STANLEY M. BECK, Q.C.

[redacted]

[redacted]

April 5, 2012

The Honourable Mr. Justice G. Morawetz
Presiding Justice
Ontario Superior Court of Justice
Commercial List
330 University Avenue
Toronto, ON M5G 1R7

Your Honour:

Re: MacKinnon v. Ontario Municipal Employees Retirement Board et al.
Court File No.: 05-CL-006035

I am writing this letter to deliver my recommendations and conclusions to the Court in support of a settlement reached following a mediation process agreed by the parties to this action and as reflected in various Mediation agreements signed between them.

The Mediation resulted in a Report (of which this letter is a part) which is enclosed herewith.

Pursuant to paragraph 10 of the Parameters for Settlement (one of the Mediation agreements) dated November 27, 2009, the parties to the Mediation agreed that the contents of my Report shall describe:

1. the Mediation process followed to achieve an overall settlement;
2. the scope of documentary and information disclosure made by the parties;
3. the key terms of the overall settlement; and
4. my recommendations to the Court on whether the overall terms of the settlement are fair to, and are in the best interest of, all members and stakeholders of the OMERS Plan.

Mediation Process

The Mediation process has been governed throughout by a process of agreements reached between the parties, consisting of a Settlement Process Agreement dated April 25, 2008, a Parameters for Settlement document dated November 27, 2009, and an Agreed Approach document dated May 5, 2010.

The Settlement Process Agreement identified the primary issues for resolution in the Mediation as follows:

[redacted]

1. Whether the amounts received by the Executives between 2001-2005 were at commercially reasonable levels;

2. A determination of the amounts received by Borealis Capital Corporation or its shareholders in respect of the 2002 MSA and 2004 repatriation transactions and whether such amounts were at commercially reasonable levels;

3. A determination as to the flow of monies resulting from each of the two transactions; and

4. A determination as to whether any improper payments were made to the Individual Defendants as a result of either transaction;

The agreements recognized that reputational issues relating to the alleged wrongdoing of the Executives had to be addressed as part of the overall settlement.

An underlying principle of the settlement was to continue to improve communication in the working relationship between CUPE Ontario and OMERS/Borealis.

The agreements further contemplated a mediated form of report which I agreed to prepare to lead to the resolution of this matter and which I could make a recommendation to the Superior Court of Justice leading to the dismissal of the action.

Scope Of Documentary And Information Disclosure

I am satisfied that I have received extensive disclosure of all information and documents required to reach a fair mediated settlement of all issues in this case.

> "There was also extensive documentation with respect to OMERS/Borealis Real Estate Portfolios and the decision to outsource real estate management. I have had full cooperation from OMERS' executives and extensive discussion and documentation with respect to its revised governance, related party, disclosure and communications policies. ... In short, I have received very full disclosure and, most importantly, full co-operation from OMERS' Senior Officers with respect to the requirements of this Report". [pages 8 and 15]

I was provided with substantial materials by the parties and met with the parties and their counsel on numerous occasions in which counsel made extensive submissions regarding the evidence.

Various issues were debated between the parties and such issues were narrowed and ultimately resolved.

After delivering a draft of my Report, I received submissions and comments from all counsel which led to two subsequent drafts of the Report, including the current version which was ultimately accepted by all parties.

Some Key Findings As A Result Of The Mediation Process As Contained In My Report

Issue #1 - Whether the amounts received by the Executives between 2001 – 2005 were at commercially reasonable levels.

> "My conclusion is that the level of compensation paid to the three individual defendants was reasonable on both a comparative and performance basis. The actual dollars paid in the relevant years are detailed in both Rosen and the Response, and there is no question as to what those amounts were...The evidence is that the amounts received by the Borealis' executives between 2001-2005, including salary, bonus, dividends or other compensation, were at commercially reasonable levels. There is simply no evidence to the contrary." [pages 28-29]

Rationale for the Borealis purchase and subsequent resale [beginning at page 29]:

> "The cost savings outlined by OMERS management of some $20 million provide the rationale for the decision to repatriate Borealis a relatively short time following the sale in October, 2001." [page 30]

> "As noted above, the BREMI transaction was based upon recommendations in a report prepared by McKinsey which concluded that outsourcing to Borealis would provide a lower cost to OMERS and improve returns based on similar models in similar industries. Ten other industry models were identified by McKinsey, each of whom had outsourced its asset management, including some of the largest insurance and pension fund organizations in North America." [page 31]

> "OMERS' 2003 and 2004 Annual Reports also detail the rationale for the repatriation of Borealis in the context of a change in OMERS' investment strategy (which has been referred to above). In short, as the 2003 Report notes, OMERS' new asset policy mix was to shift one-third of its total investments from publicly traded stocks and bonds to alternate private investments (real estate, infrastructure and private equity) over a period of four to five years....The 2004 Report notes that OMERS' alternative assets had been managed by Borealis and that to implement the new asset mix policy, it made sense to bring the management of these assets under OMERS' control where they would conduct business as separate entities with clear lines of accountability and enhanced governance". [pages 32 and 33]

> "As to cost comparisons, material provided to the OMERS Board Meeting on November 21, 2003, showed the costs for OMERS pre and post OMERS/Borealis restructuring. The real estate part of the Borealis costs were $27.8 million, opposed to the post Borealis costs of $17.1 million. The total Borealis costs (real estate, infrastructure, private equity and additional fees) were $51.70 million and the post Borealis restructuring total costs were $30.50 million, for a total cost reduction of $21.20 million. Looking at real estate alone, the annual cost savings were expected to be $10.7 million. These figures are from a Cost Comparison document tabled at the OMERS Board Meeting of November 21, 2003. Looking at the evidence, the conclusion is clear that the management of real estate assets was more expensive

when outsourced to Borealis than it was projected to be if OMERS took back the management "in house". [page 35]

Issue #s 2, 3 and 4

#2 - A determination of the amounts received by Borealis Capital Corporation or its shareholders in respect of the 2002 MSA and 2004 repatriation transactions and whether such amounts were at commercially reasonable levels,

#3 - A determination as to the flow of monies resulting from each of the two transactions, and

#4 - A determination as to whether any improper payments were made to the Individual Defendants as a result of either transaction.

> "...I would note that McKinsey concluded in an April, 2002 report to the OMERS' Board that the BREMI MSA met OMERS' objectives and was done on market terms. In addition, three other independent market studies were provided to OMERS prior to the signing of the MSA by Deloitte & Touche, the Canadian National Association of Real Estate Managers and GWL Realty Advisers ... They all, in effect, confirm what McKinsey stated – that the BREMI MSA was consistent with prevailing market terms." [pages 37-38]

> "Leaving aside the question of penalty fees, as part of the repatriation of the equity ownership of Borealis, OMERS paid the following amount to repurchase the individual and institutional holdings of Borealis' shares:

▪ Purchase of CPPIB Shares	**$19.2 million**
▪ Purchase of Kilmer Shares	**$15.7 million**
▪ Purchase of Management Shares (Nobrega, Collier and Latimer, $5 million each.)	**<u>$15 million</u>**
<u>Total</u>	**<u>$49.9 million</u>** [page 38]

> "There was $26 million in cash and cash equivalents in the Borealis treasury that flowed back to OMERS, reducing its net cost to $23.9 million. [page 42]

> "The BREMI MSA has never been terminated and there is no evidence that a termination fee has ever been paid." [page 41]

> "There is no evidence that any improper payments were made, directly or indirectly, to the Borealis executives as a result of either the 2002 BREMI MSA or the 2004 repatriation. As will be detailed below, the share buy back prices were at reasonable levels, and the original share purchase prices were consistent with the Borealis employee share purchase plan. There were no severance payments in respect of the movement of the three executives, nor were there any bonus payments other than in the normal course of the business of OMERS and Borealis." [pages 38-39]

"In summary, it is my opinion, on reviewing all of the evidence, that the share prices paid to Collier, Nobrega and Latimer, as well as to Kilmer, were fair in all of the circumstances on each... There is no evidence of anything untoward in the BREMI MSA, the repurchase by OMERS, and the share buy backs by OMERS. Each of those transactions were carefully considered by a disinterested Borealis Board that included in its membership highly experienced senior executives of other major pension funds." [page 49]

"I have reviewed the background documentation, the Rosen Report and the Response, and I am satisfied that all three individuals acted appropriately and in good faith. I am also of the opinion that the Boards of Borealis and OMERS acted appropriately and upon sound legal advice, and that there was no conflict of interest in the roles played by the executives, and particularly not by Latimer who appears to have been singled out in the newspaper articles. Moreover, and most importantly, there is no evidence of any improper dealings by the three individuals or their unjust enrichment at the expense of either OMERS or Borealis." [pages 49-50]

"As noted above, there is no question that the three executives profited handsomely in a short period of time by the purchase and sale of their shares in Borealis. However, as pointed out above and as detailed in the background documents, these were the result of corporate actions taken for sound commercial reasons, and all overseen by the legal advisors involved, among whom were some of Canada's leading commercial lawyers." [page 50]

"I am satisfied, certainly in terms of OMERS' conflict policy in 2001, that Latimer did not have a conflict of interest with respect to Borealis because, at that time, he had no reason to favour Borealis because he was not 'an affected individual who [has] a direct or indirect interest in any of these persons or parties to which this party is directly or indirectly related'." [page 59]

"I am satisfied on all of the evidence...that Latimer did not have a conflict of interest with respect to the McKinsey Report and the decision to outsource to Borealis. ... Latimer's share transactions, as detailed above, and their financing, were all in accordance with the Borealis Employee Share Plan, and were perfectly appropriate. In all of his involvement with OMERS and BREMI, Latimer could not have predicted that there would be a relatively quick repatriation by OMERS, and that he, along with his fellow senior executive officers would profit handsomely in a short period of time by the sale of their shares back to OMERS. It is simply not credible to assign that kind of foresight to Latimer." [page 60]

"The current Conflict Policy would not have changed my conclusion as to Latimer, even on the 'appearance of conflict' point and, it should be noted, that the appearance of conflict is not by itself a violation of the OMERS' Policy. What is critical, as the Policy underlines, is appropriate disclosure and monitoring...While my conclusion is that Latimer did not have a conflict of interest and acted appropriately throughout, particularly under the guidance and oversight of OMERS' presiding Executive Officers, Gunn and Richmond, I am of the opinion that the OMERS' Board and its Executives ought to have taken greater care to have avoided the appearance of conflict of interest. More particularly, BCC's Board

> ought to have paid heed to the concerns of its Executive Chairman ... that the transactions being negotiated between OMERS and Borealis involved OMERS' employees who would be joining Borealis. Accordingly, the Board ought to have been concerned "with reputational issues which could adversely affect Borealis in the market place. ... I want to emphasize again that Latimer did not have an actual conflict of interest with respect to the particular transactions and acted appropriately and with integrity throughout." [page 61]
>
> "I am satisfied on all of the evidence that no improper payments were received by Borealis or its shareholders with respect to the 2002 BREMI MSA or with respect to the 2004 repatriation of the management of its real estate assets by OMERS nor is there any evidence that the transactions were other than at commercially reasonable levels." [page 62]
>
> "I am also satisfied that no improper payments were made directly or indirectly to the Borealis executives as a result of either transaction. Moreover, I am satisfied that Nobrega, Collier and Latimer behaved properly throughout and that their purchase and sale of the shares in Borealis were all in accordance with Borealis' Employee Share Purchase Plan and in accordance with what flowed from OMERS' repatriation of its real estate assets. ...Their profits were appropriate in the circumstances of the case." [pages 62-63]

An Underlying Principle Of Settlement – Improving Communication In The Working Relationship Between CUPE Ontario And OMERS/Borealis

> "...I would note at the outset that there was, and continues to be, two representatives of CUPE on the Board of OMERS who are privy to all Board actions including, most importantly, major transactions and related party transactions. Moreover, all relevant committee reports come to the Board for report and approval. ... Notwithstanding the Board representation, it is fairly clear that if there had been a more open and responsive disclosure and related party policy in place at the time of the Borealis, BREMI and share purchase transactions, it is likely that serious discussion would have taken place between the parties and that the current litigation/mediation would have been avoided. And, as always, in cases of lack of timely and/or full disclosure, a sense of unease and distrust arises in terms of questions unanswered. It seems clear to me that that is what occurred here. I am satisfied, as will be set out below, that there are now practices and procedures in place that will ensure an open and regular flow of information to the stakeholders on a timely basis." [pages 13-14]
>
> "The details of the transactions between OMERS and Borealis are set out in the Report as is the involvement of Collier, Latimer and Nobrega and the share transactions that involved them. Suffice it to say that given the contracting out to Borealis and the relatively quick repatriation by OMERS, the share purchases by the three Senior Officers and the relatively quick buy back by OMERS which allowed them to make significant profits, all raised serious questions of corporate governance and conflicts of interest. As my Report indicates, there were sound commercial reasons for the transactions undertaken by OMERS, and I could find no wrong in the conduct of Collier, Latimer and Nobrega. But the plan sponsors and stakeholders were left largely in the dark as to the essential underlying facts.

The questions that arose out of intensive coverage in the press were left unanswered. In those circumstances, it was to be expected that serious questions would be raised and suspicions of both corporate and personal wrongdoing engendered. An atmosphere of distrust and suspicion was allowed to prevail. As I have indicated, full and open disclosure and a proper communication process would likely have avoided much, if not all, of that....I am confident that processes and procedures are now in place that would avoid a similar circumstance." [pages 15-16]

"Looking at subsequent Annual Reports and subsequent regular information materials sent to stakeholders such as BEYOND, which provides a current update of all major matters within OMERS, I am satisfied that if the Borealis transaction were to occur today, there would be appropriate disclosure to the stakeholders." [page 17]

"The most recent Policy adoption by the OAC, and one of the most important, is the Special Transactions Review Policy (the Special Policy) that was confirmed on January 20, 2011, to become effective on April 1, 2011...I have reviewed the Special Policy and have found it to be a very comprehensive document that is in accordance with good governance standards. I would also call attention to section 12 which, apart from the requirements set out in the Policy, provides additional safeguards for what are referred to as Designated Special Transactions. These Transactions relate to dealings with Directors and officers, or former Directors and officers, among others, of the OAC. These Designated Transactions fall into two categories:

(i) Designated Investment Transactions; and

(ii) Designated Outsourcing Transactions." [pages 22-23]

"Also important is section 16 which deals with Reporting and Disclosure which, apart from reporting to the Investment Committee and to the Audit Committee, requires that each such designated transaction that has been entered into that has a value in excess of $5 million be set out in the OAC's Annual Report." [page 23]

"OMERS undertook a governance reform project in 2007/08 which I will refer to in more detail below. As part of that reform project, the OMERS' Board approved a new Governance Manual. I will not refer in detail to the Manual as I understand that each of the parties has a copy (see http://www.omers.com/Plan Governance/ Administration Corporation/Corporate Governance Documents.htm). Suffice it to say that I found it a very thorough and comprehensive document, and one that indicates that the matters arising out of the FSCO Report and the subsequent Governance Reform Project were taken very seriously by the OMERS' Board. I am satisfied that processes are now in place that should ensure strong governance practices and avoid the types of difficulties that arose out of the OMERS/Borealis transactions." [pages 66-67]

"In conclusion, I am satisfied that there are processes and procedures in place that give OMERS a very sound and thorough corporate governance structure. Most importantly, I am satisfied that the senior individuals in place who are responsible for the execution of governance matters are very experienced and appreciate the critical importance of proper governance to an institution such as OMERS." [page 69]

Key Terms Of The Settlement

The settlement of the action includes:

(a) All parties accept the Report and do not contest its contents. The OAC Board must also receive and approve the Report, which it did in August 2011;

(b) The parties agree to seek an Order on consent approving all terms of settlement;

(c) settlement of the costs payable to MacKinnon (CUPE Ontario) in accordance with the Reasons of the Court of Appeal of December 11, 2007 which found that the OMERS Plan is responsible for the reasonable costs incurred by the plaintiff in pursuing this action;

(d) the payment by OMERS of the plaintiff's costs and professional fees in the action and the mediation shall be the sole monetary payment of the settlement made by any defendant;

(e) an agreed addendum to the Report or separate Report which I have prepared to recommend the settlement to the Superior Court of Justice; and

(f) an Order of the Superior Court of Justice approving the settlement and dismissing the action.

