proposed amendments

Alert	Received by....
Corporate action option modified	Both initiator and counterparty to confirm that they have active CA liability records related to a modified option
Participant merge – your CUID merging	The merging CUID (either counterparty or initiator) to confirm that they have active CA liability records
Participant merge – other CUID merging	Either counterparty or initiator to confirm that they have active CA liability records with a merging CUID
CUID inactive – your CUID inactive	The inactive CUID (either counterparty or initiator) to confirm that they have active CA liability records
CUID inactive – other CUID inactive	Either counterparty or initiator to confirm that they have active CA liability records with an inactive CUID
Security delivery due today	Both initiator and counterparty of active CA liability records to confirm that securities are due today
Security delivery past due	Both initiator and counterparty of active CA liability records to confirm that the security delivery is past due

**Note:** Email alerts are not encrypted so the confidentiality or security of the information is not guaranteed.

**3.8 TRAX – transfer requests**

TRAX transfer requests provides participants and transfer agents with the ability to process securities transfer instructions through a web-based application.

For more information, see [TRAX – transfer requests alerts](#) on page 41.

Securities transfer records are maintained in TRAX for seven years. If required, each record can be printed to PDF.

To request access to this application, use the IBM Tivoli Identity Manager self-care interface ([www.cdsservices.ca/itim/self](http://www.cdsservices.ca/itim/self)).

Users can request the following roles per CUID within TRAX.

Role	Description
User	Maintain personal subscription profiles Process security instructions View web alerts
Supervisor	Maintain user and group subscription profiles Process security instructions View web alerts
Viewer	Maintain personal subscription profiles View security instructions View web alerts

**3.8.1 TRAX – transfer requests alerts**

The following securities transfer requests are processed using TRAX.

Transfer instruction	Deposit	Withdrawal	Description
Buy-back (BB)		<input type="checkbox"/>	Identifies that a security has been bought back by the issuer, for cancellation. The issuer's register is reduced by the quantity of the transfer instruction
Global transfer (GT)	<input type="checkbox"/>		Identifies that a security is being moved from an international register to a Canadian register
Treasury order (TO)	<input type="checkbox"/>		Identifies that a security is being issued from a company's treasury. The issuer's register is increased by the quantity of the transfer instruction

The following security transfer instruction record web/email alerts are available.

**Transfer request alerts**

Alert	Available to		Description
	Transfer agent	Participant	
Transfer request record entered	<input type="checkbox"/>	<input type="checkbox"/>	Confirms the entry of a transfer request record with sub-types TO and GT
Transfer request record modified	<input type="checkbox"/>	<input type="checkbox"/>	Confirms the modification of a transfer request record with sub-types TO or GT
Transfer request record cancelled	<input type="checkbox"/>	<input type="checkbox"/>	Confirms the cancellation of a transfer request record with sub-types TO or GT
Transfer request record rejected	<input type="checkbox"/>	<input type="checkbox"/>	Confirms the rejection of a transfer request record with sub-types TO or GT

Alert	Available to		Description
	Transfer agent	Participant	
Transfer request record rejected by system	<input type="checkbox"/>	<input type="checkbox"/>	Confirms the rejection of a transfer request record with sub-types TO or GT
Transfer request record rejected by system		<input type="checkbox"/>	Confirms the rejection of a transfer request record with sub-type BB
Transfer request record deleted by system	<input type="checkbox"/>	<input type="checkbox"/>	Confirms the deletion of a transfer request record with sub-types TO or GT

**Date triggered alerts**

Alert	Available to		Description
	Transfer agent	Participant	
Record date today	<input type="checkbox"/>	<input type="checkbox"/>	Confirms that an unconfirmed transfer request record has been created for a security that has a confirmed distribution event with a record date equal to the current business date Generated at the time of record creation
			Confirms that an unconfirmed transfer request record exists for a security that has a confirmed distribution event with a record date equal to the current business date Generated at the beginning of each day

**CDSX processing alerts**

Alert	Available to		Description
	Transfer agent	Participant	
CDSX deposit entered by transfer requests	<input type="checkbox"/>	<input type="checkbox"/>	Confirms the creation of a deposit entry in CDSX by transfer requests
CDSX withdrawal entered by transfer requests	<input type="checkbox"/>	<input type="checkbox"/>	Confirms the creation of a deposit withdrawal in CDSX by transfer requests

**Note:** Email alerts are not encrypted so the confidentiality or security of the information is not guaranteed.

**CHAPTER 4**  
**Processing security deposit requests**

Participants can submit security deposit requests in the following ways:

- Direct online entry into CDSX – Participants submit a security deposit request online in CDSX. The online request triggers a Security Deposit Notice – Entry to print at both the participant’s and the transfer agent’s location. Participants then deliver the certificates in a sealed envelope with the attached Security Deposit Notice – Entry to CDS or to the transfer agent for those securities. For more information, refer to *CDS Reporting Procedures*.
- TRAX transfer requests – Participants who subscribe to the TRAX transfer requests application can transmit deposit requests to CDSX using a web-based interface. For more information, see *Participating in CDS Services*.

When making an online security deposit request, a participant provides the information indicated in the table below and any information that is required by the transfer agent. The transfer agent’s requirements are described in the individual transfer agent’s service level bulletin.

Information	Explanation
Service level	Indicates to the transfer agent the priority of the request. The choices are REG (regular) or INS (instant). There is no CDSX functionality associated with the service level information other than to capture the participant selection and display it on the appropriate screens and reports Transactions created through TRAX default to REG (regular)
Request date	The date that the deposit is normally entered into CDSX. The deposit request can be future-dated by no more than one business day
Window location	Depending on the transfer agent’s setup in CDSX, the valid window location can be designated by one of the following means: Separate CUID for each location Window locations in the WINDOW LOCATION field Memo The transfer agent service level bulletin identifies the method for identifying the delivery or receipt location
Release location	The location where the participant wants their rejected security deposits to be sent for pickup
Serial number and denominations	The serial number and denominations of the certificates
Additional information	This may include additional certificate details or routing information required by the transfer agent. This information can be indicated in the MEMO lines

Once the participant saves the deposit request, the system assigns a unique deposit ID to the deposit request. The deposit request is saved with a status of unconfirmed. CDSX does not allow the participant to delete or modify a security deposit request once a deposit ID has been generated. If the deposit request needs to be modified after a deposit ID has been generated, the participant must contact CDS and request that CDS inform the transfer agent to modify or reject the deposit.

For information that is shared by both security deposits and withdrawals, including processing security deposit and withdrawal adjustments, see [Security deposits and withdrawals](#) on page 23.

**4.1 Receiving security deposit requests and envelopes from participants**

When the participant enters and saves the deposit request, CDS sends the deposit request information to the transfer agent.

**Note:** Participants do not submit certificates or documentation if the deposit request was made through TRAX. For more information on TRAX, see *Participating in CDS Services*.

Transfer agents can choose to receive the deposit request information in one or more of the following ways:

- An InterLink real-time message
- A batch file
- A printed Security Deposit Notice - Entry.
- A transfer request alert.

#### **Receiving the certificates from the participant**

The participant prepares an envelope with the certificates for delivery to CDS or the transfer agent. The envelope is accompanied by at least one Security Deposit Notice – Entry, signed by the participant. The envelope and attached Security Deposit Notice – Entry are sent either to CDS, which will then forward the documents to the transfer agent, or directly by the participant to the transfer agent.

The time frames and locations for making deposits are indicated in the transfer agent service level bulletins.

