

# Report on Enforcement Activities

From April 1 to September 30, 2004



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## INTRODUCTION

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This report provides information about enforcement activity undertaken by members of the Canadian Securities Administrators (CSA) during the 6 months ended September 30, 2004. The CSA is the council of the securities regulators of Canada's provinces and territories whose objectives are to improve, coordinate and harmonize regulation of the Canadian capital markets. References in this report to the CSA include reference to its member regulators and associated tribunals.

## ENFORCEMENT: A CORE CSA RESPONSIBILITY

Investigation and enforcement are core CSA activities. By identifying contraventions of securities laws or conduct in the capital markets that is contrary to the public interest, and by imposing appropriate sanctions, the CSA deter wrongdoing, protect investors, and foster fair and efficient capital markets in which investors have confidence. Enforcement personnel of CSA member authorities deal with potential securities laws violations identified through internal CSA compliance and surveillance or as a result of complaints from market participants and the public.

## COMPLEMENTARY ENFORCEMENT ROLES

The CSA's enforcement activity complements that of other agencies, with whom we cooperate and share information on matters of mutual interest. This allows us to focus activity and resources where most appropriate.

## KEY PLAYERS

### SECURITIES TRIBUNALS

Enforcement personnel of CSA members can bring matters before a specialized administrative tribunal, which in most jurisdictions is the local securities commission. Such tribunals can impose sanctions including orders that trading in securities cease or that exemptions are unavailable, bans on individuals acting as corporate directors and officers, mandatory filing of specified disclosure, monetary administrative penalties and payment of costs. Enforcement personnel often negotiate settlement agreements under which those alleged to have contravened securities laws submit to agreed sanctions. In some jurisdictions settlement agreements are approved by staff; in other, cases they are presented for the approval of the local securities commission or tribunal.

### SROs

Self-regulatory organizations (SROs) oversee regulated conduct of their members. For example, if the Investment Dealers Association of Canada (IDA) finds that a member has contravened its by-laws, it can impose monetary penalties and suspend or revoke IDA membership and registration under securities laws. The Mutual Fund Dealers Association of Canada (MFDA) assumes a similar role for members in its sector.

Market Regulation Services Inc. ("RS Inc.") oversees trading activity on Canadian equity markets. It imposes sanctions for contraventions of the Universal Market Integrity Rules ("UMIRs"), including fines and suspension or restriction of market access.

## INTRODUCTION

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### EXCHANGES

Exchanges monitor compliance, by listed companies, with the terms of Exchange listing agreements and policies. Where appropriate, they can deny pre-approval of certain transactions, require corrective disclosure, halt or suspend trading and, in egregious cases, terminate a listing.

### POLICE

The RCMP and local and provincial police investigate commercial crimes, including market fraud. The federal government recently established IMET (Integrated Market Enforcement Teams, with combined RCMP and civilian membership) to target major economic crime.

### COURTS

Provincial and territorial Attorneys-General or equivalents can bring contraventions of securities laws, as well as of criminal laws, before a court. In some provinces, enforcement personnel of CSA members can also bring securities law contraventions before a court. Fraud and other contraventions of the Criminal Code can attract stiff penalties including large fines and imprisonment. The sanctions available to courts for securities law violations are also more extensive than those available to securities regulatory authorities, including imprisonment.

## CSA ENFORCEMENT ACTIVITY IN THE FIRST HALF OF 2004

During the first 6 months of 2004, CSA members pursued 77 enforcement matters. During the same period, 59 cases resulted in sanctioning orders or settlements that often included several persons or companies. This activity is summarized in the following table:

Proceedings Commenced <sup>1</sup>	Interim Order <sup>2</sup>	Matters Concluded				Appeals	
		Findings Issued (Sanction Decision Pending)	Sanctions Ordered	Settlement Agreements	Withdrawn	Decisions Appealed	Appeal Decision Rendered
77	29	19	32	27	4	6	3

A number of enforcement matters are explained in more detail in the sections that follow.

<sup>1</sup> Proceedings before a CSA member Commission or associated tribunal may be commenced by a Notice of Hearing. Court proceedings may be commenced by way of "Information".

<sup>2</sup> Includes freeze orders and interim cease trade orders.

## COURT RULINGS

### QUÉBEC

**Forex Canada NTS Inc. and Dominic Longpré** – On September 7, 2004, before the Court of Québec (Criminal and penal division) Dominic Longpré pleaded guilty to 42 counts of having contravened the Securities Act. Dominic Longpré was accused of having helped Forex Canada NTS Inc. distribute its shares without having obtained from the Autorité des marchés financiers (AMF) a receipt for a prospectus and having carried on the activities of a dealer without the proper registration and for having failed to fulfill an undertaking with the AMF. Dominic Longpré was ordered to pay a total fine of \$90,000 within a period of 2 years.

**Coopérative de producteurs de bois précieux Québec Forestales et Michel Maheux** – On August 6, 2004, the AMF obtained from the Superior Court of Québec a provisional injunction valid for 10 days ordering the Coopérative de producteurs de bois précieux Québec Forestales (“Forestales”) and Michel Maheux, president of Forestales, to cease and desist from illegally distributing securities of Forestales and respect the previously issued cease-trading order of the AMF. On August 13, 2004, the Québec Superior Court ordered that the provisional injunction be replaced by an interlocutory injunction to the same effect, valid until the end of proceedings.

**Enviromondial Inc., Stevens Demers and Hyacinthe Auger** – On April 26, 2004, before the Court of Québec (Criminal and penal division) Stevens Demers and Hyacinthe Auger pleaded guilty to 33 and 10 counts respectively of having helped Enviromondial Inc. distribute its shares without having obtained from the AMF a receipt for a prospectus and for having carried on the activities of a dealer without the proper registration. Stevens Demers was also charged with having contravened a decision of the Commission des valeurs mobilières du Québec prohibiting Enviromondial Inc. from trading in its securities, and having declared while effecting a transaction in a security that Enviromondial Inc.’s shares would be listed on an exchange. Stevens Demers was therefore ordered to pay a fine of \$77,000 within a period of 42 months while Hyacinthe Auger was ordered to pay a fine of \$42,000 within a period of 60 months.

### MANITOBA

**Charles Morrison** – On August 24, 2004, Mr. Morrison was found guilty in the Court of Queen’s Bench of Manitoba for 3 counts of trading without registration concurrently with Criminal Code charges for fraud. He was sentenced to pay \$500,000 in mitigation monies as partial reparation for victims – 72% of which was designated to be paid out to those who were the victims of the securities offences. Mr. Morrison received a Suspended Sentence of 2 years less a day with a Supervised Probation Order for the securities offences, to be served concurrently with a Conditional Sentence for criminal fraud charges, of 2 years less a day, followed by a 3-year Illegal Distribution Supervised Probation Order. See [www.msc.gov.mb.ca/investigation/reasons/morrison](http://www.msc.gov.mb.ca/investigation/reasons/morrison) for details.

### ALBERTA

**Thomas Kim Seto** - In September 2004, charges were laid in the Provincial Court of Alberta against Mr. Seto for allegedly breaching an earlier ASC order, which prohibits him from trading in securities until 2005. In 2000, the ASC ordered that Mr. Seto cease trading in securities, be denied the use of exemptions from securities laws, and not

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act as a director or officer for 5 years, for his part in unlawfully establishing an Internet stock exchange. Mr. Seto's first appearance has been set for October 27, 2004 in Provincial Court in Edmonton. See <http://www.albertasecurities.com/?currentPage=100&cmsSupressBody=1&newsID=5585> for details.