Recommendation To The Court

I believe that the settlement will improve the working relationship between CUPE Ontario and OMERS.

The settlement is a fair and reasonable resolution of the litigation.

I believe that the overall terms of the settlement are fair to, and are in the best interest of, all representative members and stakeholders of the OMERS Plan and that the Plaintiff, Wyman MacKinnon has properly and appropriately represented that group.

As a result, I recommend that the settlement be approved by the Superior Court of Justice.

As agreed by the parties in their Settlement Agreement, this letter forms part of my Report and should be read with it.

Yours very truly,

SM Beck

Stanley M. Beck, Q.C.

Confidential

Mackinnon and OMERS et al.

REPORT

This Report is consequent upon a mediation between Wyman Mackinnon (Mackinnon) and Ontario Municipal Employees Retirement Board (OMERS), Borealis Capital Corporation (BCC or Borealis), Borealis Real Estate Management Inc. (BREMI), Ian Collier (Collier), R. Michael Latimer (Latimer) and Michael Nobrega (Nobrega). OMERS is one of Canada's largest pension plans and serves as trustee of the Ontario Municipal Employees Retirement System Pension Fund (the OMERS Fund). Mackinnon is the representative plaintiff and is a member of the Canadian Union of Public Employees, Local 4705 (CUPE). CUPE members comprise close to one-half of OMERS' membership and a substantial portion of OMERS' retirees.

The claim alleges breaches of trust, fiduciary duty and duty of care by OMERS, its related corporations and the individual defendants.

The background to the claim, as set out in the Plaintiff's pleading, is as follows: In 2001, OMERS became interested in branching out from traditional pension fund equity investment and acquired a minority interest in BCC with a view to investing in the infrastructure area. The three individual defendants were directors and officers of BCC, as well as being employees of OMERS and/or its related parties. However, the Court of Appeal, in Mackinnon v. Ontario Municipal Employees Retirement Board (2007) 88 O.R. (3d) 269 (C.A.), held that Collier and Nobrega were not agents within s. 22 of the Pension Benefits Act and thus did not owe the fiduciary duties set out therein.

> . . . Section 22(5) is clear: to be an agent, the person must be employed by the administrator of the pension plan or fund. Collier and Nobrega were not employed by the OMERS Board at the relevant times nor is it alleged that they were.

The claim essentially alleges that the transfer by OMERS of the management of its real estate assets to BCC in December, 2002, was commercially unnecessary and was at a grossly understated value given the market value of the real estate involved. Furthermore, it is alleged that BCC charged OMERS fees that were excessive. As to the individual defendants, the allegation is that the decision to outsource real estate management services was taken by an inadequately informed OMERS' Board and was driven by the compensation interests of Nobrega, Collier and Latimer. The allegation is that the compensation received by the individual defendants in the form of salary, loans and share buy backs were at inflated levels and the defendants were unjustly enriched. Latimer was said to have a conflict of interest in advising both the OMERS' and BCC Boards.

A brief outline of the essential facts with respect to OMERS, BCC, BRE, BREMI and the individual defendants is as follows:

OMERS acquired some 33% of BCC in 2001. This was part of a long-term strategy to invest away from traditional equity and debt portfolios into what are known as "alternative assets", such as private equity, real estate and infrastructure. OMERS also invested directly in infrastructure assets, such as Enwave and the Detroit River Railway Tunnel, among others. OMERS' interest in private equity investments came through a new Canadian merchant bank, Dorset Partners Inc. (Dorset), which ultimately became Borealis in July, 2001. Among the other major investors in Dorset/Borealis were the Canadian Pension Plan Investment Board (CPPIB), TrizecHahn and Credit Suisse First Boston (CSFB), as well as three major Canadian banks and three major Canadian life insurance companies.

Collier, who had been OMERS' Vice President, Merchant Banking and Private Placements, left OMERS to become a CEO of Dorset (and ultimately Borealis) in March, 2001. Consistent with Borealis' policy, which was the accepted practice in the infrastructure/private equity area, Collier was required to invest $1.4 million in Borealis common stock. Commensurate with its investment, OMERS had two seats on the Borealis Board and membership on all its key committees. As of April, 2002, Borealis' executive officers consisted of Collier as CEO, Nobrega as President and Gerard McGrath as CFO. In short, OMERS and Borealis were closely linked related corporations. Latimer was Managing Director of OMERS

Realty Corporation (ORC) until 2002, when he became BREMI's President and CEO.

Among the series of transactions complained of were the transfer of OMERS asset management operations to BREMI effective June, 2002, for $11 million (the BREMI asset management transaction or BREMI AMT), BREMI's management of OMERS office and retail properties from June, 2002, to February, 2004, followed by the repatriation of OMERS asset management function in February, 2004, which involved the acquisition of all the outstanding BCC shares by OMERS for $49.9 million, and the transfer of the asset management functions from BREMI back to OMERS.

In October, 2001, OMERS, which held 20% of Oxford Properties Group (Oxford), purchased 100% of Oxford shares at a 34% premium over their 30-day average closing price that year. The purchase price for Oxford, one of Canada's largest property companies that owned or managed some $4 billion of real estate, was $1.5 billion.

Prior to the commencement of the mediation, the parties entered into a Settlement Process Agreement (the SPA) on April 25, 2008, which was filed with the Court. Paragraph 3 of the SPA sets out the main issues on which the parties wished a mediation to focus. Those issues are as follows:

(i) Were all the amounts received by the Borealis executives between 2001-2005, including salary, bonus, dividends or other compensation, at commercially reasonable levels?

(ii) What were the amounts received by Borealis or its shareholders in respect of the 2002 BREMI MSA contract and 2004 repatriation transactions and were such amounts at commercially reasonable levels?

(iii) Were any improper payments made directly or indirectly to the Borealis executives as a result of either transaction?

(iv) What were the flows of monies resulting from each of the two transactions?

(v) What costs of Mackinnon shall be paid by the defendants?

During the mediation in November, 2009, the parties entered into a Parameters for Settlement document (the Parameters) on November 27, 2009. This Report is pursuant to the Agreed Approach as contemplated by the Parameters, and which was signed as of May 5, 2010. The Agreed Approach is as follows:

Agreed Approach to the Report contemplated by the Parameters for Settlement Document of November 27, 2009 ("Parameters")

The parties to the settlement process agreement agree to give the following further parameters to the mediator, Mr. Stanley Beck, Q.C. (the "Mediator"), in order to advance the mediation to a conclusion:

1. The Mediator shall proceed to prepare the draft report contemplated by the Parameters and as set out below.

2. As part of the process, the Mediator will review the policies and practices of OMERS Administration Corporation with respect to related party transactions, conflicts of interest, contracting with or outsourcing to former employees, and executive compensation, which policies will be made available to the parties and the practices described to them in the draft report. The Mediator will determine if such policies and practices are in accordance with good governance principles for pension funds and whether they address circumstances such as transpired in the Borealis transactions in 2002 and 2004. The Mediator will, in the draft report, if he deems appropriate, recommend to OMERS that it prepare policies or practices, or revise its existing policies or practices, to address these issues ("Recommendations").

3. If the parties are in agreement on the draft report, including the Recommendations, and subject to approval by the OMERS Administration Corporation Board of Directors of policies and practices which reasonably reflect the Recommendations, the parties will request that the Mediator finalize the Report.

4. Should the Mediator conclude that he has found no evidence of breach of fiduciary duty, wrongdoing or improper behaviour on the part of the Individual Defendants, the plaintiff and CUPE agree not to contest such findings.

5. The parties will co-operate in submitting the Final Report to the Court and supporting its adoption for the purposes of settlement approval, and the Final Report will be made public, after it is filed with the Court.

6. The parties will attempt to resolve the claim of the Plaintiff to costs payable by OMERS (including legal fees, disbursements, expert report fees, reasonable travel and related out-of-pocket expenses and taxes) independently of the Mediator. In the event that agreement is not reached, the Mediator will assist the parties to reach a resolution, or resolve any impasse, subject to approval by the Court.

7. Save as set out herein, the mediation shall continue to be conducted pursuant to the terms of the Settlement Process Agreement of April 25, 2008 ("the SPA") and the Parameters. The parties shall prepare and sign a settlement agreement as contemplated by paragraph 11 of the SPA at the appropriate time.

8. OMERS will proceed to seek Board approval of this agreement.

9. This agreement will be kept confidential by the parties, as provided in the Settlement Process Agreement and Parameters.

Pursuant to the Parameters, this Report will focus primarily on the question of whether there was any evidence of "breach of fiduciary duty, wrongdoing or improper behaviour" on the part of the three individual defendants. Arising out of that issue, of course, is the conduct of the OMERS' Board and its executives with respect to its transactions with Borealis.

In writing this Report, I have received and reviewed all relevant documents relating to the Borealis purchase and repatriation and share purchases, including OMERS Board minutes, the McKinsey Report, the Towers Perrin analysis and report and a fair market valuation of the Borealis shares prepared by LECG. In addition, I received and reviewed witness statements by OMERS' former senior executive officers, Richmond and Gunn, as well as various letters, opinions and memoranda relevant to the transactions. There was also extensive documentation with respect to OMERS/Borealis real estate portfolios and the decision to outsource real estate management. I have had full co-operation from OMERS' executives and extensive discussion and documentation with respect to its revised governance, related party, disclosure and communications policies.

The plaintiffs obtained a report from a forensic accountant, Rosen and Associates (Rosen or the Rosen Report), which contains a comprehensive summary of the Borealis transactions upon which the plaintiff relies. It identified "major concerns" with respect to those transactions and the conduct of the individuals involved. Counsel for OMERS and the individual defendants filed a response to Rosen (the Response). The Response referred to the key background documents on which it was based and which were filed with the mediator (the Key Document Compendium or the Compendium). This Report will be framed in the context of the Rosen Report and the Response, as they set out the main issues in contention.

Before dealing with Rosen and the Response, it is important to review some of the background facts as emphasized in both documents.

1. OMERS' desire to diversify out of traditional debt and equity investments led it to infrastructure investing with co-investors between 1997-2001. OMERS was assisted by Borealis Fund Management Ltd. (BFML), which also carried out management services with OMERS for the infrastructure assets. OMERS acquired a majority interest in BFML in 1998.

2. In 2000, OMERS joined other Canadian institutional investors in creating a private equity fund managed by Dorset Partners Inc. (Dorset). The Dorset Fund subsequently became the Borealis Fund. Other major investors in the Dorset Fund were TrizecHahn Corporation (Trizec), Credit Suisse First Boston (CSFB), the Canadian Pension Plan Investment Board (CPPIB), and major Canadian banks and life insurance companies.

3. Consistent with industry practice in aligning the interests of senior executives with a company's investments, Collier, Nobrega and Latimer were all required to invest in Borealis.

4. Collier resigned from OMERS to become CEO of Borealis in March, 2001. At the same time, BFML changed its name to Borealis Infrastructure Management Inc. (BIMI).

5. OMERS' executives also became senior board members and executives of Borealis.

6. In 2001, OMERS greatly increased its real estate holdings by purchasing the equity of Oxford Properties Group (Oxford) and became one of Canada's largest real estate organizations. To facilitate in structuring the management of its real estate, OMERS retained the prominent consulting organization, McKinsey & Co. (McKinsey).

7. McKinsey set out the following structural objective for OMERS:

> OMERS' objective is to create an ownership structure and business model that are "simple and conventional", as well as strategically and financially attractive. This business model will allow OMERS to look more like a traditional pension fund - focused on its core competency ... while enabling best in class players to operate the investments.

8. Borealis' concern at the time was to decide whether real estate asset management was a good fit with the management of infrastructure and private equity assets. Borealis, quite properly, was concerned about possible conflict of interest, with OMERS being a major shareholder in Borealis, with management of its real estate assets. To this end, BCC received an opinion from Donald Lenz (Lenz) of Brompton Securities (Brompton), who advised that the proposed real estate management transaction was fair to Borealis. Ed Waitzer, a former Chairman of the Ontario Securities Commission

and a senior partner of Stikeman Elliott LLP, provided a written opinion to BCC to the effect that "We have no reason to believe that the negotiations were not conducted in an informed and arms-length manner."

9. As a result of the above, OMERS consolidated its real estate management in Borealis in a new wholly-owned subsidiary, Borealis Real Estate Management Inc. (BREMI). The management force at BREMI essentially consisted of 46 employees transferred from OMERS or its affiliates to BREMI. BREMI paid $10.8 million to OMERS for the right to manage $7.4 billion of OMERS' real estate assets for a five-year period.

10. Latimer, who was the Managing Director of OMERS Realty Corporation, was then hired by Borealis, effective June 2, 2002, to serve as President of BREMI and Chief Operating Officer of Borealis. Latimer resigned his position at OMERS and was required to make an investment of $1.4 million in Borealis shares.

11. The asset management services to be provided by Borealis were set out in a specific management agreement, the BREMI MSA. BREMI was then managing some $7.4 billion of OMERS property investments.

12. As of 2004, each of Nobrega, Collier and Latimer owned 6.8% or some 1,864,045 common shares in BCC.

13. In December, 2002, the Kilmer Group (Kilmer), the private holding company of Lawrence Tanenbaum (Tanenbaum), acquired equity from TrizecHahn and CFSB to become a 12% owner in Borealis and took two seats on the Borealis Board.

14. In 2003, Paul Haggis (Haggis) became the new CEO of OMERS. Following the advice of its independent advisors, the OMERS' Board increased its commitment to alternative assets from 20% to 35%, which involved the reallocation of more than $4.5 billion to alternative assets, primarily in infrastructure and private equity.

15. An internal reorganization in February, 2004, resulted in the following three (of four) new groups:

1. Borealis infrastructure, led by Nobrega.
2. Borealis private equity fund and OMERS Capital Partners, led by Collier.
3. Oxford Properties Group, managing all OMERS real estate, led by Latimer.

16. The reorganization required financial settlements to acquire the ownership interests of Borealis shareholders as follows:

Purchase of CPPIB shares	$19.2 million
Purchase of Kilmer shares	$15.7 million
Purchase of Management's Shares (Collier, Nobrega & Latimer)	$5 million each $15 million
Total Acquisition Price	$49.9 million

The above facts are the context for the four questions to be answered in this Report arising under the terms of the SPA.

<u>Disclosure</u>

A primary concern of the plaintiffs is to ensure adequate communication and full disclosure, insofar as good business practice and confidentiality requirements permit, to ensure full and open disclosure by OMERS to its stakeholders, particularly CUPE. I would note at the outset that there was, and continues to be, two representatives of CUPE on the Board of OMERS who are privy to all Board actions including, most importantly, major transactions and related party transactions. Moreover, all relevant committee reports come to the Board for report and approval.