#### **4.2 Verifying security deposits and updating registers**

Upon receipt of the deposit envelope, do the following:

1. Review the Security Deposit Notice – Entry
2. Verify the certificates against the Security Deposit Notice – Entry as follows:
  - Count the face value of the certificates and compare the total with the total on the Security Deposit Notice – Entry.
  - Ensure that the certificates are correct by verifying the issuer, security type, interest rate and maturity date, and compare those details with the information on the Security Deposit Notice – Entry.
  - Ensure that each certificate has been duly authorized and issued by the issuer.
  - Ensure that each certificate is genuine and is in proper form.
  - Validate the positions on the register.
  - Ensure that the deposited securities are processed within the time frames of the requested service level.  
**Note:** CDSX does not enforce service levels. The service levels are the result of industry standards developed by participants and transfer agents.
  - Verify that the window location is correct. If the window location is not the confirmation location, set up a process to support the communication of authorization results between both locations.
3. Record the certificate registration in CDS's nominee name in the issuer's register and update all required in-house systems.
4. Confirm the security deposit request (see [Confirming or rejecting security deposits](#) on page 32).

#### **4.3 Inquiring on security deposits in CDSX**

Transfer agents can monitor security deposits using the Inquire Security Deposit function and display information about all confirmed, unconfirmed and rejected deposits.

Transfer agents can display information on security deposit requests to help them schedule deliveries and pickups of securities or arrange for resubmission of rejected requests.

Transfer agents use this function to determine if they have:

- Not yet reviewed the security request (unconfirmed)
- Accepted the request (confirmed)
- Rejected the request.

Confirmed and rejected security deposits are displayed until the end of the day.

A transaction SUBTYPE field is displayed if the deposit was created using TRAX. For more information on TRAX, see *Participating in CDS Services*.

The CHANGE INDICATOR field indicates if a transfer agent has made a change to one of the allowable fields on the security request at the time of the confirmation:

- S indicates that the security number has been changed
- P indicates that the par/quantity has been changed
- B indicates that both the security number and the par/quantity have been changed
- N indicates that no change has been made.

To inquire on security deposit requests:

1. Access the Deposit and Withdrawal Menu on page 26. For more information, see Accessing the Deposit and Withdrawal Menu on page 25.
2. Type the number identifying Inquire Security Deposit in the SELECTION field and press ENTER. The Deposit Selection screen on page 31 displays.

Deposit Selection screen

Screen to be added when available:

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*

3. Enter the deposit ID (appearing on the Security Deposit Notice) or other selection criteria and press ENTER. The Deposit List screen on page 32 displays

Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

#### **4.4 Confirming or rejecting security deposits**

Transfer agents can confirm or reject the deposit in CDSX in any of the following ways:

- Using the online Confirm Security Deposit function in CDSX
- By creating a confirmation/rejection message record in a batch file and transmitting the file to CDS

- By issuing a confirmation/rejection InterLink message.

When confirming or rejecting a deposit request, transfer agents may update the fields listed in the table below.

Field	Description
STATUS	Enter either C (confirm) or R (reject)
PAR QUANTITY	If the request is confirmed, this field can be modified
ISIN	If the request is confirmed, this field can be modified
TRANSFER FEE	If the request is confirmed or rejected, enter the appropriate transfer fees
EFFECTIVE DATE	If necessary, backdate this date as far as 30 days in the past. This field defaults to the current date. The effective date should always be the transfer date
REASON CODE	If the request is rejected, enter a reason for the rejection or leave it blank. If a code is entered, it must be a valid reason code. Refer to <i>CDSX Procedures and User Guide</i>
MEMO	If necessary, change or add any information about the confirmation or rejection of the request

To confirm or reject the security deposit request in CDSX, see [Confirming or rejecting security deposit requests in CDSX](#) on page 33.

If a transfer agent confirms the deposit request, the following occurs:

- A Security Deposit Notice – Confirmation is printed at the participant’s location.
- CDSX automatically updates the transfer agent’s CDS system ledger and the participant’s position.
- The deposit details can no longer be modified in CDSX. Any modifications will have to be done as a manual adjustment (see [Making adjustments to confirmed deposits and withdrawals](#) on page 27).

If a transfer agent rejects the deposit, a Security Deposit Notice - Rejection prints at the transfer agent’s and the participant’s location. There are no changes to the transfer agent’s or the participant’s positions in CDSX.

**4.4.1 Confirming or rejecting security deposit requests in CDSX**

To confirm or reject a security deposit request:

1. Access the Deposit and Withdrawal Menu on page 26. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 25.
2. Type the number identifying Confirm Security Deposit in the SELECTION field and press ENTER. The Deposit Selection screen on page 33 displays.

Deposit Selection screen

Screen to be added when available

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*

3. Enter the deposit ID (appearing on the Security Deposit Notice) or other selection criteria and press ENTER. The Deposit List screen on page 34 displays.



Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

4. To confirm a security deposit request, type C in the STATUS field. If necessary, modify the following fields:
  - SECURITY NUMBER
  - PAR/QUANTITY
  - TRANSFER FEE
  - EFFECTIVE DATE
  - MEMO.
5. To reject a security deposit request, type R in the STATUS field. If necessary, modify the following fields:
  - REJECTION REASON CODE (refer to *CDSX Procedures and User Guide*).
  - TRANSFER FEE
  - MEMO.
6. Press ENTER to validate the information and press PF10 to save.

#### **4.5 Processing the certificates after confirming the deposit**

Once the deposit is confirmed, maintain the deposited securities in a format selected in accordance with the *Transfer Agent Agreement*.

#### **4.6 Handling defective deposits**

If a transfer agent confirms a security deposit request and the securities deposited are later found to be defective, the transfer agent and CDS resolve the situation as follows:

1. CDS contacts the depositing participant about the situation. At the transfer agent's request, CDS will act as an intermediary between the transfer agent and the depositing participant.
2. If the defect is covered by the signature guarantee provision of the *Transfer Agent Agreement*, the transfer agent will have the benefit of CDS's signature guarantee made in reliance on the signature guarantee of the depositing participant.
3. If, pursuant to an order of the court or regulatory agency with jurisdiction over the transfer agent, the transfer agent is required to adjust CDS's position, CDS will cooperate in making the adjustment and the relevant provisions of the *Transfer Agent Agreement* will apply.

**CHAPTER 5**  
**Processing security withdrawal requests**

Participants can submit security withdrawal requests in the following ways:

- Direct online entry into CDSX – The Request Security Withdrawal function enables participants to withdraw eligible securities from CDSX by submitting a security withdrawal request to the transfer agent for those securities.
- TRAX transfer requests – Participants who subscribe to the TRAX transfer requests application can transmit withdrawal requests to CDSX using a web- based interface. For more information, see *Participating in CDS Services*.

When making an online security withdrawal request, a participant provides the information indicated in the table below and any information that is required by the transfer agent. The transfer agent’s requirements are described in the individual transfer agent’s service level bulletin.

Information	Explanation
Service level	Indicates to the transfer agent the priority of the request should be processed. The choices are REG (regular) or INS (instant). There is no CDSX functionality associated with the service level information other than to capture the participant selection and display it on the appropriate screens and reports Transactions created through TRAX default to REG (regular)
Request date	The date that the withdrawal is entered into CDSX. The withdrawal request can be future-dated by no more than one business day
Window location	Depending on the transfer agent’s setup in CDSX, the valid window location can be designated by one of the following means: Separate CUID for each location Window locations in the WINDOW LOCATION field Memo The transfer agent service level bulletin identifies the method for identifying the delivery or receipt location
Release location	The location where the participant wants their securities to be sent for pickup
Registration and distribution address	The registration and distribution address may be provided
Additional information	This may include any special information required by the transfer agent. This information can be indicated in the MEMO lines

Once the participant has entered the security withdrawal details, CDSX verifies that the following conditions exist:

- The participant has sufficient position available in the specified participant account
- No withdrawal restrictions apply to the requested security which would preclude the request for withdrawal.