**Phillip David Archer** - In September 2004, charges were laid in the Provincial Court of Alberta against Mr. Archer for allegedly breaching an earlier ASC order prohibiting him from trading in securities. ASC staff alleges that Mr. Archer broke the conditions of the cease trade order when he traded in securities of Berkshire Real Estate Investment Trust Ltd. and Maple Mortgage Fund Inc. earlier this year, illegally raising over \$1 Million. In 1991, the ASC ordered that Mr. Archer cease trading in securities and be denied the use of exemptions from securities laws for 15 years. Mr. Archer's first appearance has been set for October 29, 2004 in Provincial Court in Calgary. See <http://www.albertasecurities.com/?currentPage=100&cmsSupressBody=1&newsID=5574> for details.

## CSA COMMISSION OR TRIBUNAL DECISIONS

### ONTARIO

**Leslie Brown and Douglas Brown (“the Browns”)** – In July 2004, the OSC found that the Browns had not acted contrary to ss. 25 & 53 of the Act. The Browns had organized and invited attendees to a seminar at which Mr. Anderson presented an investment opportunity in what he described as “a new exchange” which was called “the Flat Electronic Data Exchange”. The Commission found that the Browns were not acting on behalf of, or in furtherance of, Mr. Anderson’s trading activities. There was no evidence to show that in arranging for the meeting and inviting their friends to attend, the Browns were doing so for the purpose of furthering or promoting the sale or disposition of securities by Mr. Anderson. The Browns did not receive any consideration, or other direct or indirect benefit. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040917\\_lbrown-dbrown.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040917_lbrown-dbrown.jsp) for details.

### MANITOBA

**Barbara Caroline Joseph (“Joseph”) (formerly Barbara Caroline Todd)** –In April 2004, the MSC issued a denial of exemptions order denying Ms. Joseph the use of exemptions under the Securities Act for an indefinite period. Ms. Joseph along with Mr. Donald Werbeniuk were accused of malfeasance related to investments totalling \$47, 820.52. Ms. Joseph had paid \$20,412.40 towards restitution for the investors. See [www.msc.gov.mb.ca/investigation/reasons/joseph](http://www.msc.gov.mb.ca/investigation/reasons/joseph) for details.

*\*Note: In September 2003, Ms. Joseph pled guilty to 3 counts of trading without registration and without prospectus in Provincial Court concerning the same matters. She was placed on 4 months supervised probation with a number of conditions including a specified curfew. Mr. Werbeniuk was sentenced to 4 months jail in December, 2003 in Provincial Court for his involvement in the above matters and additional offences under the Securities Act.*

### ALBERTA

**HMS Financial et al.** - On May 18, 2004, HMS Financial Inc., Robert Fyn, Harold Murray Stark, Garth S. Bailey, Garth S. Bailey Professional Corporation, Tamika Enterprises Inc., The Dakota Corporation, Gertrude Prete and Ruby Anne Leachman had an interim Cease Trade Order issued against them for selling securities without the

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appropriate registration and without filing a prospectus. On June 2, 2004, the Cease Trade Order was extended until the hearing in this matter is concluded and a decision is rendered.

See [http://www.albertasecurities.com/dms/1404/8895/10896\\_HMS\\_Financial\\_Inc.\\_et\\_al\\_-\\_NOH\\_-\\_2004-05-18\\_-\\_1506499v1.pdf](http://www.albertasecurities.com/dms/1404/8895/10896_HMS_Financial_Inc._et_al_-_NOH_-_2004-05-18_-_1506499v1.pdf) and

[http://www.albertasecurities.com/dms/1404/8895/10970\\_HMS\\_Financial\\_Inc.\\_-\\_CTO\\_Extention\\_Order\\_-\\_2004-06-02-\\_1538135v2.pdf](http://www.albertasecurities.com/dms/1404/8895/10970_HMS_Financial_Inc._-_CTO_Extention_Order_-_2004-06-02-_1538135v2.pdf) for details.

**Skyward Management Inc. et al.** - On June 23, 2004, Skyward Management Inc., Peter Leonard Sheridan, Blaine Arthur Cisna, Milton Teibe, DeFreitas & Associates, Paget Capital and 1079373 Alberta Ltd. had an interim Cease Trade Order issued against them for selling securities without the appropriate registration and without filing a prospectus. On July 8, 2004, the Cease Trade Order was extended until the hearing in the matter is concluded and a decision is rendered or until further order.

See [http://www.albertasecurities.com/dms/1404/8895/11209\\_Skyward\\_Management\\_Inc.\\_-\\_NOH\\_-\\_2004-06-24\\_-\\_1550462.pdf](http://www.albertasecurities.com/dms/1404/8895/11209_Skyward_Management_Inc._-_NOH_-_2004-06-24_-_1550462.pdf) and

[http://www.albertasecurities.com/dms/1404/8895/11277\\_Skyward\\_Management\\_Inc.\\_-\\_Order\\_-\\_2004-07-08\\_-\\_1564622\\_v1.pdf](http://www.albertasecurities.com/dms/1404/8895/11277_Skyward_Management_Inc._-_Order_-_2004-07-08_-_1564622_v1.pdf) for details.

**Kenneth Richardson** - On July 14, 2004, the ASC panel found that Mr. Richardson breached specific provisions of the Act, including participating in an illegal distribution of Agau Resources Inc. shares, not filing the required insider reports, filing insider reports that were incomplete, inaccurate and misleading, and signing the information circular despite its incomplete disclosure regarding his control over Agau shares. The panel also found that Mr. Richardson's conduct was contrary to the public interest. The panel ordered that Mr. Richardson cease trading in securities in which he is an insider or control person for 60 days, Mr. Richardson cannot apply for any exemptions for 60 days, that he be prohibited from acting or becoming a director for 1 year, and that he pay investigation costs of \$12,000. Mr. Richardson was also ordered to file the appropriate documents to correct the public record within 10 days. See [http://www.albertasecurities.com/dms/1404/8895/11279\\_Richardson,\\_Kenneth\\_-\\_Decision\\_-\\_2004-07-14\\_-\\_1569682.pdf](http://www.albertasecurities.com/dms/1404/8895/11279_Richardson,_Kenneth_-_Decision_-_2004-07-14_-_1569682.pdf) for details.

### BRITISH COLUMBIA

**John Klippenstein** – John Klippenstein, the former president, director and controlling shareholder of L.O.M. Medical International, Inc., breached securities laws when he raised over \$2 million through LOM from 352 BC investors without being registered, filing a prospectus, or using an exemption. In selling the securities, he misrepresented that they would be listed and posted for trading on a stock exchange and would then trade at higher prices and that a product would be manufactured by LOM for sale in the near future. Mr. Klippenstein did all this while he was under sanctions issued by the Saskatchewan Securities Commission for illegal distributions. On May 28, 2004, the BCSC ordered Klippenstein to (a) not trade (except for his personal account), act as a director or officer of any issuer (except one he and his family wholly own) or engage in investor relations for 10 years, (b) pay \$100,000 penalty and \$20,000 costs. See [www.bcsc.bc.ca](http://www.bcsc.bc.ca) (then type Klippenstein or 2004 BCSECCOM 289 in the search box, then go to the decision) for details.