Notwithstanding the Board representation, it is fairly clear that if there had been a more open and responsive disclosure and related party policy in place at the time of the Borealis, BREMI and share purchase transactions, it is likely that serious discussion would have taken place between the parties and that the current litigation/mediation would have been avoided. And, as always, in cases of lack of timely and/or full disclosure, a sense of unease and distrust arises in terms of questions unanswered. It seems clear to me that that is what occurred here. I am satisfied, as will be set out below, that there are now practices and procedures in place that will ensure an open and regular flow of information to the stakeholders on a timely basis. I am reasonably confident that if the extensive disclosure that has been made in this litigation, and to me as Mediator, had been made, at least in substantial part, at the time of the transactions concerned in this case, it is unlikely that this litigation would have been commenced. I am aware that Note 14 to OMERS' financial statements for 2002 disclosed the Borealis transaction and some outline of the financial details of the MSA.

As for myself and the background for my Report, I would note that I have received full disclosure of all information and documents relevant to this case. More particularly, I have had access to 32 binders of information and documents delivered by the defendants to the plaintiffs which, in effect, constitute the Defendants' Joint Mediation Brief. I received all other information that I required to prepare my Report and found the OMERS Executives and their counsel to be very open and helpful.

I was also provided with a Compendium of Key Documents from the Defendants' Joint Mediation Brief. I also received a copy of the FSCO Report and the Defendants' Response to the FSCO

Report. The two key background Documents upon which I relied were the Rosen Report and the Defendants' Response to Rosen. I also received a Brief of OMERS Corporate Governance Documents, as well as further documentation in subsequent meetings with OMERS Vice-President and General Counsel. I have also been provided with a copy of OMERS Communication Policies and Practices dated January 5, 2011, as well as OMERS Corporate Vision Objectives and Operating Principles which I regard as relevant to this Report. In short, I have received very full disclosure and, most importantly, full co-operation from OMERS Senior Officers with respect to my requirements for this Report.

The details of the transactions between OMERS and Borealis are set out in the Report as is the involvement of Collier, Latimer and Nobrega and the share transactions that involved them. Suffice it to say that given the contracting out to Borealis and the relatively quick repatriation by OMERS, the share purchases by the three Senior Officers and the relatively quick buy back by them which allowed them to make significant profits, all raised serious questions of corporate governance and conflicts of interest. As my Report indicates, there were sound commercial reasons for the transactions undertaken by OMERS, and I could find no wrong in the conduct of Collier, Latimer and Nobrega. But the plan sponsors and stakeholders were left largely in the dark as to the essential underlying facts. The questions that arose out of intensive coverage in the press were left unanswered. In those circumstances, it was to be expected that serious questions would be raised and suspicions of both corporate and personal wrongdoing engendered. An atmosphere of distrust and suspicion was allowed to prevail. As I have indicated, full and open disclosure and a proper communication process would likely have avoided much, if not all, of that. As will be set out more fully below, I am confident that processes and procedures are now in place that would avoid a similar circumstance.

The Annual Report for 2002 noted that the annualized four-year return had fallen sharply behind the four-year funding requirement and that management was reviewing the asset mix policy "ahead of the normal review cycle, to determine what adjustments may be warranted to improve returns." It was in that context that the decision was made to outsource property management to Borealis. Note 14 of the 2002 Annual Report is titled Related Party Transactions. In it, the Borealis transaction is referenced as follows:

> ....Effective June 2002, OMERS sold the asset management business of OMERS Realty Corporation to the investee (Borealis) for cash consideration of $11 million.
>
> The Asset Manager (Borealis) provides management services for assets that total $7,490 million as at December 31, 2002. Payments to the Asset Manager during the period were $12 million and as at December 31, 2002, $4 million was due to the Asset Manager and has been included in other investment liabilities.
>
> These transactions are in the normal course of operations and are measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties.

Looking at subsequent Annual Reports and subsequent regular information materials sent to stakeholders such as BEYOND, which provides a current update of all major matters within OMERS, I am satisfied that if the Borealis transaction were to occur today, there would be appropriate disclosure to the stakeholders. I enclose the Fall 2010 copy of BEYOND to give some idea of the type of disclosure that is now provided by OMERS (attached as Appendix A). That issue deals with OMERS, through Oxford Properties Group, entering into a joint venture to develop Manhattan's Hudson Yards, with an initial equity investment of $75 million and an option to invest up to an additional $400 million as the lead investor.

Another notable feature of the 2003 Annual Report is that it was the first Report to contain a section called Management Disclosure and Analysis (MD&A). This is a required feature of the annual reports (and, in some cases, quarterly reports) of public companies. It is considered an essential disclosure document that deals with the major events of the quarter and the year, including a Risk section. An MD&A is now found in each of OMERS Annual Reports. The 2003 MD&A is instructive of the type of disclosure that is now accepted practice, as well as identifying the changes that were then being implemented at OMERS. The 2003 MD&A read, in part, as follows:

> To implement the new asset mix policy and to ensure the organization runs as effectively as possible, with clear lines of accountability, the OMERS Board announced in early 2004 that it will restructure part of

> the investment organization by creating distinct companies to implement our strategies in private equity, infrastructure and real estate assets.
>
> All infrastructure assets will now be managed by Borealis Infrastructure, all real estate operations will be consolidated under Oxford Properties Group, and all private equity investments will be managed by OMERS private equity group. Publicly traded equities and fixed income assets will continue to be managed in house by our investment staff.
>
> These groups will report directly to the President and CEO and are accountable to the Board ....

At page 20 of the MD&A, there is a discussion of the Borealis repatriation transaction, its cost, and the rationale for it, including the expectation of recouping the net cost of the purchase in approximately one year.

Communications Policy

The *OMERS Act, 2006* created autonomy for OMERS and set up a bi-cameral model consisting of the OMERS Administrative Corporation (OAC) and the Sponsors Corporation (SC), with specific roles and responsibilities as to the affairs of OMERS. In March, 2010, the OAC developed a new Communications and Information Policy (the CI Policy) (attached as Appendix B). The CI Policy sets out a broad ranging set of policies and initiatives under which the OAC is to communicate with plan participants, including sponsors and stakeholders, Government and pension and investment industry leaders.

It is the stated purpose of the information program to "provide appropriate information in a timely manner" to the relevant constituencies. It is important to note that the Policy states that "in addition to a proactive communication program, the OAC will use a clear and transparent information program to respond to requests for information from Plan participants, individual sponsors and stakeholder groups. The information program will provide appropriate information in a timely manner to meet the needs of these constituencies." A copy of the CI Policy is available from the OAC.

The OAC has a separate policy document dealing with Disclosure of Board decisions (Board Policy) (attached as Appendix C). The Policy notes that the OAC Board is accountable to members and employers of the OMERS Pension Plans and that dissemination of information regarding OAC Board and Committee decisions is essential. Most importantly, the document states that:

> As soon as practical following the approval of the minutes of an OAC Board or Committee meeting, the OAC will publish in summary form key decisions made by the OAC Board at that meeting, subject to the OAC Board's legal obligations and duties regarding Confidential Information.

In addition to the above, there is a separate Financial Management and Reporting Policy (Financial Policy). The background statement notes that the Financial Policy must "provide timely financial information consistent with accounting and regulatory requirements and be supported by appropriate internal controls and systems and, finally, the OAC's financial statements must be subject to independent external audit and be approved by the Board prior to publication". All of the disclosure policies mentioned above are available from the OAC.

An OMERS document dated January 5, 2011, titled Communication Policies and Practices sets out how extensive OMERS communications now are. The most important aspect is the listing of the multiple channels through which OMERS now communicates on a regular basis. Those channels are as follows:

Membership Publications

Targeted Stakeholder Meetings

Call Centre (Calls, Correspondence)

Website

Annual Report

Corporate Publications

Semi-Annual Information Meetings

News Releases

There are now 11 Newsletters issued annually to members, employers and retirees, with increased focus on investment results, strategy and acquisitions. The Report to Members, which is now included with the Newsletters, is, in effect, a mini-annual report. The figures with respect to disclosure indicate the extensive change that has taken place at OMERS. In 2002, there were 600 stakeholder meetings; in 2009, that figure was 1,203. In 2002, there were 6,400 e-mails/letters/faxes, and in 2009 the number was 21,090.

The OMERS website includes the Annual Report, news updates, a governance section and OAC Board meeting summaries, including disclosure of Board decisions. In 2010, there were 822,631 individual users of the OMERS website. Perhaps most importantly, there are two very broad-ranging information meetings each Spring and Fall, at which the executive Officers of OMERS and Board representatives are available to discuss financial results, board policies and a general business update.

The CI Policy is particularly relevant to the concerns that arose at the time of the Borealis transaction. The following statement from the Purpose clause of the CI Policy sets out the attitude of the OAC, its senior executives and Board to full and open disclosure:

> OAC Board and Committee matters are generally confidential, however, the OAC Board is accountable to the members and employees of the OMERS Pension Plans for its decisions. The OAC Board believes that dissemination of information regarding OAC Board and Committee decisions affecting the Plans assist in meeting this objective....

> As soon as practical following the approving of the minutes of an OAC Board or Committee meeting, the OAC will publish in summary form key decisions made by the OAC Board at that meeting, subject to the OAC Board's legal obligations and duties regarding Confidential Information.

My meetings with senior OAC officials left me in no doubt that open and frank dissemination of significant OAC policy decisions is taken very seriously and is at the forefront of ongoing OAC management.

The most recent Policy adoption by the OAC, and one of the most important, is the Special Transactions Review Policy (the Special Policy) that was confirmed on January 20, 2011, to become effective on April 1, 2011. I attach a copy of the Special Policy as Appendix D. Equally important is the Federal Investment Regulations (FIR). Particular note should be taken of section 12 of FIR which deals with an investment in a related real estate corporation (holding more than 30% of the votes for the directors of OAC) and sections 15 and 16 which define and deal with related party transactions. Section 16 prohibits the entering into a transaction with a related party as defined in Schedule 3(iii), section 1. I have reviewed the Special Policy and have found it to be a very comprehensive document that is in accordance with good governance standards. I would also call attention to section 12 which, apart from the requirements set out in the Policy, provides additional safeguards for what are referred to as Designated Special Transactions. These Transactions relate to dealings with Directors and officers, or former Directors and officers, among others, of the OAC. These Designated Transactions fall into two categories:

(i) Designated Investment Transactions; and

(ii) Designated Outsourcing Transactions.

Also important is section 16 which deals with Reporting and Disclosure which, apart from reporting to the Investment Committee and to the Audit Committee, requires that each such designated transaction that has been entered into that has a value in excess of $5 million be set out in the OAC`s Annual Report.

Settlement Process Agreement Issues

Issue One: Were all amounts received by the Borealis executives between 2001 - 2005, including salary, bonus, dividends or other compensation, at commercially reasonable levels?

Rosen is inconclusive in his findings with respect to the remuneration (salary, bonuses, incentive plans and other benefits) of the three individual defendants. He does note that there were significant increases upon the transfer of OMERS asset management function to BREMI in 2002 and upon repatriating that function back to OMERS in 2004. He states that the remuneration during the relevant times "may" have been excessive in comparison to:

(a) senior executives at comparable pension plans; and

(b) executives situated in comparable industries as OMERS.

Rosen sets out the annual remuneration of the individual defendants from 2001 to 2005. In that period, Nobrega increased from $383,399 to $1,243,595 upon becoming President and CEO of Infrastructure at OMERS in 2004. Collier increased from $346,609 in 2001 to $761,179 as BCC's CEO, and then to $811,975 and $2,375,793 in 2005 as OMERS' President and CEO of Merchant Banking. However, the $2,375,793 figure includes termination pay of some $1,600,000, which was two times' Collier's annual salary in accordance with his employment agreement. If the $1,600,000 is backed out, it leaves Collier with a 2005 salary of $775,793, which was less than he received in 2004. Latimer, as Managing Director of OMERS Realty Corporation, as well as President and CEO of BREMI, received $746,193 in 2003, and $1,252,367 in 2005, having become President and CEO of Oxford in 2004.

There is no question that the three executives received significant remuneration increases in the years noted, although they were also years of significant movement with respect to OMERS asset management functions, including being repatriated back to OMERS in 2004. The defendants noted that their annual compensation was reasonable relative to the compensation earned by the senior executives at the Ontario Teachers Pension Plan

(OTPP or Teachers). Rosen is critical of the comparison with OTPP, noting that in the relevant years, OTPP's invested assets were more than twice those of OMERS in each of the years 2001 to 2005. Mr. Rosen compares the OMERS' executives' compensation with that received by senior executives at CPPIB, which he considers a more relevant comparison.

I would note that OMERS' investment assets were significantly greater than those of CPPIB in the years 2001-2004 and only fell behind CPPIB in 2005. Rosen concludes that comparison by stating that "The remuneration received by the Individual Defendants might be considered to have been excessive ..." Rosen then compares the remuneration of the three defendants to that received by senior executives at OMERS and notes that their remuneration was in the area of 10-15% higher and in some cases 40-60% higher depending on the executive chosen and the particular year. Rosen also notes that the defendants, while employed with BCC, were members of BCC's Employee Investment Plan, which gave them the ability to acquire shares at a preferred price and to finance their share purchases with employee loans (which was true of all BCC executive employees).

Rosen also notes that in 2002 and 2003, the individual defendants received annual compensation which was higher than that of OMERS' two most senior officers, its President and CEO, Dale Richmond (Richmond), and its Chief Investment Officer and Senior Vice President, Tom Gunn (Gunn). The excess over the CEO, Richmond, ranged between 10 and 20%, and over Gunn was as high as over 40%. Rosen also comments that as senior officers and employees of Borealis, they were able to participate in BCC's Employee Investment Plan, which allowed them to acquire shares in BCC at a price of 0.75 per share, one-third less than paid by other shareholders of BCC, and to finance their share purchases with employee loans of up to 90% of the acquisition amount. (I will return to the individual share purchases and resale later in this Report.)

As Rosen notes, in 2003, BCC retained Towers Perrin (TP), a prominent compensation firm, to review its pay levels. TP found, among other things, that the compensation for each of the individual defendants in 2003 was greater than the 75th percentile of "Major Pension Funds". It is also important to note, however, that in the relevant years, BCC had an independent compensation committee composed of John MacNaughton (MacNaughton), the President and CEO of CPPIB, Dale Lastman (Lastman), a prominent lawyer and a representative of the Tanenbaum/Kilmer Group, as well as the internal officers, Gunn and Latimer. MacNaughton and Mark Weisdorf (Weisdorf), CPPIB's Executive Vice-President, were both on the BCC Board that approved the compensation of each of the defendants.

Also relevant, as the Response notes, is that with the acquisition of Oxford, there was a substantial expansion of Borealis in 2002 in terms of its investments and its staff. It was that that led to the retaining of TP in 2003 to review its executive compensation. What Rosen fails to note was that TP emphasized the combined executive and investment roles that the three executives performed at Borealis and recommended that the Borealis Board "Consider a salary increase ... to reflect the combined executive and investment roles ...". TP's comparison was not just with the executives at OMERS, but was with executives performing single roles in comparable industries. And, as noted, OMERS' real estate assets had grown to $7.4 billion during this time. The only actual salary increase that Collier and Nobrega received was in 2004 after the acquisition of Borealis. The increase was some 14%, from $350,000 a year to $400,000 a year. Latimer's base salary for managing OMERS' now $7 billion real estate portfolio, was $600,000, which is the same base salary (as well as the same bonus arrangement) received by his predecessor at Oxford, Stuart Smith. That, arguably, is the best indication of the fairness of Latimer's remuneration.

Also not referred to by Rosen was the fact that the base salaries of the individuals did not change over a five-year period. What did change, however, was the discretionary bonus that was specifically determined by the Boards of Borealis/OMERS. As noted, the Borealis Board included some of Canada's most sophisticated pension/financial executives.