CDSX will not allow the participant to save the security withdrawal request in the system if there is insufficient position or if such a restriction exists.

If neither condition exists, CDSX does the following:

- Saves the security withdrawal request as U (unconfirmed)
- Assigns a unique withdrawal ID to the request

- Reserves the securities by moving the positions to the participant's withdrawal account (WD).

CDSX does not allow the participant to delete or modify a security withdrawal request once the withdrawal ID has been generated. If the withdrawal request needs to be modified after a withdrawal ID has been generated, the participant must request that the transfer agent reject the withdrawal request and modify the EFFECTIVE DATE, TRANSFER FEE and/or REASON CODE fields.

If a transfer agent discovers an error after confirmation, they must submit a written request for a deposit or withdrawal adjustment to CDS. For more information, see [Making adjustments to confirmed deposits and withdrawals](#) on page 27.

For information that is shared by both security deposits and withdrawals, including processing security deposit and withdrawal adjustments, see [Security deposits and withdrawals](#) on page 23.

### **5.1 Receiving security withdrawal requests and declaration documents from participants**

When the participant enters and saves the request, CDS sends the withdrawal request information to the transfer agent.

**Note:** Registration instructions are not required if the withdrawal request was made through TRAX. For more information on TRAX, see *Participating in CDS Services*.

Transfer agents can choose to receive the withdrawal request information in one or more of the following ways:

- An InterLink real-time message
- A batch file
- A Security Withdrawal Notice – Entry printed at the transfer agent's site.

**Note:** The registration details are not displayed online in CDSX. These details are available on the printed notices, in InterLink messages or in batch files.

### **Receiving and verifying declaration documents from the participant**

The participant sends the declaration documents either to CDS, which will then forward the documents to the transfer agent, or directly to the transfer agent.

The transfer agent is responsible for verifying the accuracy of the declaration documents and the Security Withdrawal Notice – Entry.

### **5.2 Processing the withdrawal in the transfer agent's register**

To process the withdrawal:

1. Re-register the securities out of CDS's nominee name and into the registration name provided by the participant on the Security Withdrawal Notice - Entry.
2. Confirm the security withdrawal (see [Confirming or rejecting security withdrawals](#) on page 39).

### **5.3 Reviewing security withdrawal requests**

Transfer agents can monitor withdrawals using the Inquire Security Withdrawal function and display information about all confirmed, unconfirmed and rejected withdrawals.

The Inquire Security Withdrawal function indicates whether the transfer agent has not yet reviewed the security request (unconfirmed), accepted the request (confirmed) or rejected the request.

Transfer agents can display information on security withdrawal requests to help them schedule deliveries and pickups of securities or arrange for resubmission of rejected requests.

Confirmed and rejected security withdrawals are displayed until the end of the day only.

### 5.3.1 Reviewing security withdrawal requests through reports

Transfer agents can also monitor security withdrawal requests on the following reports:

- Unconfirmed Withdrawals Report – Instant – Lists all security withdrawal requests with a service level of INS (instant) for each transfer agent. This report is available in RMS as of 10:00 a.m. ET (8:00 a.m. MT, 7:00 a.m. PT).
- Unconfirmed Withdrawals Report – Regular – Lists all security withdrawal requests with a service level of REG (regular) for each transfer agent. This report is available in RMS as of 4:30 p.m. ET (2:30 p.m. MT, 1:30 p.m. PT).

For more information, refer to *CDS Reporting Procedures*.

### 5.3.2 Inquiring on security withdrawal requests in CDSX

To inquire on security withdrawal requests:

1. Access the Deposit and Withdrawal Menu on page 26. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 25.
2. Type the number identifying Inquire Security Withdrawal in the SELECTION field and press ENTER. The Withdrawal Selection screen on page 38 displays.

Withdrawal Selection screen

Screen to be added when available

*The withdrawal selection screen remains the same with the addition of the Transaction subtype field for selection criteria.*

3. Enter the withdrawal ID (appearing on the Security Withdrawal Notice) or other selection criteria and press ENTER. The Withdrawal List screen on page 39 displays based on the selection criteria entered.

Withdrawal List screen

Screen to be added when available

*The withdrawal list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

### 5.4 Confirming or rejecting security withdrawals

Transfer agents are responsible for confirming or rejecting withdrawals entered by participants. They can confirm or reject security withdrawal requests in any of the following ways:

- Using the online Confirm Security Withdrawal function in CDSX
- By creating a confirmation or rejection message record in a batch file and transmitting the file to CDS
- By issuing a confirmation or rejection InterLink message.

When confirming or rejecting a withdrawal request, transfer agents may update the fields listed in the table below.

Field	Description
STATUS	Enter either C (confirm) or R (reject)
TRANSFER FEE	If the request is confirmed or rejected, enter the appropriate transfer fees
EFFECTIVE DATE	If necessary, backdate this date up to 30 days. This field defaults to the current date. The effective date cannot be earlier than the request date
REASON CODE	If necessary, enter a reason for the rejection or leave it blank. If a code is entered, it must be a valid reason code. Refer to <i>CDSX Procedures and User Guide</i>
MEMO	If necessary, change or add any information about the confirmation or rejection of the request

A transaction SUBTYPE field is displayed if the withdrawal was created using TRAX. For more information on TRAX, see *Participating in CDS Services*.

To confirm or reject the security withdrawal request in CDSX, see Confirming or rejecting security withdrawal requests in CDSX on page 40.

**5.4.1 Confirmed security withdrawal requests**

If a transfer agent confirms the security withdrawal request, the following occurs:

- A Security Withdrawal Notice – Confirmation prints at the participant’s location and signals to the participant that the certificates will be available for pickup as per the agreed upon schedule.
- CDSX automatically updates the transfer agent’s CDS system ledger and removes the securities from the participant’s pending withdrawal account (WD).
- The transfer agent can no longer modify the withdrawal details in CDSX. Any modifications will have to be done as a manual adjustment (see Making adjustments to confirmed deposits and withdrawals on page 27).

**Restrictions on confirming security positions**

Negative security positions are not allowed in CDSX. An edit on withdrawal confirmations prevents transfer agents from confirming security withdrawal requests for which they do not hold sufficient positions in their system ledger at CDS. If this occurs, a message prompts the transfer agents to request an intercity transfer.

In order to confirm the security withdrawal after failing the edit, transfer agents should transfer securities from one of their other CUIDs (e.g., Montreal CUID) to the CUID indicated in the security withdrawal request (e.g., Toronto CUID).

This process does not apply to transfer agents who operate only one CUID in CDSX.

**5.4.2 Rejected security withdrawal requests**

If a transfer agent rejects the security withdrawal, the following occurs:

- A Security Withdrawal Notice – Rejection prints at the transfer agent’s and the participant’s locations. The notice signals to the participant that the security withdrawal request has been rejected.
- The affected securities are removed from the participant’s withdrawal account (WD) and returned to the originating account.

**5.4.3 Confirming or rejecting security withdrawal requests in CDSX**

To confirm or reject a security withdrawal request:

1. Access the Deposit and Withdrawal Menu on page 26. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 25.
2. Type the number identifying Confirm Security Withdrawal in the SELECTION field and press ENTER. The Withdrawal Selection screen on page 41 displays.