**Richard John Smith and Synlan Securities Corp.** – In December 1997, Richard John Smith pleaded guilty to 22 counts of theft over \$5,000 and 10 counts of fraud and was sentenced by Ontario provincial court to 2 years less a day in prison for a scheme involving sales of limited partnership units in a proposed downtown Toronto residential real estate development. Some 31 investors lost \$1.8 million. Smith also did not disclose the charges or convictions

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to the Ontario Securities Commission in 1997 and 1998, which subsequently permanently banned him and Synlan Securities Corp. from the Ontario capital markets. The BCSC permanently banned Smith and Synlan from the BC markets, ordered them to pay \$750,000 in penalties and the costs of the hearing.

Around the same time, Smith and Synlan formed partnerships to raise money for residential developments in Arizona and Florida and sold the partnership units to 14 BC residents. Smith held sales seminars and paid financial author and radio personality Brian Costello to promote the partnerships. Smith did not build the homes and did not return the investors' funds. They lost about \$600,000. Smith deceived investors by representing that their promissory notes up to \$135,000 would be paid off by the cash from the investment. See [www.bsc.bc.ca](http://www.bsc.bc.ca) (then type Smith or 2004 BCSECCOM 441 in the search box, then go to the decision) for details.

## SETTLEMENT AGREEMENTS

### NEW BRUNSWICK

**Jarislowsky Fraser Limited ("JFL")** – On June 15, 2004 Jarislowsky Fraser Limited agreed to pay \$100,000 to Public Legal Education and Information Services in New Brunswick for use towards investor education programs. The settlement was a result of JFL having allowed 5 advisors to manage investment portfolios in New Brunswick over a 12-year period without registering the firm or the advisors. See [information@nbsc-cvmb.ca](mailto:information@nbsc-cvmb.ca) for details.

### ONTARIO

**David Sloan** – In April 2004, OSC staff concluded a settlement agreement with Mr. Sloan regarding his conduct with respect to the illegal distribution of 'desks' of the Flat Electronic Data Interchange (the F.E.D.I.). The Commission approved the settlement agreement in September 2004, and ordered that Mr. Sloan cease trading in F.E.D.I. securities permanently; that any exemptions will not apply to Mr. Sloan for 24 months (except trades effected through a registered dealer in accordance with s. 35(1)(10)), that Mr. Sloan be prohibited from providing certain (sales) documents to any person or company; that he be reprimanded, and that he pay \$5,000 in costs. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040917\\_sloan.pdf](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040917_sloan.pdf) for details.

**Richard Jules Fangeat** – In May 2004, OSC staff concluded a settlement agreement with Richard Jules Fangeat with respect to his participation in the illegal distribution of 'Saxton' and 'Sussex' securities. Mr. Fangeat participated in the illegal distributions of the Saxton and Sussex securities. He made various misrepresentations about the securities, and failed to adequately assess the suitability of his clients' investment in these securities. The Commission approved the Settlement Agreement in June 2004, and ordered that trading in any securities by Mr. Fangeat cease for 20 years (however, after 6 years he is permitted to trade certain securities for his RRSP account), that Mr. Fangeat be prohibited from becoming or acting as a director or officer of any issuer for 20 years, and that he be reprimanded. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set\\_20040529\\_fangeat.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040529_fangeat.jsp) for details.

**Michael Hersey** – In May 2004, OSC staff concluded a settlement agreement with Mr. Hersey with respect to his participation in the illegal distribution of 'Saxton', 'Sussex', and 'SecurCorp' securities. Mr. Hersey participated in the illegal distributions, and engaged in unregistered trading, of the Saxton and Sussex securities. He also participated in the illegal distribution, and engaged in unregistered trading, of the securities of SecurCorp Financial

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Inc., a company of which he was the sole officer and director. The Commission approved the settlement agreement and ordered that trading in any securities by Mr. Hersey cease for 20 years (with the exception of certain trading in Mr. Hersey's personal accounts after 5 years); that Mr. Hersey be prohibited from becoming or acting as a director or officer of any issuer for 20 years; and that he be reprimanded.

See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set\\_20040528\\_hersey-final.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040528_hersey-final.jsp) for details.

### ALBERTA

**Wilfred Richard** - On September 7, 2004, Mr. Richard entered into a Settlement Agreement and Undertaking with Commission staff. Mr. Richard agreed that he participated in the illegal distribution of securities related to Galaxy Mortgage Corporation. The Commission had previously sanctioned Mr. Richard for his involvement in Renco Energy Corp et al. Mr. Richard entered into an undertaking that he will cease trading in all securities for a period of 10 years, that he will resign any position that he holds as a director or officer other than a numbered company, for a period of 10 years. Mr. Richard agreed to pay \$10,000 to the Commission to settle these allegations and to pay \$10,000 towards investigation costs.

See [http://www.albertasecurities.com/dms/1404/8895/11485\\_Richard, Wilfred - SA - 2004-09-07 - 1605775.pdf](http://www.albertasecurities.com/dms/1404/8895/11485_Richard,_Wilfred_-_SA_-_2004-09-07_-_1605775.pdf) for details.

**The Institute for Financial Learning et al.** - On September 21, 2004, a notice of hearing was issued naming the Institute for Financial Learning, Group of Companies Inc., Milowe Allen Brost (aka Milo Brost, aka Mylo Brost), Jorgen R. Nielsen, Vickie Rinehart, Ward Capstick, Jim Lavender (aka A.J. Stewart), Glenn Delwisch, Mary C. McLeod, Grant Carphin, Joanne Assen, Quatro Communications Corp., The Corporate Development Team Inc., Consumer Debt Recovery Trust/Heritage Financial S.A., Syndicated Gold Depository S.A., and Christopher Houston alleging the sale of securities without being appropriately registered and involvement in an illegal distribution. An interim Cease Trade Order was issued by the Commission on September 17, 2004 that ceased trading the securities of Quatro Communications Corp., Consumer Debt Recover Trust, Heritage Financial S.A., and Syndicated Gold Depository S.A. Trading in securities by Joanne Assen, except for personal trades through a registered dealer, must cease and any exemptions do not apply to Ms. Assen. On September 30, 2004, this Cease Trade Order was extended until a hearing was concluded and a decision rendered.

The Institute for Financial Learning, Group of Companies Inc., Milowe Allen Brost, Vickie Rinehart, Ward Capstick, Jim Lavender, Glenn Delwisch, Mary C. McLeod, Grant Carphin, The Corporate Development Team Inc., and Christopher Houston entered into an undertaking with the ASC on September 30, 2004, that they would not trade in the securities of the companies in question until approved by the ASC. See

[http://www.albertasecurities.com/dms/1404/8895/11574\\_IFL - O ACCEPTING UNDERTAKINGS - 2004-09-30 - 1629174.pdf](http://www.albertasecurities.com/dms/1404/8895/11574_IFL_-_O_ACCEPTING_UNDERTAKINGS_-_2004-09-30_-_1629174.pdf) and

[http://www.albertasecurities.com/dms/1404/8895/11562\\_IFL - ORDER EXTENDING CTO - 2004-09-30 - 1629628.pdf](http://www.albertasecurities.com/dms/1404/8895/11562_IFL_-_ORDER_EXTENDING_CTO_-_2004-09-30_-_1629628.pdf) for details.