It was the bonus determination for each of the three defendants that moved their salaries up sharply. While it is true that the bonuses received by each of the three individuals increased their total compensation substantially, it is equally true that their achievements in terms of return on infrastructure assets, private equity assets, and on real estate assets, were very good in each of the relevant years. It was those factors that the OMERS' Board took into consideration after the repatriation of Borealis in 2004. The Response also emphasizes that the three executives were paid substantially less than their counterparts at OTPP. Rosen notes, however, that OMERS' assets were substantially less than those of OTPP and that there ought to be more of a linear relationship between total assets under management and compensation paid.

While there is obviously some relationship, experience shows that it is clearly not a linear one. Moreover, as the Response points out, even if the comparison were linear by size, the OTPP compensation is a valid comparison, as the OMERS executives were paid slightly less than half the level of compensation paid to Teachers' executives when the OMERS' total assets were approximately half the level of Teachers' at that time. For 2005, OMERS' total assets were still less than half those of OTPP, but the OMERS' executives were paid less than one-third of what the comparable executives at Teachers were paid. In addition, and I consider this particularly important, the return on the three classes of assets, real estate, infrastructure and private equity were excellent for OMERS in each of the years under comparison. For the two years of 2004 and 2005, the average return exceeded 25% per year.

My conclusion is that the level of compensation paid to the three individual defendants was reasonable on both a comparative and performance basis. The actual dollars paid in the relevant years are detailed in both Rosen and the Response, and there is no question as to what those amounts were. I see nothing inappropriate in comparing the compensation of OMERS' executives with those of the Teachers' executives. This is true particularly given the major changes that were taking place at Borealis, including, most importantly, the dramatic growth of the assets under management. And, as noted, the three executives achieved very significant returns in 2004 and 2005 in each of the major asset categories. Their salary and bonuses were approved by boards that included senior and experienced pension fund investment executives. The evidence is that the amounts received by the Borealis' executives between 2001-2005, including salary, bonus, dividends or other compensation, were at commercially reasonable levels. There is simply no evidence to the contrary.

Borealis Purchase and Subsequent Resale

The Minutes of the OMERS Board meeting of November 21, 2003, set out the rationale for the purchase of Borealis. The Minutes note that OMERS then paid Borealis total real estate fees of $19.7 million. In addition, OMERS paid Borealis some $21.9 million for infrastructure management and $2 million for private equity fund management. Combined with the real estate fees, the annual payment to Borealis was approximately $43.6 million. The Minutes go on to note that by paying $20 million to buy Borealis, OMERS would eliminate $21.2 million of operating costs and management fees annually. The Minutes also noted that following the purchase of Borealis, OMERS would move to consolidate and reorganize its real estate operations. The acquisition of all of the outstanding shares of Borealis Real Estate Management Inc. (BREMI) by OMERS for $20 million was unanimously approved. The Board Minutes of December 18, 2003, approved the acquisition of BREMI; the acquisition of the Borealis shareholdings of Kilmer, CPPIB and Messrs. Collier, Latimer and Nobrega, and the employment of Collier, Latimer and Nobrega on terms to be set by OMERS senior officers. In short, as the Minutes make clear, OMERS management, and subsequently its Board expected that a cost savings in excess of $20 million annually would be accomplished by the purchase of the Borealis shares in 2004.

The cost savings outlined by OMERS management of some $20 million provide the rationale for the decision to repatriate Borealis a relatively short time following the sale in October, 2001. The Minutes of the OMERS Board of November 23, 2001, provide the rationale for the BREMI sale at that time. The essential decision was "the separation of real property ownership and management". As the Minutes noted:

> OMERS is in the business of managing pension fund monies to achieve appropriate returns in order to pay pensions. It is not in the business of running the buildings on a day-to-day basis. These recommendations will allow OMERS to focus on its investment activities in real estate at a <u>portfolio management level</u> and will retain all direct and indirect investment decisions within the Investment Division subject to transaction limits approved by the OMERS Board of Directors (emphasis added).

As noted above, the BREMI transaction was based upon recommendations in a report prepared by McKinsey which concluded that outsourcing to Borealis would provide a lower cost to OMERS and improve returns based on similar models in similar industries. Ten other industry models were identified by McKinsey, each of whom had outsourced its asset management, including some of the largest insurance and pension fund organizations in North America.

Some three years later, as the 2004 Board Minutes indicate, some $20 million in annual savings was estimated to be achieved by a re-purchase of the BREMI shares. As noted above, the repatriation also involved the shares held by Nobrega, Collier and Latimer, as well as those of Kilmer. Following repatriation, OMERS asset management functions were once again carried on through its wholly-owned subsidiaries, primarily Oxford.

Borealis Repurchase

The Minutes of the OMERS Board meeting of November 21, 2003, outlined the case for the re-purchase of Borealis (which was approved by the Board at that meeting). They provided, in part, as follows:

> OMERS currently pays Borealis an annual service fee for real estate asset management of $15.3 million per year plus transactions fees which this year will amount

> to $4.4 million for annual total real estate fees of $19.7 million.
>
> OMERS will pay Borealis approximately $21.9 million for infrastructure management and approximately $2.0 million for private equity fund management annually based on existing investments .... Combined with real estate fees, combined annual fees payable to Borealis currently approximate $43.6 million.
>
> With consolidation of real estate activity into Oxford or another OMERS affiliate, it is expected that expenses associated with real estate operations will be reduced by $10.7 million annually ....
>
> By paying $20 million to buy BREMI under the arrangements proposed, OMERS will eliminate $21.2 million of operating costs and management fees annually ....

The OMERS Board was clear that there would be substantial cost savings by taking the management of infrastructure and real estate in house, which it did. The Minutes of November 21, 2003, set out in detail the rationale for the BREMI purchase and the management structure at OMERS thereafter.

OMERS' 2003 and 2004 Annual Reports also detail the rationale for the repatriation of Borealis in the context of a change in OMERS' investment strategy (which has been referred to above). In short, as the 2003 Report notes, OMERS' new asset policy mix was to shift one-third of its total investments from publicly traded stocks and bonds to alternate private investments (real estate, infrastructure and private equity) over a period of four to five years.

The 2004 Report notes that OMERS' alternative assets had been managed by Borealis and that to implement the new asset mix policy "it made sense to bring the management of these assets under OMERS' control, where they would conduct business as separate entities with clear lines of accountability and enhanced governance."

In terms of cost and ultimate savings, the 2004 Report noted as follows:

> OMERS purchased the remaining Borealis shares for \$49.9 million. OMERS expects to recoup the net cost of the purchase in approximately one year through the elimination of third party asset management fees, overhead cost synergies and increased revenue.

The President's Letter (Paul Haggis) for 2005 noted as follows:

> Our total fund rate of return in 2005 was 16.0%, exceeding our overall benchmark of 13.2%. Our strategy, executed by experienced and capable professionals, create a value for OMERS' portfolio of more than \$1 billion over and above our benchmark.
>
> Our 2005 real rate of return was 13.8%, after deducting inflation of 2.2%. This is substantially in excess of our long-term real return funding requirement of 4.25% ....

> Oxford Properties Group, responsible for our real estate assets, achieved a return of 26.0% against a benchmark of 8.4%.

OMERS' annual reports to its members and its annual report to shareholders for 2003, 2004 and 2005 contain clear detail about OMERS' decision in 2003 to alter its asset mix policy over a five-year period and to repatriate its asset management functions and restructure its investment in Borealis as part of that new investment initiative. The essence of the shift in investment policy was to triple private investments in real estate, infrastructure and private equity from 12.5% to 37.5% of total assets over a five-year period and to bring the management of those assets in house. It was in that context that OMERS decided to repatriate Borealis.

A fair question is whether OMERS recouped the $49.9 million purchase price in one year. The short answer is that it did not, although there were real cost savings. The cost was $49.9 million, but Borealis had $26 million in cash or cash equivalents on hand which reduced the actual cost to $23.9 million. $10 million was saved by reducing the infrastructure management fee from 2% to 1% of assets under management annually. It was assumed that another $10.7 million would be saved annually by eliminating a real estate asset management fee. However, that $10.7 million fee is still paid to Oxford. In one sense, however, it is internal bookkeeping as Oxford is a wholly-owned subsidiary of OMERS and the $10.7 million is an inter-corporate payment.

As to cost comparisons, material provided to the OMERS Board Meeting on November 21, 2003, showed the costs for OMERS pre and post OMERS/Borealis restructuring. The real estate part of the Borealis costs were $27.8 million, opposed to the post Borealis costs of $17.1 million. The total Borealis costs (real estate, infrastructure, private equity and additional fees) were $51.70 million and the post Borealis restructuring total costs were $30.50 million, for a total cost reduction of $21.20 million. Looking at real estate alone, the annual cost savings were expected to be $10.7 million. These figures are from a Cost Comparison document tabled at the OMERS Board Meeting of November 21, 2003. Looking at the evidence, the conclusion is clear that the management of real estate assets was more expensive when outsourced to Borealis than it was projected to be if OMERS took back the management "in house". The Cost Comparison for 2003 (attached hereto as Appendix E) makes that clear.

Issue Two: What were the amounts received by Borealis or its shareholders in respect of the 2002 BREMI MSA Contract and 2004 Repatriation Transactions and were such amounts at commercially reasonable levels?

In 2001, OMERS acquired 27% of Borealis for $20 million. Its fellow major shareholders were CPPIB, 27%, and senior Borealis employees, including Collier and Nobrega, 40%. OMERS thus also controlled BREMI, which managed OMERS real estate. OMERS had sold its real estate management business to Borealis Real Estate (BRE) for $11 million, effective May 13, 2002. Borealis' prime function at that date was to invest assets of pension funds, including $20 million from OMERS.

At about the same time, OMERS purchased the outstanding shares of Oxford Properties Group Inc. (Oxford), which was one of North America's largest commercial real estate companies, for $1.5 billion. OMERS thus greatly increased its portfolio as Oxford had some $3.3 billion in real estate assets. As a result of the very rapid growth, the OMERS' Board retained the leading management consulting firm, McKinsey and Company (McKinsey), to advise it on a proposed restructuring. Following the McKinsey Report, the OMERS' Board decided to contract the asset management function to an outside manager. That manager was Borealis.

The Borealis Board, for its part, struck an independent committee comprised of two CPPIB directors, to determine whether it could undertake real estate asset management with its existing management of infrastructure and private equity assets. In addition, Borealis received a report on the fairness of the transaction with OMERS from Don Lenz (Lenz), of Brompton Securities (Brompton), and a second report to deal with any possible conflicts of interest between OMERS and Borealis. In the result, both the Borealis and OMERS' Boards decided to consolidate the management of OMERS real estate in a new Borealis company, and the BREMI AMT took place in May, 2002.

BREMI was incorporated in that year as a wholly-owned subsidiary of BCC. As Borealis had no real estate management expertise of its own, OMERS transferred 46 employees from its real estate subsidiaries to Borealis. As part of the transaction, OMERS signed an Asset Management Contract with BREMI (the BREMI MSA or the MSA) under which BREMI paid $10.8 million to OMERS for the right to manage $7.4 billion of OMERS real estate assets for a period of up to five years, subject to an absolute right in OMERS to terminate at its sole discretion, and paid $3.7 million to compensate BREMI for start-up costs. Included in the employees who transferred to BREMI was Latimer who became its President and CEO, which position he held from June 3, 2002, until February 21, 2004 (I will return to Latimer's involvement later in this Report).

On February 21, 2004, OMERS took back all the investment management functions - infrastructure, private equity and real estate that had been previously performed by BCC and BREMI. There is no hard evidence of what cost, if any, was incurred by OMERS with respect to the repatriation of its management functions. Rosen asserts that OMERS "may have paid" approximately $21.9 million to BREMI as termination penalty fees in accordance with the MSA. Before dealing with the possibility of penalty fees, I would note that McKinsey concluded in an April, 2002 report to the OMERS' Board that the BREMI MSA met OMERS' objectives and was done on market terms. In addition, three other independent market studies were provided to OMERS prior to the signing of the MSA by Deloitte & Touche, the Canadian National Association of Real Estate Investment Managers and GWL Realty Advisors. Covered were over 30 major asset management transactions, none of which showed rates for asset management at or lower than the 26 basis points that OMERS paid Borealis on "core assets", or the ten basis points that OMERS paid Borealis on "non-core assets". They all, in effect, confirmed what McKinsey stated - that the BREMI MSA was consistent with prevailing market terms.

Leaving aside the question of penalty fees, as part of the repatriation of the equity ownership of Borealis, OMERS paid the following amount to repurchase the individual and institutional holdings of Borealis' shares:

Purchase of CPPIB Shares	$19.2 million
Purchase of Kilmer Shares	$15.7 million
Purchase of Management Shares (Nobrega, Collier and Latimer, $5 million each.)	$15 million
Total	$49.9 million

There is no evidence that any improper payments were made, directly or indirectly, to the Borealis executives as a result of either the 2002 BREMI MSA or the 2004 repatriation. As will be detailed below, the share buy back prices were at reasonable levels, and the original share purchase prices were consistent with the Borealis employee share purchase plan. There were no severance payments in respect of the movement of the three executives, nor were there any bonus payments other than in the normal course of the business of OMERS and Borealis.

Termination Payment

In looking at section 6.3 of the BREMI MSA, Rosen sets out what "might" have been costs paid to terminate the contract. However, he fairly notes that he had "not been provided with information in support of the termination fees (if any) that had been paid by OMERS to BREMI". He goes on to note, however, that in January, 2004, KPMG estimated that OMERS' termination fees, in accordance with section 6.3, would amount to approximately $21.9 million. Rosen states that in the absence of additional information, he has "assumed" that the estimate by KPMG represents the actual fees that were incurred by OMERS to terminate the BREMI MSA. The facts, however, tell a different story. The BREMI MSA has not been terminated as of the date of the writing of this Report. The Agreement between the parties of December 21, 2007, states as follows:

> We refer to section 2.2 of the [MSA] Agreement. Notwithstanding the stated expiry by a fluctuation of time of the Agreement on May 13, 2007, we respectively acknowledge that the Term thereof has been and will continue to be extended on a month-to-month basis until terminated by either party thereto on 30 days' notice to the other party.

To recapitulate, the flow of funds between BCC and OMERS, and between the individual institutional shareholders was as follows:

1. Prior to 2001, OMERS owned 20% interest in Oxford, which was one of North America's largest public commercial real estate firms with $3.3 billion in total assets.

2. Until October, 2001, OMERS performed its real estate asset management functions internally and through ORC, other subsidiaries, and through Oxford.

3. In October, 2001, OMERS acquired 100% of the outstanding shares of Oxford for $1.5 billion.

4. Following an intensive review by the management consulting firm McKinsey, OMERS followed its recommendation and transferred its asset management function to BCC.

5. BREMI was incorporated on May 9, 2002, as a wholly-owned subsidiary of BCC.

6. On May 13, 2002, BREMI entered into an asset management services agreement with OMERS, the "BREMI MSA".

7. As consideration for entering into the BREMI MSA, BREMI agreed to pay OMERS $10.8 million, of which OMERS agreed to reimburse BREMI for BREMI's actual start-up costs which were not to exceed $3.7 million. Under the terms of the MSA, 46 employees who had previously been employed by OMERS' wholly-owned subsidiaries transferred their employment to BREMI. It is my understanding that no severance payments were involved.

8. Some 1.8 years later, on February 21, 2004, OMERS took back its real estate investment asset functions (among others) from BREMI. There is no evidence of any costs (apart from normal course) being incurred for the repatriation.