Withdrawal Selection screen

Screen to be added when available

*The withdrawal selection screen remains the same with the addition of the Transaction subtype field for selection criteria.*

3. Enter the withdrawal ID (appearing on the Security Withdrawal Notice) or other selection criteria and press ENTER. The Withdrawal List screen on page 41 displays.

If a mandatory event (e.g., a maturity) was processed on the security after the customer entered the withdrawal, the withdrawal is automatically assigned a status of R (rejected).

Withdrawal List screen

Screen to be added when available

*The withdrawal list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

4. To confirm a security withdrawal request, type C in the STATUS field. If necessary, modify the following fields:
  - TRANSFER FEE
  - EFFECTIVE DATE
  - MEMO.
5. To reject a security withdrawal request, type R in the STATUS field. If necessary, modify the following fields:
  - REJECTION REASON CODE (refer to *CDSX Procedures and User Guide*)
  - TRANSFER FEE
  - MEMO.

6. Press ENTER to validate the information and press PF10 to save.

### **5.5 Preparing certificates after confirmation**

If the security withdrawal request is confirmed, the transfer agent must register the certificates according to the participant's instructions. If there is a physical inventory, the certificates must be updated.

Once the withdrawal is confirmed, the transfer agent must issue certificates in the denominations and the form of registration as instructed by the participant.

If the withdrawal request is created through TRAX, and has a subtype of BB (buy-back), the security has been bought back by the issuer for cancellation. The transfer agent does not issue certificates for these requests.

## CHAPTER 6

### Deposit activities

Participants can deposit the following in CDSX:

- Funds – Deposit Canadian or U.S. funds into their funds account only. For more information, see [Funds deposits](#) on page 100.
- Securities – Deposit only CDSX-eligible instruments into their general, segregated or RSP account. For more information, see [Security deposits](#) on page 103. Aggregate Collateral Value (ACV) is subject to sector limits and increases when a security is deposited to the general account. For more information, refer to *Participating in CDS Services*.
- Physical strip bonds – Deposit only physical strip bonds derived from bonds issued or guaranteed by a government. For more information, see [Depositing book-entry physical strips](#) on page 93.

Transactions entered after the deposit cutoff times are processed the next business day.

#### 6.1 Deposit functions

Participants can process deposit requests by accessing the following functions on the Deposit Menu on page 100:

- Request Funds Deposit – Enter details of a funds deposit to the participant's funds account.
- Inquire Funds Deposit – View all confirmed, unconfirmed or rejected requests for funds deposits that have been made during the day.
- Request Security Deposit – Request the deposit of eligible securities into CDSX.
- Inquire Security Deposit – View all confirmed, unconfirmed, or rejected requests for security deposits that have been made during the day.

Participants who subscribe to the InterLink service can transmit security deposit requests to CDSX using InterLink messaging. For more information, see [Security deposits](#) on page 103.

Participants who subscribe to the TRAX transfer requests application can transmit deposit requests to CDSX using a web-based interface. For more information, see *Participating in CDS Services*.

CDS provides reports for monitoring the deposit of funds and securities in CDSX. For more information, refer to *CDS Reporting Procedures*.

Due to formatting issues the screens can be accessed by clicking on the following link:  
[http://www.cds.ca/cdsclearinghome.nsf/Downloads/-EN-TRAX/\\$File/TRAX\\_erbl.pdf?OpenElement](http://www.cds.ca/cdsclearinghome.nsf/Downloads/-EN-TRAX/$File/TRAX_erbl.pdf?OpenElement)  
(Page 103)

3. Review the STATUS field to determine if the request is unconfirmed (U), confirmed (C) or rejected (R).

#### 6.4 Security deposits

Participants can enter security deposit requests in CDSX in the following ways:

- Direct online entry into CDSX
- InterLink message CDSD010 – Participants who subscribe to the InterLink service can transmit deposit requests to CDSX using InterLink messaging. For more information, refer to *CDS Batch and Interactive Services – Technical Information*.

Participants register for this service by completing the InterLink/SWIFT Service – Messages Request (CDSX377).

- TRAX transfer requests – Participants who subscribe to the TRAX transfer requests application can transmit deposit requests to CDSX using a web-based interface. The service level of deposit transactions created through TRAX defaults to REG (regular). For more information, see *Participating in CDS Services*.

Security deposits are entered in CDSX and, if required, the certificates are then forwarded to the custodians of the issues. For some issues, transfer agents may assume the system role of custodian (i.e., validator) in CDSX.

The current cutoff times for security deposit activities appear in the Timetables-Deposits and Withdrawals bulletins. To view these bulletins, access CDS Bulletins on the CDS website ([www.cds.ca](http://www.cds.ca)).

Field	Description
SUPPORT DOC INCLUDED	Identifies whether the participant has included supporting documentation for the deposit: Y – Yes N – No
MEMO	A contact name and telephone number (transfer agent requirement) The market value of the security deposit (CDS requirement) For intercity deposits, include the word "INTERCITY" (CDS requirement)

4. Enter the certificate details if required by the transfer agent.
5. If the CERTIFICATE NUMBER field is completed, the DENOMINATION field must also be completed (and vice versa).
6. Press ENTER to validate the information and press PF10 to save. CDSX saves the request with a status of U (unconfirmed) and assigns a deposit ID.

Once the deposit request has been entered and saved in CDSX, prepare the securities for physical deposit as follows:

**Note:** Certificates and documentation are not required if the deposit request was made through TRAX. For more information on TRAX, see *Participating in CDS Services*.

1. Endorse registered securities to CDS & CO.
2. Put two copies of the Security Deposit Notice - Entry, along with the securities, in an envelope. Seal it with an Envelope Seal (CDSX001).
3. Depending on the type of deposit, follow the procedures indicated in the table below.

Type of deposit	Description
Government of Canada issues	Complete the Inter-City Batch Control form (CDSX184) and attach an envelope seal to the envelope. Both documents must be addressed to the custodian

To inquire on security deposit requests:

1. Access the Deposit Menu on page 100. For more information, see [Accessing the Deposit Menu](#) on page 100.
2. Type the number identifying Inquire Security Deposit in the SELECTION field and press ENTER. The Deposit Selection screen on page 108 displays.

Deposit Selection screen

Screen to be added when available

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*



3. Enter the deposit ID or other selection criteria.
4. Press ENTER. The Deposit List screen on page 108 displays showing the deposits that match the selection criteria.

Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

5. Review the STATUS field to determine if the request is unconfirmed (U), confirmed (C) or rejected (R).

## CHAPTER 7 Withdrawal activities

Participants request the withdrawal of eligible securities from CDSX by submitting a security withdrawal request to the custodian or transfer agent of those securities. Paying agents may initiate a withdrawal request once an issue has matured and the maturity is paid.

Custodians are responsible for confirming or rejecting withdrawal requests, and reconciling their holdings on a daily basis with the records of CDS. For some securities, transfer agents may assume the system role of custodian (and are called validators) in CDSX. To view details on the custodian or transfer agent for a security, see [Viewing security agent information](#) on page 60.

Withdrawals cannot be made against the general account.

For securities that have been reconstituted beyond the quantity stripped by book-entry, withdrawals are allowed only to the extent that the custodian has certificates available.

If a withdrawal is found to be unacceptable after it has been confirmed, CDS informs the participant involved and makes an adjustment to resolve the problem. For more information, see [Modifying confirmed deposits or withdrawals](#) on page 111.

CDS charges a fee if the participant does not value the withdrawal. When entering a withdrawal request in CDSX, indicate the market value of the security withdrawal in the MEMO field.

For issuer buy-backs, if a withdrawal or TRAX transaction is not processed prior to the record date, CDS will upon reconciliation with the transfer agent, charge the non-reporting participant a non-compliance fee. For more information on TRAX, see *Participating in CDS Services*.