### BRITISH COLUMBIA

**Walter Leo Barnscher** – In the spring of 2000, Walter Leo Barnscher, a former registrant, was a director, officer and controlling shareholder of 601949 B.C. Ltd. He illegally sold its shares to 10 BC investors for \$250,000 and did not fulfill his duty of care under company law. On May 28, 2004, Barnscher entered into a settlement with the BCSC. Barnscher agreed not to apply for registration for 3 years and to pay \$10,000. The BCSC ordered that Barnscher not trade (except for his personal account), act as a director or officer of any issuer (with a limited

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exception and conditions) or engage in investor relations for 3 years. See [www.bcsc.bc.ca](http://www.bcsc.bc.ca) (then type Barnscher or 2004 BCSECCOM 217 in the search box, then go to the settlement) for details.

**Michael Jerome Knight** – In December 1999, Michael Jerome Knight, a former registrant, was a director, officer and controlling shareholder of 3644871 Canada Inc. He and others illegally sold its shares to 14 BC investors for \$150,000 and did not fulfill his duty of care under company law. On April 5, 2004, Knight entered into a settlement with the BCSC. Knight agreed not to apply for registration for 3 years and to pay \$15,000. The BCSC ordered that Knight not trade (except for his personal account), act as a director or officer of any issuer (with a limited exception and conditions) or engage in investor relations for 3 years. See [www.bcsc.bc.ca](http://www.bcsc.bc.ca) (then type Knight or 2004 BCSECCOM 218 in the search box, then go to the settlement) for details.

**Kenneth Kim Leiske, Aspen Capital Management Inc., Cambria Bancorp Ltd. and 3644871 Canada Inc.** – In 1999, Kenneth Kim Leiske was a registrant and a director, officer and controlling shareholder of Aspen Capital Management Ltd. and Cambria Bancorp. Ltd. He and others illegally sold shares of Cambria and 3644871 Canada Inc. to 33 BC investors. Leiske sold the 3644871 shares based on misrepresentations. Aspen Capital had several registrations over the years. In the fall of 2000, it surrendered its registration. During the last few years, it did not meet its obligations under the Securities Act to segregate client funds, to send interest earned to mutual funds and to maintain its capital. Leiske did not fulfill his duty of care under company law. On April 15, 2004, Leiske, Aspen Capital, Cambria and 3644871 entered into a settlement with the BCSC. Leiske agreed not to apply for registration for 12 years. The BCSC cease traded Aspen Capital, Cambria and 3644871 and ordered Leiske for 12 years not to trade (except for his personal account), act as a director or officer of any issuer (with conditions) or engage in investor relations. See [www.bcsc.bc.ca](http://www.bcsc.bc.ca) (then type Leiske or 2004 BCSECCOM 230 in the search box, then go to the settlement) for details.

**Patrick Thomas Stojak** – For over a year ending in 1999, Patrick Thomas Stojak, who was the BC sales manager for Corporate Express Club Inc., offered securities of several issuers for sale without registration and a prospectus contrary to securities laws. In offering convertible debentures of Great American Gold Ltd. for sale, he made misrepresentations contrary to securities laws when he told investors that the shares of Great American would be listed for trading on a stock exchange and that this would increase their value. On June 17, 2004, the BCSC entered into a settlement with Mr. Stojak. He undertook to pay \$5,000 and the BCSC ordered that he not trade (except for his personal account), act as a director or officer of any issuer (with an exception) or engage in investor relations for 3 years. Mr. Stojak was 1 of 7 respondents in a BCSC notice of hearing. The executive director alleges various breaches of the securities laws under a scheme in which investors paid a membership fee to purchase securities. The remaining respondents are Corporate Express Inc., Corporate Express Club, Fortress International Ltd., Great American Gold Ltd., John Thomas McCarthy and Cameron Willard McEwen. The BCSC hearing has commenced and is adjourned until January of 2005. See [www.bcsc.bc.ca](http://www.bcsc.bc.ca) (then type Stojak or 2004 BCSECCOM 374 in the search box, then go to the settlement) for details.

## APPEALS

### MANITOBA

**Gerald Blerot** – In March of 2004, the Manitoba Court of Appeal, in Chambers, dismissed the motion of Mr. Blerot for leave to appeal an Order of the MSC. In a January 2004 decision, a panel of the MSC had ordered a denial of exemptions against Mr. Blerot for 2 years and costs of \$5,000, for his role in trading in securities of a Synergy Alliance company through an investment proposal whereby investors were to provide funds to a Synergy Alliance

## ILLEGAL DISTRIBUTION

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entity and receive shares in return. See [www.msc.gov.mb.ca/investigation/reasons/blerot](http://www.msc.gov.mb.ca/investigation/reasons/blerot) and [www.msc.gov.mb.ca/orders/synergy 7](http://www.msc.gov.mb.ca/orders/synergy_7) for details.

*\*Enforcement action against Synergy Alliance Two, LLC, Synergy Alliance Fourteen, LLC, Synergy Alliance Group, LLC, Synergy Equivest Group LLC, and Synergy Investment Corporation, LLC, and certain individuals not including Blerot, was concluded with a settlement agreement approved by a panel of the MSC in August of 2003.*

## INSIDER TRADING

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### COURT RULINGS

#### QUÉBEC

**Claude Vézeau** – In April 2004, penal proceedings were instituted by the AMF before the Court of Québec (Criminal and penal division) against Mr. Vézeau for allegedly having contravened the insider trading prohibitions contained in section 189.1 of the Securities Act. In its statement of offence that has 1 count, the AMF alleges that on August 21, 2003, Mr. Vézeau, through 9099-3569 Québec Inc., a closed company, conducted a trade on shares of Conjuchem Inc. while he had privileged information relating to this issuer. If found guilty, Mr. Vézeau could be sentenced to pay a fine of no less than twice the profit he realized, subject to a minimum of \$5,000. In this instance, the AMF has estimated that minimum fine to be \$9,630 but has announced its intention to ask the court that a fine of \$20,000 be imposed.

**Marie-José Girard** – In September 2004, penal proceedings were instituted by the AMF before the Court of Québec (Criminal and penal division) against Mrs. Girard for allegedly having contravened the insider reporting obligations of the Securities Act. In its statement of offence that encompasses 34 counts, the AMF alleges that Ms. Girard, while being an insider of two reporting issuers, Exploration Dios Inc. and Ressources Sirios Inc., repeatedly failed to comply with section 97 of the Securities Act. This section requires that an insider file a report within 10 days of any change of his control on securities of any issuers for which he is considered an insider. If found guilty, Ms. Girard could be sentenced to pay a minimum fine of \$1,000 per count.

### CSA COMMISSION OR TRIBUNAL DECISIONS

#### ONTARIO

**Glen Harvey Harper** – In April 2004, the OSC found that it was in the public interest to sanction Mr. Harper for trading in the securities of Golden Rule Resources Inc. with knowledge of undisclosed material facts contrary to s. 76(1) of the Act. Mr. Harper was charged and convicted in Provincial Court, under s. 122 of the Act, on 2 counts of insider trading. In July 2000, he was found guilty of both counts and sentenced to 1 year imprisonment for each offence, concurrent, and fined \$3,951,672. On appeal, his sentence was reduced to 6 months, concurrent, and his fine was reduced to \$2,400,000. The appeal court agreed with the trial judge's findings of fact. After a hearing in March 2004, the Commission found that, pursuant to s. 127 of the Act, it was in the public interest to order that Mr. Harper cease trading in any securities for 15 years (with the exception of certain specified trading in his personal accounts); and that he be prohibited from becoming or acting as a director or officer of any reporting issuer for 15 years. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040408\\_harper.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040408_harper.jsp) for details.