9. The BREMI MSA has never been terminated and there is no evidence that a termination fee has ever been paid.

10. In accordance with the take-back of the BCC shares that it did not own, OMERS paid out the remaining individual and institutional shareholders as follows:

(i) Nobrega - $5 million for 1,864,045 common shares

(ii) Collier - $5 million for 1,864,045 common shares

(iii) Latimer - $5 million for 1,864,045 common shares

(iv) CPPIB - $19,200,000 for 8,557,432 common shares

(v) Kilmer - $15,700,000 for 2,872,000 common shares

(vi) There was $26 million in cash and cash equivalents in the Borealis treasury that flowed back to OMERS, reducing its net cost to $23.9 million.

As noted above, Nobrega, Collier and Latimer all purchased their shares when their employment was moved from OMERS, Oxford, ORC or other OMERS' subsidiaries, to BCC. At that time, they were required to purchase BCC shares in accordance with OMERS' approach (common among institutional investors) of requiring senior officers to hold an equity position in its management companies.

(vii) The share buy backs amounted to just under $50 million.

Apart from what is set out above, which was detailed in Rosen and in the Response, I know of no other evidence of monies passing between OMERS and BCC and their senior executive officers. I appreciate that substantial fees may have been paid to accountants, consultants and lawyers with respect to the BREMI MSA and its repatriation, but this would have been in the normal course of corporate affairs, and there is no evidence that such fees were out of the ordinary.

Purchase and Re-purchase of BCC Shares by Collier, Nobrega, Latimer and Kilmer

Each of Collier, Nobrega and Latimer purchased their shares at 75 cents per share under the terms of BCC's Employee Investment

Plan (the Plan). The Plan also offered generous financing provisions for the share purchases. Rosen notes that CPPIB acquired its shares for $2.24 per share, as did Kilmer and OMERS. There is nothing remarkable in those share purchase prices and the fact that they exceeded the prices paid by the three individuals who benefitted from the terms of the Plan, as do many similarly situated executives. The Plan was certainly not initiated in contemplation of the BCC and/or BREMI MSA transactions. And the same is true of the BCC Employee Investment Plan and the employee loans granted thereunder. Once again, they appear to be corporate incentives for senior employees and there does not appear to be anything out of the ordinary about them, or in the timing of their implementation.

As to the fairness of the price paid by OMERS for the Borealis shares, Rosen asserts "that OMERS may have overpaid ....". No hard facts are cited for that assertion and, most importantly, Rosen does not refer to the share price valuation conducted by Howard Rosen, of LECG (professional valuators), who concluded that, after minority and liquidity discounts, the value of the Borealis common shares at the time was between $4.98 to $6.50 per share. To recapitulate, the three executives received $2.68 per share, Kilmer received $5.48 per share, and CPPIB received $2.24 per share, prices that, except for Kilmer's shares, were far below the values range set by an independent valuator, LECG.

Rosen particularly notes the short timeframe over which the individuals and Kilmer realized substantial profits as a result of

OMERS' business decision, based on the McKinsey Report, to re-purchase BCC shares:

> (i) In less than one year, Latimer realized a profit of $3.6 million;
>
> (ii) In less than one year, Kilmer realized a profit of $9,333,280; and
>
> (iii) In less than three years, Nobrega and Collier each realized a profit of $3.6 million.

Rosen then goes on to note that CPPIB did not generate any profit and received approximately the same $19,200,000 that it paid to acquire its shares in BCC. What Rosen fails to note is that the BCC business really did not start until July of 2001. Over the next three years, under the leadership of Collier, Nobrega and Latimer, Borealis carried out approximately $160 million of private equity investments, established the real estate asset management business with $7.4 billion of assets under management (albeit primarily through the purchase of Oxford by OMERS), and carried out some $1.2 billion of infrastructure investments. In the same period, in accordance with OMERS rebalancing plan, there were some $896 million of property sales. Accordingly, the share value of Borealis increased markedly to reflect the rapid growth in its business. There was nothing untoward in the profits realized by the investors, or in the decision by OMERS to repatriate its investment in BCC which resulted in the share buy backs.

Rosen is quite accurate in noting that the February 21, 2004, agreed purchase price for Nobrega's shares was only $2,526,382 ($1.36 per share). However, some eight months later, Paul Haggis (Haggis), OMERS' CEO, proposed an additional $2,473,618 payment to Nobrega to equalize his share purchase amount with that of Latimer and Collier. Haggis told the Board that this was pursuant to a verbal agreement reached between himself and Nobrega. Rosen refers to the oral agreement coming some eight months after the original Purchase and Sale Agreement as "irregular". As to that, it is obviously the case that two views can be taken of the top-up of Nobrega's share price to equalize him with Latimer and Collier. It is not, however, unusual to treat similarly placed senior executives in a similar manner in such circumstances, particularly when the purchases took place at exactly the same time for the same number of shares. Moreover, as noted above, all elements of the share purchase transactions were approved by the Borealis Board, which included institutional representatives from CPPIB, Kilmer and OMERS.

Kilmer's Shares

Rosen refers to a "potential irregularity" with respect to OMERS' purchase of Kilmer's shares. The amendment of BCC's Articles of Incorporation to create 15,733,280 Class F common shares and the subsequent transfer by Kilmer of its 2,872,000 Class B common shares in exchange for its new Class F common shares is set out in Rosen's Report at pp. 63-4. On the same day that it exchanged its Class B shares for the Class F shares, Kilmer sold the Class F shares to OMERS for $1.00 per share for a total price of $15,733,280. Rosen states that the appearance is that OMERS paid just $1.00 per BCC common share held by Kilmer.

It is quite transparent, however, that OMERS paid Kilmer the equivalent of $5.48 per share or $15,733,280 for 2,872,000 Class B common shares. Rosen makes no other judgment on the acquisition of the Kilmer shares other than to refer to a "potential irregularity". The Response notes Kilmer's original asking price from OMERS was $9.00 per share and indicated it was prepared to go to Court to recover what it regarded as the fair value. The Response also notes the value claimed by Kilmer is close to the LECG valuation of between $6.57 and $8.10 before an illiquidity discount, to reduce the fair market value to a range of $4.98 to $6.50 per share.

The final price, as noted, was negotiated to $5.48 per share, or a price that fell within the range of the fair market value determined by LECG. The Response commissioned a report by FTI Consulting, who are professional valuators. FTI focuses particularly on the acquisition of the Nobrega shares and the Kilmer shares and the assertion by Rosen that OMERS "may" have overpaid for the BCC shares. I will not quote the FTI Report in detail as it is set out in its entirety at Tab D of the Compendium. I would note the following items however:

1. Rosen makes no reference whatsoever to the valuations in the LECG Report. The conclusion in the LECG Report was that the fair market value (FMV) of the BCC shares in 2003 was in the range of $4.98 to $6.50 per share and, accordingly, OMERS did not overpay for the BCC shares in February, 2004.

2. Rosen's Report does not indicate any disagreement with the methodology, assumptions or conclusions set out in the LECG Report, nor did Rosen perform any independent valuation.

3. Rosen relied on two versions of a Schedule titled "Borealis Restructuring Analysis". The Schedules were both on plain white paper, were undated, did not indicate by whom they were prepared, the context in which they were created, their intended purpose, the documents relied upon in their preparation, the methodology used, or any explanation for the assumptions made.

4. All of this leads FTI to conclude that the document referred to "does not provide any indication of the FMV of the shares of BCC as of the date of the OMERS share transaction".

5. As for the value set out in the KPMG Report, the FTI Report notes that KPMG stated that "... our conclusion does not represent our opinion of value or a formal estimate of value, which opinion or estimate could only be formed following the receipt of additional information, the completion of additional analyses and discussions with management of OMERS." (emphasis in original)

6. The FTI Report also notes that neither Rosen, nor KPMG, took into account the very large increase in the Borealis assets under management, which I have noted above. There is no doubt that, on the evidence presented by FTI, the KPMG Report clearly understated the FMV of Borealis.

7. It should also be noted that the amount paid to Nobrega by OMERS did not exceed the FMV of the shares of BCC as compared to the opinion of value from $4.98 to $6.50 per share as set out in the LECG Report.

I am of the opinion that the summary in the Response is a fair one and an answer to the questions and doubts expressed by Rosen. That "Summary of Value" is as follows:

(i) The LECG valuation at $4.98 to $6.50 per share;

(ii) the "en-block adjusted" KPMG value of $1.880 million to $2.9 million (for 27,443,044 common shares) or $6.85 to $7.32 (before illiquidity discounts) which compares closely to the value of $168 million to $207 million set by LECG.

(iii) the Kilmer transaction at $5.48 per share.

In summary, it is my opinion, on reviewing all of the evidence, that the share prices paid to Collier, Nobrega and Latimer, as well as to Kilmer, were fair in all of the circumstances of each case. There were clearly some special circumstances, as set out above, and as detailed in the Response. The time periods were perfectly explicable in terms of OMERS' business decision, influenced by the experience of other major pension funds, to take back its real estate asset management function from BCC in a relatively short period of time after the signing of the BREMI MSA. There is no evidence of anything untoward in the BREMI MSA, the repurchase by OMERS, and the share buy backs by OMERS. Each of those transactions were carefully considered by a disinterested Borealis Board that included in its membership highly-experienced senior executives of other major pension funds.

Latimer - Conflict of Interest and Share Buy Back

The OMERS/Borealis transactions which have been identified above led to a series of newspaper articles, primarily in *The Toronto Star, The Globe & Mail and The Windsor Star* in 2005-2007 which highlighted a possible conflict of interest in the OMERS/BCC transactions and particularly singled out the role of Collier, Nobrega and Latimer. I have reviewed the background documentation, the

Rosen Report and the Response, and I am satisfied that all three individuals acted appropriately and in good faith. I am also of the opinion that the Boards of Borealis and OMERS acted appropriately and upon sound legal advice, and that there was no conflict of interest in the roles played by the three executives, and particularly not by Latimer who appears to have been singled out in the newspaper articles. Moreover, and most importantly, there is no evidence of any improper dealings by the three individuals or their unjust enrichment at the expense of either OMERS or Borealis.

As noted above, there is no question that the three executives profited handsomely in a short period of time by the purchase and sale of their shares in Borealis. However, as pointed out above and as detailed in the background documents, these were the result of corporate actions taken for sound commercial reasons, and all overseen by the legal advisors involved, among whom were some of Canada's leading commercial lawyers.

Rosen singles out Latimer's role for criticism, particularly with respect to his involvement in the BREMI MSA. Specifically, Rosen alleges that while Latimer was employed as an executive of OMERS, he played a dual role in advising both OMERS' Investment Committee and its Board of Directors in 2001 on the decision to outsource its real estate asset management and in negotiating the terms of the MSA in 2002. Rosen then asserts that Latimer "benefited personally" on the purchase and sale of his shares in Borealis. I am satisfied that the Response deals with these allegations in a detailed and convincing manner which I will summarize below:

Rosen rightly points out that the BREMI MSA was a series of related party transactions between OMERS and Borealis. Accordingly, appropriate safeguards were required to avoid conflicts of interest, whether actual or perceived. Rosen is very clear in his conclusion that:

> The transfer of asset management functions to BREMI did not occur in a manner that made the transaction free of actual or perceived conflicts of interest. In our view, the documents that have been produced by the Defendants give rise to concerns over the existence of a conflict of interest in Mr. Latimer's involvement in the BREMI asset management transaction.

Rosen details the conflicts as follows (in an abbreviated summary):

> (a) a conflicting role in advising both OMERS Investment Committee with respect to the proposed transfer of asset management operations to BCC; and
>
> (b) Borealis' Board on the rationale for the transfer of OMERS' real estate asset management functions to BREMI.

The conflict included:

> advising OMERS' management;

> advising BCC's management; and
>
> directing, overseeing and assisting OMERS' external business consultants [McKinsey] who advised with respect to the transactions.

Upon completion of the MSA, Latimer became the President and CEO of BREMI, as well as a director and minority shareholder in BCC, BREMI's parent company.

According to Rosen, Latimer then benefitted personally through his position at BREMI by acquiring shares in BCC at a significantly discounted amount, which he financed through BCC's employee share purchase plan, and then by selling his BCC shares to OMERS for a large profit less than one year after the share acquisition. Subsequent to the repatriation, Latimer assumed the position of President and CEO of OMERS' wholly-owned subsidiary, Oxford.

The trail leading to the BREMI MSA really begins in the summer of 2001, when OMERS retained McKinsey to advise it on a proposed restructuring of its real estate assets. The Board considered the McKinsey Report on October 19, 2001, at which time it asked staff to report back with a business case on why OMERS' asset management should be transferred to a related entity, BCC. On November 22, 2001, Latimer recommended to OMERS' Investment Committee that OMERS transfer its asset management function to

BCC. On the following day, November 23, 2001, OMERS approved the transfer.

Subsequent to that, BREMI was incorporated in 2002 as a wholly-owned subsidiary of BCC, and on May 13, 2002, BREMI entered into the MSA with OMERS, the terms of which have been described above. Among the 46 former OMERS' employees who joined BREMI at that time was Latimer, who became BREMI's President and CEO. Until that time, Latimer was the Managing Director of ORC.

The Boards of both BCC and OMERS were concerned with potential conflicts of interest. Indeed, BCC's Executive Chairman, Steven Hudson (Hudson), expressed his concerns as follows:

> The increased level of transactions activity, particularly with OMERS, brings with it increased potential for conflict of interest. Transactions between OMERS and Borealis are being negotiated on behalf of Borealis by former OMERS employees whose focus is on growing the relationship between OMERS and Borealis. Those transactions are being negotiated on behalf of OMERS with the involvement of current OMERS' employees who would be joining Borealis. The Board must be concerned with reputational issues which could adversely affect Borealis in the market place and which have implications for our stakeholders and for each of us as directors.

A similar concern was expressed at OMERS by Graham Senst (Senst), OMERS' Vice-President of Real Estate. Senst, in a letter to Gunn, expressed his concern as follows:

> Generally, the negotiating process has been encumbered with OMERS/Borealis people meeting and negotiating at multiple levels at OMERS. The presence of independent third party negotiation has not been as prevalent as it could have been. The concern is that the process might be called into question from an external viewpoint.

Hudson's letter was provided to Osler, Hoskin & Harcourt (Osler), OMERS' legal advisor on the BREMI MSA.

Rosen expresses the opinion that, despite the concerns expressed, "safeguards do not appear to have been implemented to avoid conflicts". Rosen also voiced "concerns over the existence of a conflict of interest in Mr. Latimer's involvement in the BREMI asset management transaction".

In particular, Rosen was concerned that Latimer was involved in both advising the OMERS' Board to outsource, and then in negotiating the terms of the MSA contract. Rosen concludes that Latimer "potentially benefitted personally" on the purchase and sale of the shares in Borealis (the details of that purchase and sale are set out above). Following the sale, Latimer became the President and CEO of BREMI, as well as a shareholder and director of BCC, BREMI's parent company.

Rosen specifically cites a letter from Carol Hansell (Davies Ward Phillips and Vineberg LLP), a memorandum from Ed Waitzer (Stikeman Elliott) and signed statements from Dale Richmond and Tom Gunn, OMERS' senior executive officers, all to the effect that Latimer was either not involved in the negotiations of the BREMI MSA, that the negotiations were conducted in an arm's length manner and/or that Latimer was not responsible for any of OMERS' strategic decisions with respect to outsourcing to Borealis. Rosen also refers to a legal opinion by The Honourable Mac Austin (Austin), a former Judge of the Ontario Court of Appeal, stating that "there was an absence of any conflict of interest concerning the role of Mr. Latimer". Notwithstanding these opinions, Rosen refers to "numerous documents" that indicate that Latimer was involved in the BREMI AMT. Rosen goes on to specify meetings attended by Latimer and submissions he made to OMERS' Investment Committee. Rosen also notes that Latimer attended and participated in a meeting of BCC's Board of Directors in which the asset transfer was discussed in some detail. Following that discussion, the BCC Board approved the MSA.