The conditions for submitting withdrawals using the Remote Transfer Withdrawal Service are the same as those for other withdrawals with one exception. CDS does not accept withdrawals for securities that are within one month of their next entitlement date.

### 7.1 Withdrawal functions

Participants can process security withdrawal requests by accessing the following functions on the Withdrawal Menu on page 115:

- Request Security Withdrawal – Enter details about a security withdrawal.
- Inquire Security Withdrawal – View details for a security withdrawal.
- Enter Registration Instruction – Enter registration instructions.
- Maintain Registration Instruction – Modify registration instructions.
- Inquire Registration Instruction – View registration instructions.

Participants who subscribe to the InterLink service can transmit security withdrawal requests to CDSX using InterLink messaging. For more information, see [Requesting security withdrawals](#) on page 120.

Participants who subscribe to the TRAX transfer requests application can transmit withdrawal requests to CDSX using a web-based interface. The service level of withdrawal transactions created through TRAX defaults to REG (regular). For more information, see *Participating in CDS Services*.

CDS provides reports for monitoring security withdrawals in CDSX. For more information, refer to *CDS Reporting Procedures*.

#### 7.1.1 Accessing the Withdrawal Menu

To access the Withdrawal Menu:

1. Log on to CDS systems. For more information, refer to *Participating in CDS Services*.
2. On the CDS Clearing and Depository Services Inc. Main Menu, type the number identifying CDSX - Customer Functions in the SELECTION field and press ENTER. The CDSX – Customer Functions Menu on page 19 displays.

3. Type the number identifying Withdrawal Menu in the SELECTION field and press ENTER. The Withdrawal Menu on page 115 displays.

Due to formatting issues the screens can be accessed by clicking on the following link:  
[http://www.cds.ca/cdsclearinghome.nsf/Downloads/-EN-TRAX/\\$File/TRAX\\_erbl.pdf?OpenElement](http://www.cds.ca/cdsclearinghome.nsf/Downloads/-EN-TRAX/$File/TRAX_erbl.pdf?OpenElement)  
(Page 115)

Participants register for this service by completing the InterLink/SWIFT Service – Messages Request (CDSX377).

- TRAX transfer requests – Participants who subscribe to the TRAX transfer requests application can transmit withdrawal requests to CDSX using a web- based interface. For more information, see *Participating in CDS Services*.

Security withdrawals are entered in CDSX and declarations, if required, are submitted to CDS for delivery to the transfer agent.

Although withdrawal requests may be entered and confirmed any time from system startup to system shutdown, the times for custodial services for the withdrawal (i.e., delivery and receipt) of physical certificates depend on agreements in place between transfer agents and participants.

Out-of-town instant withdrawals are not available for issues requiring declarations.

Only certificated issues may be withdrawn from CDSX prior to maturity, provided that the custodian has access to a sufficient quantity. Uncertificated issues may only be withdrawn after processing of the entitlement event by the paying agent.

Confirmed and rejected securities withdrawal requests are purged from CDSX at close-of-business on the day the confirmation or rejection is made. Unconfirmed securities requests remain in CDSX until they are confirmed or rejected.

For securities that are required to process an entitlement event (e.g., maturity), unconfirmed withdrawals are rejected and purged by CDSX on close-of-business on the payable date, and the requestor receives the corresponding entitlement.

**Note:** The procedure for withdrawing issues using the Remote Transfer Withdrawal Service is the same as for other withdrawals with one exception. If CDS does not have sufficient quantity on hand to service the withdrawal request (i.e., the needed quantity is in transit from the transferor), CDS rejects the withdrawal.

To request a security withdrawal in CDSX:

1. Access the Withdrawal Menu on page 115. For more information, see [Accessing the Withdrawal Menu](#) on page 115.
2. Type the number identifying Request Security Withdrawal in the SELECTION field and press ENTER. The Request Security Withdrawal screen on page 122 displays
11. Press PF3 twice to return to the Request Security Withdrawal screen on page 122.
12. Press PF10 to save the withdrawal request. If CDSX accepts the request, a blank Request Security Withdrawal screen on page 122 displays with the transaction ID for the withdrawal request.

When a withdrawal request is saved, CDSX creates two events. The first event moves the securities from the settlement account to the withdrawal account. When confirmed or rejected by the custodian, the second event removes the positions from the withdrawal account. If rejected, the positions are returned to the settlement account.

### **7.3.1 Preparing and receiving security withdrawals**

To prepare and receive security withdrawals complete the following steps. For more information on the listed reports refer to *CDS Reporting Procedures*.

1. For issues that require declarations, attach them to the Security Withdrawal Notice - Entry.  
For non-certificated issues, attach an irrevocable power of attorney to the Security Withdrawal Notice - Entry.  
For security withdrawal requests created through TRAX, no documentation is required.
2. Prepare and submit envelopes containing any required declarations to CDS for delivery to the transfer agent.

Once the request is entered in CDSX and any required declarations are received, CDS or the custodian confirms the request in CDSX and makes the certificates available for pickup at the CDS window or the transfer agent's office, as identified in the REL LOCATION field.

For securities where CDS is the custodian, CDS confirms requests for both instant and regular withdrawals only when the transfer agent returns the completed certificates to CDS, or when confirmation is received from the transfer agent indicating that the holdings have been recorded on the register as transferred out of CDS & CO.

When CDS or the custodian confirms a security withdrawal, the Security Withdrawal Notice - Confirmation prints at the participant's location. When CDS or the custodian rejects a security withdrawal, the Security Withdrawal Notice - Rejection prints at the participant's location.

If a withdrawal request cannot be satisfied, CDS rejects the withdrawal and indicates the reason in the MEMO field. Participants may submit a request at a later date when the inventory may be available or request a depository acknowledgement (for non-transferable issues only).

For non-certificated issues, the transfer agent sends the original transfer confirmation to the beneficial holder and CDS forwards a copy of the transfer confirmation to the participant who requested the withdrawal.

3. CDS batches all completed withdrawal transfer certificates. The certificates and the Unconfirmed Withdrawals report are placed in an envelope affixed with a CDS envelope seal.
4. If applicable, pick up the envelope at the CDS window and sign for it.
5. Match the certificates received to those expected and immediately report any shortages to CDS.

If the registration on the certificates is incorrect, forward the certificates to the transfer agent directly for correction.

#### **7.4 Monitoring security withdrawals**

Information about all confirmed, unconfirmed and rejected withdrawals may be displayed by accessing the Inquire Security Withdrawal function. Confirmed and rejected security withdrawals are displayed until the end of the day only.

To inquire on security withdrawal requests:

1. Access the Withdrawal Menu on page 115. For more information, see [Accessing the Withdrawal Menu](#) on page 115.
2. Type the number identifying Inquire Security Withdrawal in the SELECTION field and press ENTER. The Withdrawal Selection screen on page 126 displays.

Withdrawal Selection screen

Screen to be added when available

*The withdrawal selection screen remains the same with the addition of the Transaction subtype field for selection criteria.*

3. Enter the withdrawal ID or other selection criteria.
4. Press ENTER. The Withdrawal List screen on page 127 displays with the entered selection criteria.

Withdrawal List screen

Screen to be added when available

*The withdrawal list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

5. Review the STATUS field to determine if the request is unconfirmed (U), confirmed (C) or rejected (R).
6. Review the TRANSFER FEE field to determine if any transfer fees have been charged by the transfer agent.

Alternatively, review the Deposit/Withdrawal Transfer Fees Summary Report - Participant to determine all transfer fees incurred for deposits and withdrawals during a particular billing period. For more information, refer to *CDS Reporting Procedures*.