#### ALBERTA

**Glen Harvey Harper** - On April 8, 2004, the OSC found that Mr. Harper sold securities of Golden Rule Resources Inc., a reporting issuer with which he was in a special relationship, when he had access to material information that was not generally disclosed to the public. Consequently on June 10, 2004, an ASC panel affirmed in Alberta the sanctions imposed by the OSC and ordered that for 15 years Mr. Harper be prohibited from acting as a director or

## INSIDER TRADING

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officer of any reporting issuer, cease trading in any securities, except in his own account, and that the exemptions do not apply to Mr. Harper.

See [http://www.albertasecurities.com/dms/1404/8895/11111\\_Harper, Glen Harvey - Decision - 2004-06-10 - 1545597.pdf](http://www.albertasecurities.com/dms/1404/8895/11111_Harper,_Glen_Harvey_-_Decision_-_2004-06-10_-_1545597.pdf) for details.

## SETTLEMENT AGREEMENTS

### ONTARIO

**Donald Parker** – In May 2004, OSC staff concluded a settlement agreement with Donald Parker with respect to his trading in the shares of Roman Corporation Ltd while in possession of undisclosed material information. The Commission approved the settlement agreement and ordered that Mr. Parker cease trading in securities for 6 months; that the exemptions in Ontario securities law not apply to him for 6 months; that he not act as a director of any issuer for 6 months; that he be reprimanded; that he make a settlement payment of \$1,800; and that he pay \$5,000 in costs.

See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set\\_20040518\\_donaldparker.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040518_donaldparker.jsp) for details.

**James Anderson** – In June 2004, OSC staff concluded a settlement agreement with James Anderson with respect to his short sales of Bioscrypt shares while in possession of a material fact, which had not been generally disclosed. The Commission approved the settlement agreement and ordered that Mr. Anderson's registration be suspended for 6 months; that he cease trading in securities for 6 months (except in his RRSP); that he be reprimanded; that he is prohibited from acting as a director or officer of an issuer for 6 months; and that he pay \$15,000 in costs. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set\\_20040616\\_anderson.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040616_anderson.jsp) for details.

**Paradigm Capital Inc., Patrick Mr. McCarthy, and Eden Rahim** – In June 2004, OSC staff concluded a settlement agreement with Paradigm Capital, Mr. McCarthy, and Mr. Rahim with respect to their 'overtrading' of Bioscrypt Inc. shares with knowledge of an undisclosed material fact.

In the settlement agreement, the Commission ordered that Paradigm implement a revised policy with respect to the receipt of confidential material information while acting as an agent on behalf of an issuer; that Paradigm be reprimanded; that they make a settlement payment of \$55,755; and that they pay \$30,000 in costs.

The Commission also ordered that Mr. McCarthy's registration as a salesperson be restricted to institutional sales for a period of 1 year; that he take the Canadian Securities Course on Securities Law and Regulations within 1 year; that he be reprimanded; and that he pay \$30,000 in costs. The Commission ordered that Mr. Rahim's registration as a portfolio manager be subject to the condition, for 1 year, that he not be permitted to participate in a private placement of securities on behalf of any fund that he may manage without the prior written consent of his supervisor; that he be reprimanded; and that he pay \$30,000 in costs.

See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040618\\_paradigm.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040618_paradigm.jsp) for details.

**W. Jefferson T. Banfield** – In August 2004, OSC staff concluded a settlement agreement with Mr. Banfield regarding his trading on behalf of the limited partnership, BCM Arbitrage Fund, while in possession of material undisclosed information with respect to a proposed special warrant financing by Burntsand Inc. The Commission approved the settlement agreement and ordered that Mr. Banfield cease trading in securities for 2 years; that he be reprimanded; that he make a settlement payment of \$150,000; and that he pay \$50,000 in costs. Mr. Banfield also

## INSIDER TRADING

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provided the Commission with his written undertaking that he will not apply for registration for a period of 5 years; that if he does, he will consent to the imposition of terms and conditions on his registration for a period of 3 years requiring close supervision, including prohibiting him from participating in any private placement financing without his supervisor's consent, and that he will complete the CSC and CPH Course before applying for registration. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set\\_20040713\\_banfield.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040713_banfield.jsp) for details.

### ALBERTA

**John Herring** - On June 16, 2004, Mr. Herring entered into a Settlement Agreement and Undertaking with the ASC in which he admitted that he acted on material information that was not available to the public, and as a result, avoided a loss of at least \$17,500. Mr. Herring agreed to pay \$17,500 to settle the allegations, to pay \$1,500 towards costs, and for 6 months to resign any positions as a director or officer and to not become or act a director or officer. See [http://www.albertasecurities.com/dms/1404/8895/11154\\_Herring, John - SA&U - 2004-06-16 - 1522043v1.pdf](http://www.albertasecurities.com/dms/1404/8895/11154_Herring,_John_-_SA&U_-_2004-06-16_-_1522043v1.pdf) for details.

### BRITISH COLUMBIA

**Glen Harvey Harper** - In March 1999, Harper was charged under the Ontario Securities Act with illegal insider trading. In July 2000, following a trial, he was found guilty. Harper served 6 months in prison and paid a \$2 million fine. In April of this year, the OSC prohibited Harper for the next 15 years from buying and selling securities (with limited exceptions) and from acting as a director or officer of any public company. In June, the Alberta Securities Commission made substantially the same orders. Please see above under CSA Commission or Tribunal Decisions for Ontario and Alberta. On July 28, 2004, the BCSC entered into a settlement with Harper and under an order made him subject to the same market restrictions in BC as in Ontario and Alberta. See [www.bcsc.bc.ca](http://www.bcsc.bc.ca) (then type Harper or 2004 BCSECCOM 451 in the search box, then go to the settlement) for details.

**Douglas Laurence Mason** - On July 28, 2004, the BCSC entered into a settlement with Douglas Laurence Mason, the president of Clearly Canadian Beverage Corp. Mr. Mason failed to file insider trading reports, caused a misleading appearance of trading activity and failed to report the distribution of stock he held as a control person. He agreed to pay \$250,000 and the BCSC has ordered that he restrict his activities in the market for the next 12 months. Under the settlement agreement, for 12 months Mason can only engage in some limited financing activities and can trade within certain conditions. Mason cannot serve as an officer or director of any issuer nor can he engage in investor relations activities for 12 months, except for in some non-public companies and two public companies in which he is already currently involved: Clearly Canadian Beverage Corp. and Columbia Yukon Explorations Inc. See [www.bcsc.bc.ca](http://www.bcsc.bc.ca) (then type Mason or 2004 BCSECCOM 507 in the search box, then go to the settlement) for details.

## MARKET MANIPULATION

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### CSA COMMISSION OR TRIBUNAL DECISIONS

#### ALBERTA

**Luciano John Podorieszach and Secondo Pietro (Peter) Podorieszach** - On March 17, 2004, the ASC panel found that the respondents manipulated the market by creating an artificial price for shares in Anthony Clark Limited. On June 7, 2004, the panel ordered both John and Peter Podorieszach to cease trading all securities and that no exemptions were available to them for 6 years, except for their respective RRSPs. After 2 years the Podorieszachs may trade on behalf of clients, provided they are closely supervised for a period of 12 months. Both Podorieszachs were also ordered to pay an administrative penalty of \$20,000 and investigation costs of \$20,000. See [http://www.albertasecurities.com/dms/1404/8895/11018\\_Podorieszach, Luciano John - Decision - 2004-06-07 - 1542993v1.pdf](http://www.albertasecurities.com/dms/1404/8895/11018_Podorieszach,_Luciano_John_-_Decision_-_2004-06-07_-_1542993v1.pdf) for details.