In light of all of the above, Rosen concludes that:

> Mr. Latimer appears to have acted in multiple (and seemingly conflicting) capacities to the BREMI asset management transaction: (a) in advising OMERS' investment committee; and (b) in advising BCC's board of directors.

As to the restructuring of OMERS' real estate assets based upon the report and recommendation of McKinsey, Rosen concludes that "the mediation documents indicate that Mr. Latimer was highly involved in directing, overseeing and assisting McKinsey in their advisory task". Rosen particularly quotes a McKinsey memorandum which states as follows:

> In our experience, working closely with key members of our clients' organization produces the best results. ... We understand Michael [Latimer] will be dedicating a substantial portion of his time to this effort and will serve as a conduit between OMERS, McKinsey and Oxford Properties (if required). In addition, we propose that an OMERS steering committee of [Tom Gunn], Michael Latimer and other senior managers you deem appropriate direct and review the work of our joint project weekly for the duration of the effort to discuss findings and key issues going forward. ...

There is no question that Latimer played an important role in the OMERS' decision to outsource its real estate management to BREMI. But that role was primarily an advisory one, as will be detailed below, and always under the direction of Gunn, OMERS Senior Vice President and Chief Investment Officer. The ultimate decision to outsource was made by the OMERS' Board based upon the recommendations of its Investment Committee which acted on Latimer's recommendation. It should also be noted that Latimer attended the OMERS' Board meeting that approved the BREMI MSA. The Investment Committee acted on the basis of McKinsey's advice to outsource as being in accordance with best practice in the pension fund industry.

The Response, not surprisingly, takes issue with Rosen's opinion. The starting point, with which I agree, is the decision of Gunn to engage McKinsey to advise OMERS on how best to restructure and manage its affairs since, with the acquisition of Oxford, its real estate portfolio had grown from $4.5 billion to some $8 billion. It was McKinsey's recommendation to outsource to Borealis, and it was that recommendation that was approved by the OMERS' Board. Certainly, Latimer had a hand in assisting McKinsey with its analysis of the OMERS' real estate portfolio, and I will return to that below. Although Latimer clearly played a helpful role to McKinsey, the evidence is equally clear, as emphasized by the Response, that OMERS' two most senior executives, Richmond and Gunn, were the ones responsible for retaining McKinsey, approving its recommendations and presenting them to the OMERS Investment Committee and Board of Directors in October and November, 2001. In his statement, Gunn says that:

> Dale Richmond, OMERS' CEO and President at the time, and I gave approval to all the strategic decisions on behalf of OMERS' staff and approved all submissions to OMERS' Board and Investment Committee in the fall of 2001 ...

Most importantly, Gunn makes the following statements with respect to Latimer:

> (1) At the time [2001], Michael Latimer had no responsibility for the strategic decisions made by OMERS... His role was to lead OMERS' internal operational team at OMERS Realty Corporation....
>
> (2) Michael Latimer had no responsibility for the strategic decisions made in 2001 (with the benefit of McKinsey's expert advice) to recommend to OMERS' Board that it should acquire Oxford and its real estate assets, merge them with other real estate properties owned by OMERS, to outsource to Borealis the asset management of those combined properties. Strategic decisions of that nature (and all those listed in paragraph 3 above) were simply not Mr. Latimer's responsibility.
>
> (3) Because Mr. Latimer had no responsibility for those strategic decisions, it is plain and obvious to me that he did not act in any conflict of interest in any of his actions throughout the summer and fall of 2001 and subsequently. Any suggestion to the contrary is false and totally without merit.

Gunn and Richmond also confirm in their statements that Latimer was not responsible for either defining McKinsey's terms of reference or for making any strategic decisions on outsourcing.

It is also important to note that at the time of the outsourcing, Latimer was not employed by Borealis, did not have any financial interest in Borealis and had been given no assurance subsequently that he would be employed by Borealis.

I am satisfied, certainly in terms of OMERS' conflict policy in 2001, that Latimer did not have a conflict of interest with respect to Borealis because, at that time, he had no reason to favour Borealis because he was not "an affected individual who [has] a direct or indirect interest in any of these persons, or parties, to which this party is directly or indirectly related." It was that fact, among others, that led The Honourable Mac Austen to conclude that "there is simply no basis on the facts that support any finding of conflict of interest or breach of duty against Mr. Latimer". Judge Austen also relies on the fact, as set out above, that all the strategic decisions and recommendations by OMERS' staff to its Investment Committee and Board of Directors at the relevant time were made by Richmond and Gunn in their capacities as CEO and Senior Vice President, respectively.

When OMERS made its decision to outsource its real estate management to Borealis, it acted on the advice of McKinsey. As the facts indicate, McKinsey relied on Latimer for much of its factual information. But the Report was clearly a McKinsey Report based upon all of its information gathering and its broad survey of best industry practices. To repeat what is set out above, McKinsey's conclusions were based, in part, on economic modelling that it performed after conducting 39 interviews, including those with nine Canadian and U.S. pension funds, eight Canadian REITS, three Canadian real estate funds, four asset managers, three property managers, three real estate corporations and lawyers and investment bankers involved in the real estate industry.

I am satisfied on all of the evidence, including particularly the statements by Gunn and Richmond, in addition to the review and conclusion arrived at by Judge Austin, that Latimer did not have a conflict of interest with respect to the McKinsey Report and the decision to outsource to Borealis.

I have a particular problem with Rosen's conclusion that, among other things, Latimer had a conflict through acquiring shares in BCC at a discounted price, financing a portion of it with an employee loan from BCC, and shortly thereafter selling his shares to OMERS for a sizeable profit, and then assuming employment with OMERS subsequent to the repatriation. Latimer's share transactions, as detailed above, and their financing, were all in accordance with the Borealis Employee Share Plan, and were perfectly appropriate. In all of his involvement with OMERS and BREMI, Latimer could not have predicted that there would be a relatively quick repatriation by OMERS, and that he, along with his fellow senior executive officers, would profit handsomely in a short period of time by the sale of their shares back to OMERS. It is simply not credible to assign that kind of foresight to Latimer.

Conflict of Interest

OMERS' current Conflict of Interest policy would not change any of my conclusions with respect to Latimer. The senior executive officers of OMERS at that time, Gunn and Richmond, had full knowledge and full disclosure of Latimer's involvement and his participation. Moreover, they directed that specific steps be taken to keep him separate from the negotiation team for the services contract with Borealis. The current Conflict Policy would not have changed my conclusion as to Latimer, even on the "appearance of conflict" point and, it should be noted, that the appearance of conflict is not by itself a violation of the OMERS Policy. What is critical, as the Policy underlines, is appropriate disclosure and monitoring.

While my conclusion is that Latimer did not have a conflict of interest and acted appropriately throughout, particularly under the guidance and oversight of OMERS' presiding Executive Officers, Gunn and Richmond, I am of the opinion that the OMERS' Board and its Executives ought to have taken greater care to have avoided the appearance of conflict of interest. More particularly, BCC's Board ought to have paid heed to the concerns of its Executive Chairman, Hudson, as set out above, that the transactions being negotiated between OMERS and Borealis involved OMERS' employees who would be joining Borealis. Accordingly, the Board ought to have been concerned "with reputational issues which could adversely affect Borealis in the market place ...."

It would not have been difficult to take precautionary steps, including the possible insulation of Latimer and his colleagues, from being involved in the transactions. I appreciate that this is counsel given in hindsight, and I want to emphasize again that Latimer did not have an actual conflict of interest with respect to the particular transactions and acted appropriately and with integrity throughout. I can well understand, however, that he was placed in a difficult position that led to an appearance of conflict of interest.

In fairness, I would note that OMERS retained Oslers to act as its legal counsel for the negotiation of the MSA contract, that Gunn and Senst were OMERS' negotiation team, and that team did not include any of the 42 employees who were transferred to Borealis from OMERS and Oxford after the MSA was signed. And Jack Petch, Oslers' Chairman, confirmed that OMERS' negotiations team consisted of Gunn and Senst, and that Latimer was not involved in the negotiations.

Conclusion as to Collier, Nobrega and Latimer

I am satisfied on all of the evidence that no improper payments were received by Borealis or its shareholders with respect to the 2002 BREMI MSA or with respect to the 2004 repatriation of the management of its real estate assets by OMERS. Nor is there any evidence that the transactions were other than at commercially reasonable levels. And I would emphasize again, as I have above, the highly experienced nature and independence of many of the third party executives who served on both Boards.

I am also satisfied that no improper payments were made directly or indirectly to the Borealis executives as a result of either transaction. Moreover, I am satisfied that Nobrega, Collier and

Latimer behaved properly throughout, and that their purchase and sale of the shares in Borealis were all in accordance with Borealis' Employee Share Purchase Plan and in accordance with what flowed from OMERS' repatriation of its real estate assets. Certainly, the three executives realized substantial profits in a relatively short period of time, but none of the transactions were driven by that consideration, nor driven primarily by them to the exclusion of either the Borealis or OMERS' Boards or their advisors. Their profits were appropriate in the circumstances of the case. And it is necessary to point out once again that OMERS was advised by McKinsey, Oslers and independent and highly experienced Boards throughout.

Policies and Practices of OMERS

Paragraph 2 of the Parameters required that the Report contain a review of "the policies and practices of OMERS Administration Corporation with respect to related party transactions, conflicts of interest, contracting with or outsourcing to former employees, and executive compensation ..." I have received full co-operation from Blair Cowper-Smith (Cowper-Smith), OMERS' Executive Vice-President, Corporate Development, and Chief Legal Officer, and from James Roks (Roks), Vice-President, Legal, and Corporate Secretary. Cowper-Smith provided the background to and an outline of OMERS Governance Reform Project (GRP), which was initiated in 2007 and stretched over some two years. I was also provided with OMERS Corporate Governance documents, which included Mandate and Roles, By-laws and Policies. I will deal briefly with all of these documents below. Suffice it to say, however, that I am satisfied that OMERS has a very thorough and effective corporate governance policy in place and, most importantly, the policies are adhered to operationally and, as far as one can judge, appear to be effective.

Before reviewing the GRP and the governance documents, however, I want to refer briefly to the FSCO Report and OMERS Response (the FSCO Response). The OMERS/Borealis transactions, and the involvement of its senior executive officers, led to allegations and complaints regarding the possibility of non-compliance with the PBA. As a result, the Financial Services Commission of Ontario (FSCO) conducted an extensive examination of OMERS to "determine whether the Plan and the Fund were administered in compliance with the PBA". The period between January 1, 1997, to December 31, 2004, was examined. As part of its examination, FSCO examined, in part, the following areas:

> <u>OMERS Board Oversight and Plan Governance Practices:</u>
>
> All policies, procedures, guidelines and manuals relating to OMERS' investment activities, including the process by which an investment or loan is selected, undertaken and monitored;
>
> OMERS' internal compliance procedures and processes.

FSCO identified a number of areas with which it was concerned, and recommended changes in OMERS' practices. I would also note that with respect to the scope of the FSCO examination, FSCO stated that:

> With respect to the transactions involving BCC, the review centered on the relationship between OMERS and BCC and its entities, and between OMERS and the Borealis Executives, as well as whether there were conflicts of interest and related party transactions benefitting BCC and Borealis Executives contrary to the requirements of the PBA....
>
> Special attention was paid to investments made and certain identified projects, including the Detroit River Tunnel project, the BCC transactions and the Oxford Properties Group Inc. (Oxford).

FSCO conducted a very extensive review, which included the following areas:

> <u>OMERS Board Oversight and Plan Governance Practices:</u>
>
> All policies, procedures, guidelines and manuals relating to OMERS' investment activities, including the process by which an investment or loan is selected, undertaken and monitored;
>
> OMERS' internal compliance procedures and processes;
>
> Selected due diligence reports and studies.

The above just highlights the thoroughness of the review undertaken by FSCO. It is important to emphasize that FSCO was clear that what it was concerned about were "the processes through which an investment was selected, implemented and monitored, rather than the performance of the investment itself."

In its Findings, FSCO raised concerns about PBA compliance, after noting that OMERS had conducted a significant amount of due diligence with respect to the Borealis transactions:

> However, FSCO could not conclude that OMERS obtained advice on PBA compliance matters and whether it thereby complied with its prudence obligation under section 22 of the Act.

FSCO also found that "OMERS did not follow its internal policies in certain instances" with respect to meeting its standard of care requirements under the PBA.

I will not deal in any more specifics with respect to the FSCO Report as all parties have a copy. I do want, however, to refer to the Response to the Report as it indicates the beginnings of the very fundamental change that has taken place over the past few years in OMERS' governance practices.

Governance Review Project

OMERS undertook a governance reform project in 2007/08 which I will refer to in more detail below. As part of that reform project, the OMERS' Board approved a new Governance Manual. I will not refer in detail to the Manual as I understand that each of the parties has a copy (see http://www.omers.com/Plan Governance/ Administration Corporation/Corporate Governance Documents.htm). Suffice it to say that I found it a very thorough and comprehensive document, and one that indicates that the matters arising out of the FSCO Report and the subsequent Governance Reform Project were taken very seriously by the OMERS' Board. I am satisfied that processes are now in place that should ensure strong governance practices and avoid the types of difficulties that arose out of the OMERS/Borealis transactions.

Further assurance can be taken from the fact that the *OMERS Review Act, 2006*, S.O.c.9, Sch K, mandates a Ministerial review of the OMERS governance structure in 2012.

The Governance Reform Project (GRP) was very thorough and relied upon two external advisors, the law firm McCarthy Tétrault and John T. Dinner Board Governance Services. The advisors, along with the Board, developed a GRP work plan. The results of the GRP are found in the Governance Manual. The OMERS' Board now has the following operational documents, with backup written materials, in place:

- clear mandates for the Board, its Committees as well as Management designed to ensure, in the words of some members of the Board, that "the Board stays out of the weeds";
- detailed work plans for the Board and its Committees;

- clear role descriptions for the Board Chair, individual Directors and the CEO;

- numerous policies which are overseen by the Board or its Committees and reviewed regularly further to sunset provisions covering subjects like the Code of Conduct, managing complaints, board education, the statement of investment policies and procedures, asset valuations and financial management and reporting;

- a documented approach to oversight of transactions which are out of the ordinary course of business or which involve related parties (the final step of which will be a related party transactions policy);

- standardized agendas and checklists applicable to preparing for effective and efficient Board and Committee meetings; and

- an electronic system for delivery of documents to Directors to ensure they are delivered in a timely and efficient manner for Committee and Board meetings.

There are many other operational documentary aspects to the GRP which are set forth in the Governance Manual, Governance Handbook and Statement of Investment Authorities and related sub-delegation documents. An outline of the GRP is attached as Appendix F.

Although the words in the Governance Manual provide an excellent framework, it is their actual operation and adherence to the principles by the Board that are the primary matters. First, I would note that OMERS hired Cowper-Smith as Executive Vice-President, Corporate Development, and Chief Legal Officer in August 2008. Cowper-Smith was a highly-respected, senior commercial lawyer at McCarthy Tétrault. I have had excellent co-operation from him, and I have no doubt that he has a firm grip on corporate governance matters and proper Board and Board committee responsibilities. OMERS also hired James Roks (Roks) as Vice-President, Legal and Corporate Secretary. Prior to joining OMERS, Roks was Chief Legal Counsel with Go-Transit. It is my understanding that Blair and Roks both attend every Board and Board committee meeting, including in-camera meetings. Bill Orr (Orr), a Senior Partner at Fasken, Martineau, was retained to provide independent legal advice to the Board. I have worked with Orr on numerous occasions on corporate mandates, and there is no question that he would be considered one of Canada's leading experts on corporate governance matters, and is often retained by corporate boards in that capacity. I would also note that OMERS now has a full-time Vice-President dedicated to compliance, with backup resources.