To monitor the security withdrawal request on reports, review the Settled Transactions report and Unsettled Transactions report for the following:

- When the withdrawal is incomplete, the first event is settled, while the second is unsettled. The withdrawal displays on both the Settled Transactions report and Unsettled Transactions report.
- When the withdrawal is confirmed, both events are settled (the positions have been moved out of CDSX). The withdrawal displays in the Settled Transactions report.
- When the withdrawal is rejected, both events are settled (the positions have been moved from the withdrawal account back to the originating account). The withdrawal displays in the Settled Transactions report.

For more information, refer to *CDS Reporting Procedures*.

Deposit Selection screen

Screen to be added when available

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*

3. Enter the deposit ID or other selection criteria.
4. Press ENTER. The Deposit List screen on page 60 displays with a list of the deposits that match the selection criteria.

Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

5. Review the STATUS field to determine if the request is unconfirmed (U), confirmed (C) or rejected (R).

#### 5.4 Confirming or rejecting security deposits

The security validator is responsible for confirming deposits.

The user who entered, modified or confirmed the preliminary issue cannot confirm or reject the security deposit for the money market issue. Also, the user who entered the deposit cannot confirm or reject the deposit.

The service access administrator (SAA) cannot confirm or reject a deposit.

To confirm or reject a deposit request:

1. Access the Deposit and Withdrawal Menu (custodian) on page 57. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 56.
2. Type the number identifying Confirm Security Deposit in the SELECTION field and press ENTER. The Deposit Selection screen on page 61 displays.

Deposit Selection screen

Screen to be added when available

*The deposit selection screen remains the same with the addition of a Transaction subtype field for selection criteria.*

3. Enter the deposit ID or other selection criteria.
4. Press ENTER. The Deposit List screen on page 62 displays. Only the custodian can change the details of a security deposit request for issues.

Deposit List screen

Screen to be added when available

*The deposit list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

The CHANGE INDICATOR field indicates whether a change was made to the security at the time of confirmation:

- S indicates that the security number has been changed
  - P indicates that the par/quantity has been changed
  - B indicates that both the security number and the par/quantity have been changed.
5. To confirm a security deposit request, type C in the STATUS field. If necessary, modify any of the following fields:
    - SECURITY NUMBER
    - PAR/QUANTITY
    - TRANSFER FEE
    - EFFECTIVE DATE.

6. To reject a security deposit request, type R in the STATUS field. If necessary, modify any of the following fields:
  - REJECTION REASON CODE
  - TRANSFER FEE.
7. Press ENTER to validate the information and press PF10 to save.

### **5.5 Modifying confirmed deposits**

Security validators must request a deposit adjustment in writing when they discover an error after confirmation. CDS makes all deposit adjustments in CDSX.

- Inquire Security Withdrawal – View all confirmed or rejected security withdrawal requests that have been made during the day or any security withdrawal requests that have not been confirmed. For more information, see [Inquiring on security withdrawals](#) on page 65.
- Custodian Reconciliation Position – Reconcile holdings with CDS on a daily basis. For more information, see [Reconciliation](#) on page 90.

### **6.2 Inquiring on security withdrawals**

Security validators monitor security withdrawals using the Inquire Security Withdrawal function. This function enables the security validator to display information about all confirmed, unconfirmed and rejected withdrawals.

Confirmed and rejected security withdrawals are displayed until the end of the day. To inquire on security withdrawals:

1. Access the Deposit and Withdrawal Menu (custodian) on page 57. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 56.
2. Type the number identifying Inquire Security Withdrawal in the SELECTION field and press ENTER. The Withdrawal Selection screen on page 65 displays.

Withdrawal Selection screen

Screen to be added when available

*The withdrawal selection screen remains the same with the addition of the Transaction subtype field for selection criteria.*

3. Enter the withdrawal ID or other selection criteria.
4. Press ENTER. The Withdrawal List screen on page 66 displays with a list of the withdrawals that match the selection criteria.

Withdrawal List screen

Screen to be added when available

*The withdrawal list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

5. Review the STATUS field to determine if the request is unconfirmed (U), confirmed (C) or rejected (R).

### 6.3 Confirming or rejecting security withdrawals

The security validator is responsible for confirming withdrawals entered by the entitlements processor.

To confirm or reject a security withdrawal:

1. Access the Deposit and Withdrawal Menu (custodian) on page 57. For more information, see [Accessing the Deposit and Withdrawal Menu](#) on page 56.
2. Type the number identifying Confirm Security Withdrawal in the SELECTION field and press ENTER. The Withdrawal Selection screen on page 67 displays.

Withdrawal Selection screen

Screen to be added when available

*The withdrawal selection screen remains the same with the addition of the Transaction subtype field for selection criteria.*

3. Enter the withdrawal ID or other selection criteria.
4. Press ENTER. The Withdrawal List screen on page 67 displays.

If a security has matured since the customer entered the withdrawal, it is automatically assigned a status of R (rejected).

Withdrawal List screen

Screen to be added when available

*The withdrawal list screen remains the same with the addition of a sub type field. Data will display in the subtype field if the transaction was created in TRAX.*

5. To confirm a security withdrawal request, type C in the STATUS field. If necessary, modify any of the following fields:
  - TRANSFER FEE
  - EFFECTIVE DATE.



**13.3.2 CDS Notice of Effective Date –Technical Amendments to CDS Procedures – WR 1346 – New York Link collateral requirement alert**

**CDS Clearing and Depository Services Inc. (CDS®)**

**TECHNICAL AMENDMENTS TO CDS PROCEDURES**

**WR 1346 – New York Link collateral requirement alert**

**NOTICE OF EFFECTIVE DATE**

**May 31, 2010**

**A. DESCRIPTION OF THE CDS PROCEDURE AMENDMENTS**

*Background*

**WR1346 – New York Link collateral requirement alert**

Effective May 1, 2010, CDS's New York Link participants have an obligation to provide CDS with collateral for the NSCC Participant Fund for New York Link Pool to cover their NSCC settlements by 9:00 a.m. ET.

CDS currently provides these participants with a daily Collateral Valuation Summary Report at 7:00 a.m. ET that details their collateral deficiency or excess, as reported to CDS by NSCC. As a courtesy to western clients that may have challenges meeting the deadline, CDS will now provide an alert with the same information contained in the report that may be sent to a subscriber's email prior to regular business hours, allowing them to instigate corrective measures earlier. Although CDS's service level agreement for delivery of the email will be the same as for the report (7:00 a.m. ET), in practice the email creation process will be triggered by the receipt and processing of the NSCC collateral information, and will generally be performed at 5:30 a.m. ET.

Participants will subscribe to the email alert and/or a web based alert through the existing Electronic Alert System (EAS). These alerts will provide New York Link participants with their NSCC current collateral requirement, the amount of collateral already provided and the difference in amounts (i.e. excess or shortage).

*Description of Proposed Amendments*

The CDS Procedures marked for the amendments may be accessed at the CDS website at:

<http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open>

**WR1346 – New York Link collateral requirement alert**

- Participating in CDS Services (Release 6.3)  
Ch 3: Web Services  
s 3.6 Electronic Alert Service (updated)

For ease of readability, a formatting change has been made to the way alerts are documented. A new table has been added to the procedure that identifies who is eligible to receive specific alerts (Role), the name of the alert, and a description of the alert. In addition to the alert for New York Link participants, the previously implemented "Warrant Subscriptions" alert for Depository Agents has been removed in text form and embedded in the table.