#### BRITISH COLUMBIA

**Gordon Howard Callies** – In an agreed statement of facts filed with the BCSC, Gordon Howard Callies admitted that he illegally sold securities of Cambria Bancorp Corp. to 14 BC investors, defrauded an 86-year-old woman of \$30,000 and failed to fulfill his duty of care as a director of Cambria under company law. On July 28, 2004, the BCSC ordered that Callies not trade (except for his personal account), act as a director or officer of any issuer (except one he and his family wholly own) or engage in investor relations, for 25 years and pay \$125,000 as penalty and \$7,000 in costs. See [www.bcsc.bc.ca](http://www.bcsc.bc.ca) (then type Callies or 2004 BCSECCOM 447 in the search box, then go to the decision) for details.

### SETTLEMENT AGREEMENTS

#### NOVA SCOTIA

**Bruce E. Clarke** – Mr. Clarke entered into a Settlement Agreement in respect to allegations that while a registrant under the Securities Act at National Bank Financial Limited in Halifax he entered into an agreement with persons in a special relationship with Knowledge House Inc. (“KHI”) to act jointly to maintain the price of KHI stock and to carry out transactions in the market to this effect and to provide liquidity for the stock. Mr. Clarke’s registration was cancelled, exemptions denied, \$75,000 administration penalty, \$75,000 costs ordered. See: <http://www.gov.ns.ca/nssc/docs/clarkesettlement04jun28.pdf> for details.

**River John Oceanfront Resorts LTD** - River John Oceanfront Resorts Ltd. entered into a settlement agreement with Staff of the Nova Scotia Securities Commission in respect to allegations that it had contravened the Community Economic- Development Corporations Regulations, and thereby contravened provisions of the Securities Act. The respondent had made investments that varied materially from those described in the offering document without having provided notice and sufficient information to investors and having obtained the required approval of investors. An administrative penalty of \$2,500 was imposed together with costs in the amount of \$500.00. See [www.gov.ns.ca/docs/fineriverjohn.pdf](http://www.gov.ns.ca/docs/fineriverjohn.pdf) for details.

## DISCLOSURE VIOLATIONS

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### CSA COMMISSION OR TRIBUNAL DECISIONS

#### ONTARIO

**Nortel Networks Corporation and Nortel Networks Limited (certain Directors, Officers & Insiders of)** – In May, 2004, the OSC ordered that all trading in the securities of Nortel Networks Corporation (“NNC”) and Nortel Networks Limited (“NNL”) by certain named individuals (directors, officers or insiders of NNC or NNL during the relevant time period) shall cease until two full business days following the receipt by the Commission of all filings NNC and NNL are required to make pursuant to Ontario securities law. NNC and NNL had announced in April that they would each have to restate the financial results reported in each of the quarterly periods of 2003 and for earlier periods including 2002 and 2001, and that they would be delayed in filing their annual financial statements for the year ended December 31, 2003, and their interim statements for the first quarter ended March 31, 2004 by the required filing date. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040517\\_nortel-networks.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040517_nortel-networks.jsp) for details.

**Argus Corporation Limited (certain Directors, Officers & Insiders of)** – In June 2004, the OSC ordered that all trading in Argus securities by certain named individuals (directors, officers or insiders of Argus during the relevant time period) shall cease until two full business days following the receipt by the Commission of all filings Argus is required to make pursuant to Ontario securities law. Argus had failed to file its interim financial statements and related documents. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040603\\_argus-corp.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040603_argus-corp.jsp) for details.

**Hollinger Canadian Newspapers, Limited Partnership (certain Directors, Officers and Insiders of)** – In June 2004, the OSC ordered that all trading in the Partnership securities by certain named individuals (directors, officers or insiders of the Partnership during the relevant time period) shall cease until two full business days following the receipt by the Commission of all filings the Partnership is required to make pursuant to Ontario securities law. The Partnership had failed to file its interim and annual financial statements, and related documents. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040601\\_hollinger-can-news.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040601_hollinger-can-news.jsp) for details.

**Hollinger Inc. (certain Directors, Officers and Insiders of)** – In June 2004, the OSC ordered that all trading in Hollinger securities by certain named individuals (directors, officers or insiders of Hollinger during the relevant time period) shall cease until two full business days following the receipt by the Commission of all filings Hollinger is required to make pursuant to Ontario securities law. Hollinger had failed to file its interim and annual financial statements, and related documents. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040601\\_hollinger-inc.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040601_hollinger-inc.jsp) for details.

**Hollinger International Inc. (certain Directors, Officers and Insiders of)** – In June 2004, the OSC ordered that all trading in Hollinger International Inc. (“HLR”) securities by certain named individuals (directors, officers or insiders of HLR during the relevant time period) shall cease until two full business days following the receipt by the Commission of all filings HLR is required to make pursuant to Ontario securities law. HLR had failed to file its interim and annual financial statements, and related documents. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040601\\_hollinger-int-inc.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040601_hollinger-int-inc.jsp) for details.

## DISCLOSURE VIOLATIONS

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### SASKATCHEWAN

**Manitou Springs Venture Capital Corporation, New Era Venture Capital Corporation, Manitou Springs Hotel Inc., Manitou Beach Mineral Pool Inc.** – On May 26, 2004, the SFSC ordered sanctions against Manitou Springs Venture Capital Corporation *et al* in respect to failure to file financial statements. Manitou Springs Venture Capital Corporation *et al* was ordered to each pay \$15,000 as an administrative penalty and \$11,720.09 as a collective cost of the hearing. Manitou Springs Venture Capital Corporation *et al* were the subject of a Cease Trade Order dated October 20, 2000, which stated that trading in their shares cease and that the companies be denied the use of exemptions, by reason of serious concerns about their financial disclosure. This decision has been appealed by counsel for Manitou Springs Venture Capital Corporation *et al*.

### ALBERTA

**Bruno Stephen Dobler and Thomas Vernon Hochhausen (the “respondents”)**- On September 3, 2004, the ASC panel issued their decision regarding a private placement that occurred while a reporting issuer (Cenpro Technologies) was cease traded for failure to file financial statements. The panel found that the respondents contravened the CTO and therefore, Alberta securities laws, and acted contrary to the public interest; both respondents made misrepresentations to an investor and in doing so acted contrary to the public interest. Mr. Hochhausen's conduct in acting in multiple and conflicting roles in connection with the private placement and the use of the funds received from this private placement was found to be contrary to the public interest. The Panel is scheduled to hear arguments regarding sanction on October 25, 2004. See [http://www.albertasecurities.com/dms/1404/8895/11487 DOBLER AND HOCHHAUSEN - DECISION - 2004-09-03 - 1614601.pdf](http://www.albertasecurities.com/dms/1404/8895/11487_DOBLER_AND_HOCHHAUSEN_-_DECISION_-_2004-09-03_-_1614601.pdf) for details.

## SETTLEMENT AGREEMENTS

### ALBERTA

**Grant William Krucik** - On May 19, 2004, Mr. Krucik admitted that the Offering Memorandum, for Babel Fish Corporation, signed by him as its president and a director, contained a misstatement that Mr. Krucik ought to have known was a misrepresentation, and thus contravened the Act and acted contrary to the public interest. Mr. Krucik agreed to pay an administrative penalty of \$1,000 to settle this allegation and \$500 towards investigation costs. See [http://www.albertasecurities.com/dms/1404/8895/10971 Krucik, Grant - SA - 2004-05-19 - 1484438v1.pdf](http://www.albertasecurities.com/dms/1404/8895/10971_Krucik,_Grant_-_SA_-_2004-05-19_-_1484438v1.pdf) for details.