In conclusion, I am satisfied that there are processes and procedures in place that give OMERS a very sound and thorough corporate governance structure. Most importantly, I am satisfied that the senior individuals in place who are responsible for the execution of governance matters are very experienced and appreciate the critical importance of proper governance to an institution such as OMERS.

Costs

I understand that the parties will attempt to reach their own agreement with respect to costs. If that is not possible, I further understand that submissions will be made to me, and I will make a ruling. I will await to hear from the parties.

SM Beck

Stanley M. Beck, Q.C.

BEYOND

Pension and Investment Insight from OMERS

Fall 2010
Issue 07

Oxford invests in New York City's Hudson Yards

Oxford Properties Group, the real estate investment and development arm of OMERS, has joined forces with Related Companies LP to develop Manhattan's Hudson Yards, reported to be the largest single undeveloped piece of property in Manhattan.

The deal, announced in late May, sees Oxford making an initial equity investment of $75 million in the general partnership with an option to invest up to an additional $400 million as the lead investor in the Limited Partnership, according to Blake Hutcheson, President and CEO of Oxford Properties Group.

The 26-acre property is conceived as a mixed-use community and will include about 5,000 units in nine residential buildings, three world-class corporate headquarter sites, a major destination retail complex, a 300-room five-star hotel, a 1,000-room convention hotel and multiple cultural and parking facilities.

Related Companies was awarded development rights by the Metropolitan Transportation Authority earlier this year. For its part, Oxford, with assets of approximately $16 billion, has become a global player in the commercial real estate sector, with recent strategic expansion in the United Kingdom and the United States.

"This project is one of the best development opportunities in America, on one of the last remaining great real-estate parcels in Manhattan," Mr. Hutcheson said in a recent interview.

The deal with Oxford is another example of Canadian pension funds looking to New York as a sound investment opportunity given the weakening of the economy and the fact that so many other real estate investors have been sidelined.

Solidifying the partnership with Related is the fact that Mr. Hutcheson and OMERS CEO, Michael Nobrega have known Hudson Yards President Jay Cross, originally from Canada, for over 25 years.

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IN THIS ISSUE

OMERS
Plan for the Future

The six drivers of OMERS Strategic Plan

The OMERS enterprise-wide Strategic Plan has been developed by Management and approved by the Administration Corporation Board in 2009. Management's goal is to create surplus wealth over the long term beyond the basic pension promise. This surplus will provide the Sponsors Corporation with flexibility in making decisions about pension benefits, contribution rates and a funding cushion. In addition, surplus wealth will provide money to reinvest in the OMERS organization.

OMERS rolling five-year enterprise-wide Strategic Plan has six drivers:

Asset Mix Policy — Investments in public markets provide portfolio diversification and offer sufficient liquidity to meet our pension obligations despite the volatility of public equity investments. This asset class compliments our private market investments which are less liquid but generate more stable, long-term returns. OMERS is continuing to shift its asset mix to increase its private assets and move toward a better balance between public market and private market investments.

Direct Drive Active Management — On the investment side, direct drive active management is designed to create value above the passive returns of market indices. On the pension side, direct drive active management means we have created an integrated professional pension services team. This team has developed top-line breadth and depth in pension administration, customer service and actuarial expertise.

Access to Domestic Capital — OMERS will raise domestic capital so our investment entities have a larger capital base from which to make large-scale investments that can generate superior and sustainable long-term returns. Fee-based investment management services will be offered to eligible clients through OMERS Investment Management Inc.

In addition, OMERS will consider offering other pension plans the opportunity to participate in the OMERS Plan. We will also raise domestic capital through offering Plan members the opportunity to make RRSP-type voluntary contributions to the Primary Plan. These are known as Additional Voluntary Contributions, or AVCs, and have the potential to raise significant additional capital with which OMERS can pursue top-tier investment opportunities.

Access to Foreign Capital — Establish Global Strategic Investment Alliance (GSIA) with like-minded investors such as public and private pension funds, sovereign wealth funds and insurance companies. The GSIA will originate, acquire and manage large-scale real estate and infrastructure assets. GSIA will allow OMERS to acquire attractive large-scale assets it could not acquire on its own.

Strategic Investment Opportunities — There are three components to this strategic driver. The first is the creation of the OMERS Worldwide brand as our investment brand to build OMERS reputation internationally, and the establishment of a network of OMERS Worldwide offices in key foreign and domestic markets to ensure we have people on the ground and close to our assets as they grow in strategic locations.

The second is the establishment of OMERS Strategic Investments, charged with a mandate to establish a portfolio of companies that can help OMERS investment entities identify and source investment opportunities worldwide.

Finally, the establishment of a single market-facing company within OMERS to coordinate and manage all OMERS public debt.

Eliminating Barriers to Growth — OMERS has grown to become a leading institutional investor in Ontario and Canada. Where appropriate, we are working hard to persuade governments to remove unnecessary and outdated restrictions on our ability to do business effectively. Important changes we seek include:

- removal of legislative and regulatory obstacles to our ability to manage third-party capital;
- removal of Federal Investment Regulations which unfairly restrict pension fund investment activities; and
- amend statutes to facilitate the launch of specific strategic growth initiatives.

OMERS Private Equity completes deal for Logibec

OMERS Private Equity in August completed the acquisition of Montreal-based Logibec Groupe Informatique.

Logibec is among the fastest-growing North American companies specializing in information systems for the health and social services sector. Logibec's clients include acute care hospitals, community care centres and other healthcare facilities.

"With an aging population, we see a lot of growth in U.S. assisted living and nursing homes ... where Logibec sells its software," says Paul Renaud, President and CEO of OMERS Private Equity. "The company has a strong market position in both Canada and the United States. The market, particularly in the United States, is very fragmented thus there is opportunity to participate in further consolidation."

The company has approximately 430 employees and its head office is in Montreal. It also has offices in Quebec City, Edmonton, St. Louis, Minneapolis and Dallas.

OMERS Private Equity completes second U.S. acquisition

UNITED STATES INFRASTRUCTURE CORPORATION

OMERS Private Equity, the private equity arm of the OMERS Worldwide group of companies, announced in May the acquisition of United States Infrastructure Corporation (USIC).

USIC is the leading provider of outsourced sub-surface utility locating services in the U.S. The company provides locating services across 20 states on behalf of over 400 telecom, electric, gas, cable and water utilities, including all major national and regional utilities throughout the midwest, southeast, southwest and northwest.

"We believe USIC is poised to benefit from the growth in infrastructure spend and recovery in the U.S. construction market generally," said Michael Graham, Senior Managing Director and Head of U.S. Private Equity for OMERS. "We look forward to working closely with management and supporting their vision for the continued growth and leadership of the business."

Based in Indianapolis, Ind., USIC was created in 2008 through the combination of SM&P and CLS. USIC operates 38 district offices within its 20-state footprint.

The transaction represents the second private equity investment led by OMERS Private Equity in the United States, after its 2009 acquisition of rail maintenance equipment provider Nordco Inc.

"USIC is a great addition to our portfolio with its market-leading position, focus on quality of service and history of innovation within its industry," said Paul Renaud, President and CEO of OMERS Private Equity, which has $5 billion of investments under management.

OMERS, ABP form international partnership with inkef capital

OMERS and Netherlands pension fund ABP have joined forces on a unique joint initiative that will invest in start-ups in the knowledge economies of both countries.

Announced in late June, inkef capital — Investing in the Knowledge Economy of the Future — is planning to deploy about $265 million in Canada and the Netherlands over the first five years of the program's 15-year term.

"This type of international collaboration in programs for direct investment between pension funds is a promising new strategic option, both in this asset class and in others," said Philip Haggerty, Vice President, Corporate Development at OMERS.

The pension money that inkef capital will invest in start-ups with innovative ideas and technologies will provide good returns for the pension holders of ABP and OMERS, but will also contribute to economic development through the expansion of the high-level knowledge economy. inkef capital distinguishes itself from other investors by its long-term investment horizon, active partnership with and mentoring of start-ups, and integration with the market presence of OMERS and ABP.

inkef capital will invest in new companies and technologies — typically spin-offs from university research departments or existing firms — from an early stage of their development onwards, with ABP and OMERS each providing half of the funding for the program.

Oxford invests in New York City's Hudson Yards

continued from page 1

These relationships were instrumental to our involvement, Mr. Hutcheson said. "Related are terrific partners and we have confidence in Jay to get the project completed in a highly commercial and successful way."

According to the *Wall Street Journal*, over the past year, Related has received zoning approvals and begun plans to build the deck that must cover the rail yards before construction can move ahead.

With equity in hand, Related and Oxford can turn to raising funds from other partners and commence signing up tenants for the commercial space. In an "ideal case" scenario, Related said it would secure a tenant in early 2011. Building construction would start 18 months later, with 2015 as the earliest move-in date for corporate tenants. The total development of the site could take over 10 years.

Mr. Hutcheson says Oxford is not finished investing in New York, "We have $1-billion in the US market and we want to invest that much again, plus."

Warren W. Bell named Executive Vice President, Chief Human Resources Officer

Michael Nobrega, President and CEO of OMERS, announced the appointment of Warren Bell as Executive Vice President and Chief Human Resources Officer on July 15, 2010.

Prior to joining OMERS, Mr. Bell held a variety of senior management positions in human resources over his progressive, 25-year career at TD Bank Financial Group. Most recently, he was Senior Vice President, Corporate Human Resources.

As a key member of the senior management team at OMERS, Mr. Bell plays a leading role in implementing the OMERS Global Human Resources Strategy as well as securing and developing the top-[illegible] talent and intellectual capital that make OMERS one of the 50 Best Employers in Canada and a global leader in the pension and investment industries.

Mr. Bell is a graduate of The University of Ottawa from which he holds both Bachelor of Commerce (Honours) and Bachelor of Administration [illegible]. Mr. Bell is a Certified Human Resources Professional and a Fellow of the Institute of Canadian Bankers.

OMERS Worldwide teams up with Free The Children

Craig Kielburger joined onstage by His Holiness the Dalai Lama at We Day 2009

OMERS Worldwide, through Borealis Infrastructure, Oxford Properties, OMERS Private Equity, OMERS Strategic Investments and OMERS Investment Management, announced in July a three-year branding partnership with Free The Children, an international children's charity that supports education in developing countries and focuses on youth empowerment and mentorship.

Through co-title sponsorship of We Day, Free The Children's annual signature event encouraging youth leadership and making a difference in communities, OMERS Worldwide will be seen across Canada this fall at celebrations in Toronto, Vancouver and Montreal.

"We Day inspires the next generation of leaders and supports volunteering - philosophies that reflect the core values of our enterprise," says John Macdonald, OMERS COO.

"My sincere thanks go to OMERS Worldwide for coming on board as co-title sponsor for We Day," says Craig Kielburger, Founder, Free The Children. "The empowerment and encouragement youth receive at We Day would not be possible without the generous support of OMERS Worldwide. For this we say, thank you."

Corporate-wide support for We Day will include employee fundraising and special events throughout the year. We Day dates are September 30, in Toronto; October 15, in Vancouver; and November 12, in Montreal.

OMERS Senior Management Team

We are moving to grow our assets through enhanced global reach, increasing our active management approach to investments and teaming with other like-minded plans

Michael Nobrega
President and CEO
OMERS

Warren W. Bell
Executive Vice President and Chief Human Resources Officer

Jennifer Brown
Executive Vice President and Chief Pension Officer

Blair Cowper-Smith
Executive Vice President, Corporate Affairs, and Chief Legal Officer

Patrick Crowley
Executive Vice President and Chief Financial Officer

Jacques Demers
President and CEO
OMERS Strategic Investments

James Donegan
President and CEO
OMERS Capital Markets

Wendy Forsythe
President
OMERS Investment Management

Blake Hutcheson
President and CEO
Oxford Properties Group

Michael Latimer
Executive Vice President & Chief Investment Officer

John Macdonald
Executive Vice President and Chief Operating Officer

Paul G. Renaud
President and CEO
OMERS Private Equity

Michael Rolland
President and CEO Borealis Infrastructure

Further Information

To obtain additional copies of this newsletter, please write to: beyond@omers.com

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While the information in this newsletter is accurate at the time of publication, the OMERS Act, 2006 is the governing source for all plan provisions

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Policy Sponsor: COO and Corporate Communications

Summary: Sets out guiding principles and management's strategic approach for the OAC's communications; articulates the roles of the OAC Board and Directors in specific areas of the OAC's communications relating to OMERS; and directs management to develop and maintain communication and information strategies and programs, supported by appropriate policies and procedures. **This policy must be approved by the Governance Committee.**

Contents

1. PURPOSE

1.1 Objective

The central objective of all OAC communication and information activities is to build, promote and protect OMERS reputation as a leader in pension plan administration, governance and pension fund investing. Communication and information activities should be tailored to meet the needs of OMERS major audiences but are carried out under a set of key corporate messages relevant to all and articulated in strategies and programs developed by management consistent with this policy.

1.2 Principles

Our communications and information strategies and programs are guided by the following principles:

- The OAC's communication and information initiatives promote OMERS as a leader in the pension and investment industries in Canada and, where applicable, at a global level.
- The OAC's communication and information initiatives build awareness of the benefit of the OMERS Pension Plans and the value of OMERS as an investor.
- The OAC's communication and information initiatives are designed to both build positive reputation capital among all audiences and to reduce any potential reputation damage.
- The OAC will use communication initiatives to share the right Information in an appropriate and transparent manner.
- OAC management shall be professional and knowledgeable experts in both the pension and investment arenas and support the SC and the OAC Board by establishing and managing communications processes relevant to all communications activity.
- The OAC shall act consistently with the terms and conditions set out in the Framework Agreement which establishes the respective roles and responsibilities of both the OAC and the SC.

2. COMMUNICATIONS PROGRAM

2.1 Communications Strategy and Tactical Plans

On behalf of management, Corporate Communications develops and updates as required a multi-year Communications Strategy that defines the key corporate messages and employs a proactive approach to their delivery to all audiences. Adherence to these messages by all OAC communicators presents OMERS as a single and unified organization. There may be specific messaging to individual audiences depending on the need, but all messaging must be consistent with the corporate messaging. Corporate Communications will consult with the communication teams at each of the Investment Entities and the Pension Division to ensure that there is no inconsistency with their communication initiatives focused on their business units.

A slate of communications tactics is also developed by management outlining specific communications activities which are guided by the Communications Strategy and directed at the key audiences outlined below.

2.2 Key Audiences

2.2.1 Plan Participants

Management designs, develops and delivers information and educational initiatives to support Plan participants (consisting of active members, retired members and employers) and to ensure broad understanding of the OMERS Pension Plans and the impact of the OAC's activities. Initiatives include in-person presentations, newsletters, a Members' Handbook, website and event packages. Responsive communication with Plan participants is provided through a well-established Call Centre. Requests for information from Plan participants must be managed in accordance with section 3 below.

2.2.2 News Media

A key aspect of the Communications Strategy is a proactive approach with the news media. Coverage by the news media will impact OMERS reputation in the eyes of all audiences. The OAC's voice should be assertive in its dealings with the media, promoting OMERS as a significant support to pensioners as a jointly sponsored, multi-employer pension plan and as a key participant in both the provincial and national economies, deserving of a voice at any table of influence related to the pension industry. An enhanced reputation will also support the OAC's reputation as an attractive investment partner and an employer of choice.