The new "Projected Payment Rejection" and "Unreleased and Pending Entitlement Payments" alerts for Transfer Agents, documented in a separate Technical Notice "Payment Matching for Transfer Agents", dated 30 April 2010 and being implemented at the same time as the New York Link collateral requirement alert, is also included in this new table.

- New York Link Participant Procedures (Release 25.2)  
Ch 6: New York Link participant funds  
s 6.1 NSCC participant fund for New York Link (administered by CDS and NSCC) (updated)

CDS Procedure Amendments are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from the CDS Participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on April 29, 2010.

**B. REASONS FOR TECHNICAL CLASSIFICATION**

The amendments proposed pursuant to this Notice are considered matters of a technical nature in routine operating procedures & administrative practices relating to CDS settlement services.

**C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENT**

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the Recognition and Designation Order, as amended on November 1, 2006, and Annexe A ("Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers") of AMF Decision 2006-PDG-0180, made effective on November 1, 2006, CDS has determined that the proposed amendments will become effective on a date subsequently determined by CDS, and as stipulated in the related CDS Bulletin.

**D. QUESTIONS**

Questions regarding this notice may be directed to:

Laura Ellick  
Manager, Business Systems  
Business Systems Development & Support  
CDS Clearing and Depository Services Inc.  
85 Richmond Street West  
Toronto, Ontario M5H 2C9

Telephone: (416) 365 - 3872  
Email: lellick@cds.ca

**13.3.3 CDS Notice of Effective Date – Technical Amendments to CDS Procedures – WR 1185 – Add security value to Deposit & Withdrawal reports**

**CDS Clearing and Depository Services Inc. (CDS®)**

**TECHNICAL AMENDMENTS TO CDS PROCEDURES**

**WR 1185 – Add security value to Deposit & Withdrawal reports**

**NOTICE OF EFFECTIVE DATE**

**May 31, 2010**

**A. DESCRIPTION OF THE CDS PROCEDURE AMENDMENTS**

*Background*

**WR1185 – Add security value to Deposit & Withdrawal reports**

CDS provides various reports for security deposit or withdrawal requests entered by the participants. These reports contain information on securities deposited to and withdrawn from CDSX (such as Custodian CUID, Window Location, Total number of securities withdrawn or deposited etc). There is no information about the total dollar value of the securities on the reports, which is important for participants when assessing the liability associated with the transaction.

All of the reports noted below will have a column added to display the Canadian dollar value of the securities being deposited or withdrawn. The value will be calculated using the current CDSX benchmark price times the par value of the deposit or withdrawal transaction.

- Unconfirmed Withdrawals Report – Regular (000052)
- Unconfirmed Withdrawals Report - Instant (000053)
- Unconfirmed Deposits Report – Instant (000283)
- Unconfirmed Deposits Report – Regular (000284)
- Unconfirmed Withdrawals Report – Internal to CDS only (000111)
- Security Deposit Notice (000014)
- Security Withdrawal Notice (000015)

*Description of Proposed Amendments*

Access the proposed amendments to the CDS Procedures on the User documentation revisions web page (<http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open>) and to the CDS Forms (if applicable) on Forms online (Click View by Form Category and in the Select a Form Category list, click External review) on the CDS Services web page ([www.cdsservices.ca](http://www.cdsservices.ca)).

A small housekeeping change is required to identify four reports as Custodian reports:

- CDS Reporting Procedures (Release 6.0)  
Ch 11: Deposit and Withdrawal Reports  
s 11.8, 11.9, 11.10, 11.11

CDS Procedure Amendments are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from the CDS Participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on April 29, 2010.

**B. REASONS FOR TECHNICAL CLASSIFICATION**

The amendments proposed pursuant to this Notice are considered matters of a technical nature in routine operating procedures & administrative practices relating to CDS settlement services.

**C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENT**

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the Recognition and Designation Order, as amended on November 1, 2006, and Annexe A ("Protocole d'examen et d'approbation des Règles de Services de Dépot et de Compensation CDS Inc. par l'Autorité des marchés financiers") of AMF Decision 2006-PDG-0180, made effective on November 1, 2006, CDS has determined that the proposed amendments will become effective on a date subsequently determined by CDS, and as stipulated in the related CDS Bulletin.

**D. QUESTIONS**

Questions regarding this notice may be directed to:

Laura Ellick  
Manager, Business Systems  
Business Systems Development & Support  
CDS Clearing and Depository Services Inc.  
85 Richmond Street West  
Toronto, Ontario M5H 2C9

Telephone: (416) 365 - 3872  
Email: lellick@cds.ca

13.3.4 CDS Notice of Effective Date – Technical Amendments to CDS Procedures – WR 1354 – Matched Trade Deletion Facility

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

WR1354 – MATCHED TRADE DELETION FACILITY

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE CDS PROCEDURE AMENDMENTS

*Background*

**WR1354 – Matched trade deletion facility**

The existing Trade Matching process in CDSX provides participants with an alternative method of confirming non-exchange trades when the trade type is DP (direct participant) and both parties to the trade are eligible for trade matching. The Trade Matching service supports three levels of matching:

- M1 – a real time trade-for-trade matching facility that evaluates every trade that is reported to CDSX on a continuous basis. If a match is found (based on CUIDs, Security number, Trade type, Value date, Currency, Par Value or quantity and Net amount), the two matching trades are deleted and a single new trade is created.
- M2 – once per day, the trades which were not completely matched in M1 are subsequently matched by creating trades for a partial match on quantity. If a match is found, the old trades are deleted and one or more new trades are created for a partial amount. The M2 matching process also creates a residual trade with an unconfirmed status for the partial quantity that could not be matched.
- LI – the LI (lock in) process automatically confirms matching-eligible trades that do not have a counter trade entered. It changes the status of the trade to C (confirmed) and leaves the remaining trade details unchanged.

Once a trade is confirmed at the M1, M2 or LI level, no further changes can currently be made to the status by the submitter or the acceptor of the trade. In the event that both parties conclude that the trade is not a valid transaction, there is currently no mechanism available that would allow a matched trade to be deleted or cancelled. To remove the matched trade, both parties must enter another “equal and opposite” trade to negate the matched trade.

To allow a confirmed matched trade to be deleted upon approval by both parties, the following changes will be permitted:

- The acceptor of the trade (the buyer) will now be allowed to change the status of a matched trade which is in either Confirmed or Pending status to DK (don't know)
- The submitter of the trade (the seller) will then have the ability to change the status from DK to Delete
- The acceptor will be able to change the status of a DK'd trade back to Confirmed if it has not already been Deleted by the submitter
- If the trade has neither been Deleted by the submitter nor Confirmed again by the acceptor, the CDSX system will automatically change the status of the DK'd trade to Confirmed at the end of the day

*Description of Proposed Amendments*

Access the proposed amendments to the CDS Procedures on the User documentation revisions web page (<http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open>) and to the CDS Forms (if applicable) on Forms online (Click View by Form Category and in the Select a Form Category list, click External review) on the CDS Services web page ([www.cdsservices.ca](http://www.cdsservices.ca)).

**WR1354 – Matched trade deletion facility**

- Trade and Settlement Procedures (Release 6.1)  
Ch 6: Trade matching (updated)

CDS Procedure Amendments are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from the CDS Participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on April 29, 2010.

**B. REASONS FOR TECHNICAL CLASSIFICATION**

The amendments proposed pursuant to this Notice are considered matters of a technical nature in routine operating procedures & administrative practices relating to CDS settlement services.

**C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENT**

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the Recognition and Designation Order, as amended on November 1, 2006, and Annexe A ("Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers") of AMF Decision 2006-PDG-0180, made effective on November 1, 2006, CDS has determined that the proposed amendments will become effective on a date subsequently determined by CDS, and as stipulated in the related CDS Bulletin.