**Oscar A. Jofre, Jr.** - On June 28, 2004, Mr. Jofre, who was the CEO and a director of Babel Fish Corporation, agreed that he did not disclose his bankruptcy in the corporation's Offering Memorandum signed by him and thus made a misrepresentation to its investors, contravened the Act and acted contrary to the public interest. Mr. Jofre agreed to pay an administrative penalty of \$2,500 to settle these allegations and \$1,000 towards investigation costs. See [http://www.albertasecurities.com/dms/1404/8895/11216 JOFRE - SA - 2004-06-28 - 1531074.pdf](http://www.albertasecurities.com/dms/1404/8895/11216_JOFRE_-_SA_-_2004-06-28_-_1531074.pdf) for details.

## MISCONDUCT BY REGISTRANTS

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### CSA COMMISSION OR TRIBUNAL DECISIONS

#### QUÉBEC

**Conseillers de placements TIP Ltée et Paul Gagné** – On April 21, 2004, the Bureau de décision et de révision en valeurs mobilières («BDRVM») suspended the rights granted by registration as advisers to Conseillers de placements TIP Ltée («TIP») for a period of 2 years and to Paul Gagné, TIP's president, for a period of 5 years. These sanctions follow a finding by the Commission des valeurs mobilières du Québec, the BDRVM's predecessor, that TIP and Paul Gagné had (since at least the year 2000) mismanaged funds that TIP's clients had left in their care, in particular in regards to the operation of Fonds TIP. In doing so, the BDRVM found that TIP and Paul Gagné had acted with professional negligence and, in some instance, misconduct.

Both TIP, Paul Gagné and the AMF, which considers that the sanctions imposed are not severe enough, have appealed this decision to the Court of Québec, civil division.

#### ONTARIO

**John Craig Dunn** – In June 2004, an OSC hearing panel found that Mr. Dunn had acted contrary to the public interest when he prepared and signed (and caused others to prepare and sign) 'Proof of Funds Letters' regarding accounts at Nesbitt Burns that contained misleading representations. The panel ordered that Mr. Dunn's registration be terminated for 10 years; that Mr. Dunn be prohibited permanently from having a supervisory or managerial role with a registrant; that Mr. Dunn be permanently prohibited from becoming or acting as a director or officer of a registrant; that Mr. Dunn be reprimanded; and that he pay \$126,938.50 in costs. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040615\\_dunn-johncraig.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040615_dunn-johncraig.jsp) for details.

**Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited, and Pierrepont Trading Inc. (the "respondents")** – In June 2004, the OSC issued its reasons for sanctions ordered against Patrick Lett, Milehouse Investment, and Pierrepont Trading in connection with their trading in securities without registration. The respondents, none of whom were registered under the Act, had offered a 'high yield program' that was found to constitute an 'investment contract' (and therefore a 'security' as defined in the Act). The Commission ordered that Milehouse and Pierrepont cease trading in securities for 15 years, and that Mr. Lett cease trading in securities for 10 years (except that he may trade in certain specified securities for his own account or for the account of his RRSP or RRIF). It was further ordered that Mr. Lett be prohibited from becoming or acting as an officer or director of any reporting issuer or of any registrant (or issuer which has a direct or indirect interest in any registrant) for 15 years; and that he pay \$150,000 in costs. All three respondents were reprimanded. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040322\\_lett.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040322_lett.jsp) and [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad\\_20040608\\_lett.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/rad_20040608_lett.jsp) for details.

#### ALBERTA

**Donald Stuart Wallace** - On May 18, 2004, Mr. Wallace was found to have committed serious breaches of the Act and engaged in conduct contrary to the public interest and was ordered to cease trading in securities for 15 years, was not eligible to apply for exemptions for 15 years, and was ordered to pay a \$30,000 administrative

## MISCONDUCT BY REGISTRANTS

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penalty as well as \$15,000 costs. Mr. Wallace admitted that he recommended unsuitable investments, resulting in aggregate client losses exceeding \$1,000,000, failed to discuss material risks of the unsuitable investments, inappropriately recommended that clients incur debt to purchase and maintain the unsuitable investments, conducted discretionary trades in clients' accounts without authorization and registration under the Act, failed to use "know-your-client" (KYC) forms, and requested clients sign blank forms such as trade authorizations. See [http://www.albertasecurities.com/dms/1404/8895/10899\\_Wallace, Donald Stuart - Decision - 2004-05-18 - 1518353v1.pdf](http://www.albertasecurities.com/dms/1404/8895/10899_Wallace,_Donald_Stuart_-_Decision_-_2004-05-18_-_1518353v1.pdf) for details.

**Stewart Grant Showers** - On September 8, 2004, the commission ordered that Mr. Showers cease trading permanently in securities (except for debt securities or securities with a market capitalization of over \$500 million), all of the exemptions contained in Alberta securities laws permanently do not apply to Mr. Showers, that he shall resign immediately from any position that he holds as a director or officer, and Mr. Showers is permanently prohibited from becoming or acting as a director or officer of any reporting issuer. Mr. Showers was also ordered to pay \$10,000 for costs of the investigation. Mr. Showers was a mutual fund representative who diverted funds from client accounts and then falsified documents to his clients to hide the missing funds. Mr. Showers misappropriated approximately \$36,000 for his own personal benefit from his clients and also benefited from this scheme by maintaining his asset retention bonus from his mutual fund dealer. Mr. Showers earlier pleaded guilty and was sentenced for fraud offences under the Criminal Code relating to this wrongdoing. See [http://www.albertasecurities.com/dms/1404/8895/11486\\_Showers, Stewart Grant - DECISION - 2004-09-08 - 1616176.pdf](http://www.albertasecurities.com/dms/1404/8895/11486_Showers,_Stewart_Grant_-_DECISION_-_2004-09-08_-_1616176.pdf) for details.

## SETTLEMENT AGREEMENTS

### NOVA SCOTIA

**Christopher Bevis** – Mr. Bevis entered into a Settlement Agreement in respect to misconduct while an approved person at Select Money Strategies in Halifax. Mr. Bevis failed to comply with the “Know Your Client” Rule, processed trade documentation without proper client signature or bearing signatures cut and pasted from other documents and failed to comply with MFDA by-laws and regulations. Mr. Bevis’s registration was suspended for a period of 6 months; an administrative penalty in the amount of \$5,000 was imposed together with costs of \$2,500. See [www.gov.ns.ca/nssc/docs/bevisettle.pdf](http://www.gov.ns.ca/nssc/docs/bevisettle.pdf) for details.

### ONTARIO

**David Bromberg** – In March 2004, OSC staff concluded a Settlement Agreement with Mr. Bromberg with respect to his conduct as a principal of Buckingham Securities Corporation. Buckingham failed to segregate its clients’ securities held in omnibus accounts with other brokerage firms; failed to maintain adequate capital at all times; failed to keep required books and records; failed to file an audited Form 9; and made materially misleading statements in two Form 9 reports. The Commission approved the Settlement Agreement in April 2004, and ordered that Mr. Bromberg permanently cease trading in securities; that his registration be terminated; that any exemptions do not apply to him; that he be permanently prohibited from becoming or acting as an officer or director of any reporting issuer or of any registrant; and that he be reprimanded. Mr. Bromberg provided his undertaking never to apply for registration in any capacity under Ontario securities law, and never to own any interest in a registrant. See [http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set\\_20040420\\_bromberg.jsp](http://www.osc.gov.on.ca/Enforcement/Proceedings/2004/set_20040420_bromberg.jsp) for details.