**D. QUESTIONS**

Questions regarding this notice may be directed to:

Laura Ellick  
Manager, Business Systems  
Business Systems Development & Support  
CDS Clearing and Depository Services Inc.  
85 Richmond Street West  
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**13.3.5 CDS Notice of Effective Date – Technical Amendments to CDS Procedures – WR 1085 – Payment Matching for Transfer Agents**

**CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)**

**TECHNICAL AMENDMENTS TO CDS PROCEDURES**

**WR 1085 – PAYMENT MATCHING FOR TRANSFER AGENTS**

**NOTICE OF EFFECTIVE DATE**

**A. DESCRIPTION OF THE CDS PROCEDURE AMENDMENT**

*Background*

The proposed amendments will describe the new projected payment reconciliation service that CDS is developing to encourage transfer agents, as Limited Purpose participants, to assume the paying agent role in CDSX for their issuers' dividend and interest events (this role is currently performed by CDS).

The existing payment functionality in CDSX allows the designated paying agent to verify their payments online in CDSX and on RMS reports two days prior to the event payment date. The new projected payment matching process will involve the development of three files that will be exchanged between the transfer agent and CDS after the record date of an event, to match and reconcile projected payments, and provide payment date reporting. The three files are:

- Projected Payments File (Inbound from Transfer Agent)
- Projected Payments Matching File (Outbound from CDS)
- Final Projected Payments File (Outbound from CDS)

The Projected Payments file will initially consist of dividend and interest (Canadian dollar) payment records from the transfer agent utilizing the service. The transfer agent's records will be compared to the projected payments calculated in CDS's Entitlement system. The payment will be flagged as matched, if the value on the transfer agent's file is reconciled with an event in CDS's Entitlement system, within a predetermined tolerance established by the transfer agent. If the transfer agent's projected payment does not match that of CDS, within the tolerance limit, the payment will be flagged as unmatched.

On completion of the comparison of the transfer agent and CDS projected payments, the details of the matched and unmatched records will be returned to the transfer agent in the Projected Payments Matching file. Unmatched projected payments will be resolved and corrected manually by the transfer agent and/or the CDS Entitlement Analyst prior to the payment date.

A third file, the Final Projected Payments file, will be sent to the transfer agent and/or their designated paying agent at the beginning-of-day on payment date. This file will provide the final CDS entitlement amount for the event, and will be the amount the paying agent will be expected to fund for the event. Additionally, an email notification and report will be generated throughout the day on payable date to alert the transfer agent of any remaining unreleased or unpaid payments.

There will be no changes to the current CDS event creation process or the payment release functionality in CDSX, and therefore participants will not be impacted. While the automation of the matching of projected payments will provide enhancement to the transfer agent's current reconciliation process, it will not replace existing paying agent procedures.

*Description of Proposed Amendments*

Access the proposed amendments to the CDS Procedures on the User documentation revisions web page (<http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open>) and to the CDS Forms (if applicable) on Forms online (Click View by Form Category and in the Select a Form Category list, click External review) on the CDS Services web page ([www.cdsservices.ca](http://www.cdsservices.ca)).

The proposed amendments describe the new payment matching function.

**Transfer Agent Procedures** (Release 7.2)

A new chapter to describe the:

- Projected Payment Matching service
- Purpose of the inbound and outbound data files
- Role and responsibilities of the transfer agent or their designated paying agent in CDSX

**CDSX218 – Data Transmission Request Form**

The form will be amended to include:

- Projected Payments File (Inbound)
- Projected Payments Matching File (Outbound)
- Final Projected Payment File (Outbound)

CDS Procedure Amendments are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from the CDS Participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on April 15, 2010.

**B. REASONS FOR TECHNICAL CLASSIFICATION**

The amendments proposed pursuant to this Notice are considered matters of a technical nature in routine operating procedures & administrative practices relating to CDS settlement services.

**C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENT**

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the Recognition and Designation Order, as amended on November 1, 2006, and Annexe A ("Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers") of AMF Decision 2006-PDG-0180, made effective on November 1, 2006, CDS has determined that the proposed amendments will become effective on a date subsequently determined by CDS, and as stipulated in the related CDS Bulletin.

**D. QUESTIONS**

Questions regarding this notice may be directed to:

Hyder Ally  
Senior Product Manager  
Customer Service & Product Development  
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Toronto, Ontario M5H 2C9

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Fax: (416) 365 - 0842  
Email: hally@cds.ca



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## Chapter 25

# Other Information

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### 25.1 Permissions

#### 25.1.1 Jupiter Investment Management Holdings Limited – s. 38(3)

May 21, 2010

Davies Ward Phillips & Vineberg LLP  
1 First Canadian Place  
100 King Street West, Suite 4400  
Toronto, Ontario M5X 1B1

Attention: Kevin Greenspoon

**Re: Jupiter Investment Management Holdings Limited (“Jupiter”) Request for Permission under s. 38(3) of the Securities Act (Ontario)**

Further to your letter of May 20, 2010 (the “**Letter**”), we understand that:

1. Jupiter and certain selling shareholders are proposing to make an offering of ordinary shares of Jupiter (the “**Ordinary Shares**”) to: (a) certain institutional investors in the United Kingdom and elsewhere, including Ontario, Canada, and (b) retail investors in the United Kingdom (the “**Offering**”).
2. Jupiter will re-register as a public limited company prior to the Offering.
3. Prospective purchasers, who must be “accredited investors” and/or “permitted clients” in Ontario, will receive an offering memorandum in the form of a UK prospectus that will include specific disclosure for Canadian purchasers (the “**Prospectus**”), and offering documents ancillary thereto.
4. The managers for the offering will rely on appropriate exemptions from the prospectus requirements, and will either rely on the “international dealer” exemption to the registration requirements, or will be appropriately registered under the *Securities Act* (Ontario), when distributing securities to residents of Ontario.
5. Jupiter intends to make applications to the Financial Services Authority (“**FSA**”) for the ordinary shares to be admitted to the Official List and to the London Stock Exchange for the ordinary shares to be admitted to trading on the London Stock Exchange’s main market for listed securities.

6. The Prospectus, including any offering documents ancillary thereto, will contain one or more representations substantially similar to the following (the “**Listing Representations**”): (a) application will be made to the FSA for all the Ordinary Shares to be admitted to the Official List of the FSA and to the London Stock Exchange for such Ordinary Shares to be admitted to trading on the London Stock Exchange’s main market for listed securities (collectively, “**Admission**”), and (b) it is expected that Admission will become effective and that unconditional dealings will commence in the Ordinary Shares on the London Stock Exchange at a time and date that will be specified in the Prospectus.
7. The FSA has not granted approval to the admission to the Official List of the FSA and the London Stock Exchange has not granted approval for the listing of the Ordinary Shares, conditional or otherwise, nor have they consented to, nor indicated that they do not object to, the Listing Representations.
8. The Prospectus discloses that all dealings in the Ordinary Shares on the London Stock Exchange are conditional on Admission.
9. Jupiter seeks permission to include the Listing Representation in the Prospectus, including any offering documents ancillary thereto, to be provided to or made available to prospective Ontario purchasers.

Based upon the representations above and the representations contained in the Letter, permission is hereby granted pursuant to subsection 38(3) of the *Securities Act* (Ontario) to include the Listing Representation in the Prospectus, including any offering documents ancillary thereto, to be provided to or made available to prospective Ontario purchasers.

Yours very truly,

“Jo-Anne Matear”  
Assistant Manager, Corporate Finance Branch  
Ontario Securities Commission

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