## MISCONDUCT BY REGISTRANTS

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### MANITOBA

**John Lawrence (“Larry”) Reid** – In April of 2004, staff concluded a Settlement Agreement with Mr. Reid, subsequently approved by the Commission, regarding his handling of a client’s account. It was agreed that Mr. Reid had recommended investments and provided advice and recommendations, resulting in an unsuitable portfolio, and failed to follow the KYC Rule exposing his client to unnecessary risk, all resulting in a loss of approximately \$89,000 or 29% of the original amount invested. Under the terms of the Settlement Agreement, Mr. Reid agreed to a written reprimand, an administrative penalty of \$5,000, and continued supervision until June 30, 2004. See [www.msc.gov.mb.ca/orders/reid](http://www.msc.gov.mb.ca/orders/reid) for details.

### SASKATCHEWAN

**Sheldon Christopher Shymko** – SFSC staff entered into a Settlement Agreement with Sheldon Christopher Shymko for trading in securities in Saskatchewan while not being registered. Under the Settlement Agreement, Mr. Shymko agreed to pay an administrative penalty of \$2,000, to pay the costs of the investigation of \$500 and to become registered in the province of Saskatchewan.

### ALBERTA

**Cardinal Capital Management Inc.** - On September 29, 2004, Cardinal Capital Management Inc. acknowledged that it had operated as an advisor in Alberta when it was not registered to do so. It paid \$7,500 registration fees that were owed while it operated unregistered, and paid an administrative penalty of \$10,000 to settle these allegations and \$1,000 towards investigative costs.

See [http://www.albertasecurities.com/dms/1404/8895/11560\\_CARDINAL - SAU - 2004-09-29 - 1627881.pdf](http://www.albertasecurities.com/dms/1404/8895/11560_CARDINAL_-_SAU_-_2004-09-29_-_1627881.pdf) for details.

### BRITISH COLUMBIA

**Northern Securities Inc.** – The BCSC entered into a settlement with Northern Securities Inc. under which Northern has agreed to pay \$10,000 for violating a cease trade order. The BCSC cease-traded the shares of Solucorp Industries Ltd. in October 2000. Since July 2002, Solucorp’s shares have been quoted on the Pink Sheets Electronic Quotation Service in the United States. In March 2003, the BCSC varied its cease trade order to allow certain BC residents to sell Solucorp shares bought before October 2000. Northern Securities violated the orders when it traded Solucorp shares bought after that date. Northern executed these trades because of deficiencies in changes it made to its internal systems in April 2003. In March 2004, Northern corrected these deficiencies and gave the BCSC an undertaking to maintain its internal systems to prevent further cease trade order violations. See [www.bcsc.bc.ca](http://www.bcsc.bc.ca) (then type Northern or 2004 BCSECCOM 272 in the search box, then go to the settlement) for details.

**DPM Securities Inc./Valeurs Mobilières DPM Inc., The Height of Excellence Financial Planning Group Inc., John Wilson Howard and James Gordon Armit** – On May 18, 2004, the BCSC entered into a settlement with DPM Securities Inc., an investment dealer, and The Height of Excellence Financial Planning Group Inc., a mutual fund dealer. They breached numerous securities laws in selling limited partnership units to their clients. DPM and Height of Excellence are no longer registered to sell securities in BC. DPM has agreed to pay the BCSC \$60,000. Height of Excellence has agreed to pay the BCSC \$35,000. These payments include the commissions earned by the

## MISCONDUCT BY REGISTRANTS

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dealers in selling the partnership units. See [www.bcsc.bc.ca](http://www.bcsc.bc.ca) (then type DPM or 2004 BCSECCOM 276 in the search box, then go to the settlement) for details.

## APPEALS

### ONTARIO

**Brian K. Costello** – On July 12, 2004, the Ontario Divisional Court upheld a decision of the Ontario Securities Commission that ordered that Mr. Costello, a well-known author, speaker and investment commentator, be denied registration for 5 years and be reprimanded. The Commission found that Mr. Costello was acting as an “adviser”, as defined in the Act, without being registered and that he failed to disclose certain conflicts of interest contrary to the public interest. However, the Court allowed Mr. Costello’s appeal of the Commission decision to award \$300,000 in costs and directed the Commission to reconsider that issue.

See [http://www.osc.gov.on.ca/About/NewsReleases/2004/nr\\_20040713\\_osc-costello.jsp](http://www.osc.gov.on.ca/About/NewsReleases/2004/nr_20040713_osc-costello.jsp) for details.

### BRITISH COLUMBIA

**Robert Arthur Hartvikson and Blayne Barry Johnson** - In June 2001, the BCSC banned two First Marathon Securities Ltd. stockbrokers – Robert Arthur Hartvikson and Blayne Barry Johnson – from the BC securities markets for a year and, considering general deterrence, ordered them to pay the maximum penalty of \$100,000 each. The two men appealed the Commission’s decision to the BC Court of Appeal, which upheld the finding but reduced the penalties to \$10,000 each.

The BCSC appealed the decision to the Supreme Court of Canada. On April 22, 2004, that court restored the original penalties against both Mr. Hartvikson and Mr. Johnson. The court (a) held that the BCSC in making its public interest orders could consider general deterrence and was not bound by the settlements entered into by its staff and (b) set out the standard of review for BCSC decisions.

See: [http://www.lexum.umontreal.ca/csc-scc/cgi-in/disp.pl/en/pub/2004/vol1/html/2004scr1\\_0672.html](http://www.lexum.umontreal.ca/csc-scc/cgi-in/disp.pl/en/pub/2004/vol1/html/2004scr1_0672.html) for details.

### COURT RULINGS

#### QUÉBEC

**Johanne Goyette** – On April 23, 2004 Mr. Justice Gilles Pigeon of the Court of Québec (Criminal and penal division) found Johanne Goyette guilty of having failed to appear before an AMF investigator after having been summoned to do so to testify in connection with an investigation being conducted by the AMF. This being Ms. Goyette's second conviction for the same offence to the Securities Act, Mr. Justice Pigeon ordered Ms. Goyette to pay a fine of \$3,000, three times the amount of the minimum fine of \$1,000.

**Gérald Gaudreau, Jean Pierre Nadeau, Jacques Gagné and Louise Lessard** – In May and September 2004, the AMF instituted penal proceedings before the Court of Québec (Criminal and penal division) against Mr. Gaudreau, Mr. Gagné and Ms. Lessard for having failed to appear (Mr. Gagné and Ms. Lessard) and refusing to testify (Mr. Gaudreau) before AMF investigators. If found guilty, Mr. Gagné, Mr. Gaudreau and Ms. Lessard could be liable to pay a fine of no less than \$1,000 to a maximum of \$20,000 per count. On July 6, 2004, the AMF obtained from the Québec Superior Court the issuance a special rule ordering Mr. Nadeau to appear before the court to answer a charge of contempt of court. Mr. Nadeau appeared before AMF investigators after having been duly summoned to do so, but he refused to answer any of the questions asked by the investigators and to provide the documents requested. If Mr. Nadeau is found guilty of contempt for having failed to comply with the AMF investigators' demands, he could be liable to a fine not exceeding \$5,000 or to imprisonment for a period not exceeding 1 year.

**INQUIRIES:**

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