Management will maintain media monitoring and analysis to ensure OMERS reputation is safeguarded and in keeping with best practices for public and investor relations.

2.2.3 Sponsors and Stakeholders

General and targeted Information sessions and exchanges, and other outreach, are held with stakeholders as required. The activity should be responsive, proactive where appropriate, coherent and aligned with the OAC's business goals and strategies. Requests for information from stakeholders are managed in accordance with section 3 below.

2.2.4 Government

Our communication with governments and regulators is intended to promote OMERS business interests by effecting changes to government and regulatory agendas favourable to OMERS and the pension industry and by leveraging and/or responding to legislative/regulatory reforms for OMERS benefit. OMERS should be positioned as a leader in the pension and investment fields and as an important partner, contributor and significant institutional investor in the Ontario and Canadian economies.

2.2.5 Pension and Investment Industry Leaders

A proactive communications approach to this audience is designed to promote OMERS reputation and position the OAC as a solid and reliable investment partner, an ally in the efforts to gain regulatory reform for defined benefit pension plans and an employer of choice. Communication with this audience involves a range of tactics including speeches and panel participation by key OAC experts at industry events, a quarterly newsletter from the CEO targeting industry leaders and focusing on developments at OMERS and its position on industry trends and issues, and other activities as appropriate. Activities at this level should be coordinated with the applicable Investment Entities to ensure alignment of messaging.

3. INFORMATION PROGRAM

3.1 Scope of Information Program

In addition to a proactive communication program, the OAC will use a clear and transparent information program to respond to requests for information from Plan participants, individual sponsors and stakeholder groups. The information program will provide appropriate information in a timely manner to meet the needs of these constituencies. Any distribution of information must be consistent with the OAC's statutory obligations as set out in the OMERS Act and the PBA, and consistent with the OAC's fiduciary duties. Information requests from the individual members and the general public are addressed through existing and contemplated processes, including but not limited to privacy and access policies and procedures intended to meet the OAC's obligations under applicable law.

3.2 Requests for Information Process

The SC, individual sponsors and stakeholder groups make requests for information from the OAC ("Requests") with respect to a wide range of OMERS activities from generally available public information with respect to the Plans, their investments, possible Plan design changes, the Supplemental Plan or other possible supplemental plans.

With respect to all Requests from all of these sources:

- management shall respond to all reasonable Requests. When the OAC Board or a Director receives a Request from a Plan participant, sponsor or stakeholder, it must be forwarded to management for response;

- the response to any Request is subject to any legal or regulatory requirement, such as privacy laws which may limit the scope of a response or the ability to respond to the Request at all, and is subject to management's discretion regarding demand on resources to fulfill the Request;
- any information provided directly by management to a sponsor or stakeholder must be provided with appropriate disclaimers regarding its accuracy, timeliness and similar factors, and within appropriate defined limitations for its use;
- management will assess whether the information requested would be useful for a broad constituency of stakeholders and sponsors, including retired members, and whether or not its costs, external and internal, should or could be paid from the Plans; and
- where there may be a reputational impact, management shall keep the OAC Chair informed as required.

4. ROLES AND RESPONSIBILITIES

This policy articulates involvement or input of the OAC Board, its Committees and individual OAC Board members, whether to approve, review, or receive information, or to represent the OAC at public events.

4.1 News Media Relations

- OAC Board approval is required for the annual release of financial information and investment and pension service performance, other significant media releases identified by management and communication with the news media on issues that involve potential reputational damage to OMERS.
- The Board Chair will respond to the media on matters involving the CEO.
- Management shall ensure that OAC Board members are provided results of daily media monitoring when items of interest to Directors are published.
- All other activity between the news media and the OAC is within the purview of management.

4.2 Changes to the OMERS Brand

The OMERS brand, logo and word-mark (the "Brand") represents the face of OMERS. From time to time OAC management reviews the Brand, assesses the extent to which it continues to reflect and support OMERS long-term direction and develops any changes to the Brand awareness strategy. This review is normally tied to OMERS long-term strategic planning process and involves a number of initiatives:

- management determines the timing of and initiates any Brand review;
- the OAC Board provides Input to the Brand review through OMERS strategy discussions and reviews new branding concepts recommended by management;
- the OAC Board approves any changes to the Brand proposed by management; and
- management rolls out any changes to the Brand awareness which it communicates to the OAC Board for information.

4.3 Participation at Conferences

The OAC Board of Directors Mandate provides:

> *"generally Board members will not make formal public presentations on behalf of OMERS without consultation with the [CEO and the Chair]. Such presentations are to be distinguished, however, from meetings that may routinely occur with the organizations or bodies that appoint individual Directors*

where [the Director's] comments are limited to discussion of publicly available information consistent with the fiduciary duties of [Directors]."

With respect to participation in all stakeholder and professional events, conferences and seminars:

- Directors may attend as OAC representatives or as individuals, at their discretion;
- OAC employees, as the experts and professionals engaged by the OAC Board, are designated to speak to technical matters with respect to OMERS; and
- Directors may chair or moderate panels in order to introduce OAC employees who are making presentations as OAC spokespersons.

With respect to participation in stakeholder events, conferences and seminars only:

- Directors may make presentations to organizations or bodies that appoint individual Directors, with comments limited to discussion of publicly available information consistent with the fiduciary duties of Directors; and
- Directors must use materials prepared by management at such events, as required.

With respect to participation in professional events, conferences and seminars only:

- when a Director is represented as having any connection or association with OMERS, the Director must not make formal public presentations that are contrary to the interests of OMERS generally and the OAC in particular and must consult with the Board Chair to confirm that any presentation materials are consistent with OMERS interests;
- upon approval by the Board Chair to act as the OAC's spokesperson, the Director's presentation material must be prepared by or approved by management;
- Directors may make presentations based on their business experience and background without approval of the Board Chair, provided that they are not representing the OAC and not using material prepared by management;
- participation in the conference must be consistent with the Director Education Policy; and
- management is responsible for establishing the appropriate involvement in investment and pension industry associations and related organizations where there are benefits in maintaining involvement for communications and professional purposes.

4.4 Reputational/Service Satisfaction Research

Research is carried out on a regular basis by management to assess OMERS reputation and service levels. Selected individuals representing clients of the Pension Division participate in satisfaction surveys designed to assess satisfaction with the services of the Pension Division. In addition, reputation research is carried out focusing primarily on external audiences to assess how OMERS is perceived by the news media, other leaders in the pension and investment industries, as an employer, and by government and stakeholder groups. In carrying out this research:

- management determines the need for and frequency of reputational/service satisfaction research initiatives; and
- management provides the OAC Board with regular reports on the results of this research, as well as any strategies designed to respond to the findings.

4.5 OMERS Newsletters/Web Content

Management regularly communicates with Plan members through a series of newsletters distributed to active members, employers, and retired members. As well, management maintains an external website for ongoing communication to these groups as well as other audiences including sponsors and stakeholders, the investment community, the news media and the general public. In carrying out this form of communication:

- the Board Chair reviews and approves quotes to be attributed to him or her;
- the Board Chair approves any content related to changes in membership of the OAC Board; and
- management approves all other content with the purpose of keeping key audiences informed as appropriate.

4.6 Government Relations

Management maintains contact with government and regulatory authorities as required to implement the strategic plan and to advance OMERS business interests. In communicating the advancement of government relations:

- management provides a report on government relations for discussion and review to the OAC Board where the activity is related to OMERS strategy and major business initiatives, or where there may be a reputational impact; and
- on occasion, a Director(s) may attend a meeting(s) with government or regulatory officials, if management, in consultation with the Chair, decides it would be appropriate.

5. OVERSIGHT AND REPORTING

In concert with the responsibilities outlined above, management shall report as follows:

Report	Frequency	To whom
Daily Media monitoring	As required based on content	OAC Board members
Media coverage summary	Annually	Governance Committee
Reputational research reports	Annually or as conducted	Governance Committee
Web site activity and statistics	Annually	Governance Committee
Requests for Information	Annually	Governance Committee

6. THE SC

Management shall provide the SC with the contents of this policy for its information and provide support to the SC relating to corporate communication and Requests consistent with this policy. Management shall provide the SC with an annual summary report regarding Requests to assist the SC in its deliberations regarding issues of concern to sponsors and stakeholders.

HISTORY

Effective Date:	March 24, 2010
Approval Dates:	June 19, 2008; March 24, 2010
Next Scheduled Date for Review:	March 2013

OMERS

Enterprise
Disclosure of Board Decisions Policy

Policy Sponsor:	CLO and Legal
Summary:	Provides for the public disclosure of key decisions of the OAC Board and its Committees, through posted summaries of meetings, subject to restrictions on disclosure of confidential information. **This policy must be approved by the Governance Committee.**

1. PURPOSE

This policy covers the public dissemination of information about OAC Board and Committee decisions. The OAC's Communications and Information Policy deals with all other ongoing communication of information to members, employers, the business and investment community, and the public.

OAC Board and Committee matters are generally confidential; however, the OAC Board is accountable to the members and employers of the OMERS Pension Plans for its decisions. The OAC Board believes that dissemination of information regarding OAC Board and Committee decisions affecting the Plans assists in meeting this objective.

2. CONFIDENTIAL INFORMATION

The decisions of the OAC Board and its Committees are documented in minutes of OAC Board and Committee meetings (collectively, "Board Documents"). Board Documents may include information that is:

- proprietary or sensitive business or financial information, disclosure of which could prejudice the OAC's business or commercial interests, or those with whom it does business;
- personal information relating to members, employees or business partners; or
- privileged information, such as opinions from legal counsel,

(collectively, "Confidential Information"), which must not be disclosed.

In making disclosure of OAC Board and Committee decisions, care must be taken to prevent release or disclosure of Confidential Information to preserve confidentiality expectations and meet the OAC's legal obligations.

3. PUBLICATION OF KEY DECISIONS

As soon as practical following the approval of the minutes of an OAC Board or Committee meeting, the OAC will publish in summary form key decisions made by the OAC Board at that meeting, subject to the OAC Board's legal obligations and duties regarding Confidential Information. Where circumstances require, such as the timely issuance of financial statements, the OAC Board may direct immediate disclosure of the information.

4. PUBLICATION PROCESS

The Corporate Secretary shall prepare the summaries for review by the OAC Board Chair. Following approval by the OAC Board Chair, the Corporate Secretary shall provide the summaries to the Corporate Communications Department for posting on www.omers.com.

HISTORY

Effective Date:	April 1, 2009
Approval Dates:	February 24, 2005, March 24, 2006, March 26, 2009
Next Scheduled Date for Review:	March 2012

OMERS

Enterprise
Special Transactions Review Policy

Policy Sponsor: CLO and OAC Legal

Summary: The Policy describes the processes that OAC uses to manage certain transactions that involve related parties, and provides additional safeguards to be considered in those transactions. **This policy must be approved by the Investment Committee.**

Contents

1. PURPOSE

OAC, acting as the administrator of the OMERS Pension Plans, or its Investment Entities, may from time to time enter into transactions which may be considered by legislation, the common law or OAC policies to be non-arm's length transactions or related party transactions ("Special Transactions").[1]

Special Transactions may in fact or appearance lack some of the important checks and balances of arm's length negotiated transactions. Certain checks and balances of arm's length transactions may be missing because of relationships that exist between the parties or other circumstances that create the potential for a perceived or actual conflict of interest. Special Transactions may therefore need to be undertaken with additional safeguards in place.

An example of a Special Transaction would be a sale of assets by a parent corporation to a subsidiary corporation where there are minority shareholders. The subsidiary may be inclined to accept the sale terms offered by the parent corporation because of the control or influence of the parent corporation. Minority shareholders may however need assurances with respect to the value of the assets being acquired by the subsidiary. These assurances could come from a third-party valuation of the assets or in other forms. In OAC's case, an example would be OAC entering into a transaction with a company in which a Director has a substantial interest. Where non-arm's length circumstances exist, this Policy identifies OAC's approach to managing them.

The intent of this Policy is to ensure that Special Transactions are presented, reviewed and, where appropriate, approved and are undertaken in a manner and on terms that are in the best interests of OMERS and its members and are viewed in that light by stakeholders.

[1] For a complete description of the requirements and restrictions imposed under the legislation, policies and procedures referred to in sections 1 through 11, reference should be made to the complete text of such legislation, policies and procedures. This Policy supplements, but does not limit, the requirements, restrictions and prohibitions imposed under such instruments.

2. TERMINOLOGY

Terminology is important to this Policy because of the use of terms such as "non-arm's length" or "related party" in numerous contexts which apply to OAC. For example, "non-arm's length" and "related party" appear frequently in the ITA. The ITA does not specifically define these terms but its general approach is to equate the relationship to related party relationships. Family relationships create "relatedness" among natural persons and, for corporations, relatedness is tied closely to voting control of a corporation by a person or group of persons who themselves are related.

The *Securities Act* (Ontario) ("OSA") also adopts a precise approach to the meaning of "related party" and uses the concept in various contexts including Multilateral Instrument 61-101 which mandates special protections and safeguards in connection with related party transactions entered into by reporting issuers. Parties are often considered "related" where one entity holds more than 10% of the voting rights attached to another entity's voting securities.

Transacting with "related parties" is an important concept in the Federal Investment Regulations (the "FIR")[2], which are incorporated into the PBA by reference. In the FIR, "related party" has quite a different meaning than it does in the ITA and the OSA. The FIR approach to relatedness is based on the objective of prohibiting certain investment transactions by plan administrators where the parties involved are closely related to the pension plan itself. For example, an employer who participates in the pension plan or any entity which is an affiliate of the employer is a related party as is a member of the plan or any child of a member. The FIR definition is notoriously unwieldy for pension plans as the factual determination and listing of all of the related parties in complex investment transactions can be daunting if not impossible to determine without making reasonable assumptions about the relationships the transacting parties may have with other entities associated with them as required by the FIR definition. For the sake of clarity, where this Policy is intended to refer to a "related party" as defined in the FIR, reference is made to "Related Party".

There are, however, some common features to regulatory approaches to non-arm's length or related party transactions or relationships. Common principles tend to revolve around defining circumstances where a party to a transaction or the person representing the party may be wearing several hats and may therefore not be able to (or, at least, may be perceived to be unable to) represent one bargaining position at the negotiating table to the best advantage of the transacting party. Such circumstances can compromise or can be perceived to compromise the outcome of the negotiations for stakeholders such as sponsors, plan members or regulators. It is these circumstances that may necessitate special protections for affected parties. Those protections may include requirements for enhanced disclosure and the use of special committees made up of independent persons and various other tools.

3. REVIEW STANDARDS FOR SPECIAL TRANSACTIONS

The purpose of this Policy is not to prohibit or unduly restrict Special Transactions from occurring where permitted by law but to recognize the importance of including safeguards when such transactions do occur or are proposed. This is similar to the approach taken by Canadian securities regulators with respect to regulating public company transactions where there are non-arm's length features[3].

Safeguards will not necessarily be the same for every Special Transaction. The safeguards need to be thoughtfully decided based on the factual circumstances in question. **The Policy therefore expresses a principled approach to Special Transactions as opposed to a strict code.**

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[2] The "federal investment regulations" are defined in subsection 66(1) of the regulations under the *Pension Benefits Act* (Ontario) as sections 6.7, 7.1 and 7.2 and Schedule III to the *Pension Benefits Standards Regulations, 1985* made under the *Pension Benefits Standards Act, 1985* (Canada) as it read on December 31, 1999.

[3] See Multilateral Instrument 61-101.

Aside from this Policy there are safeguards and standards which in some cases are already reflected in existing policies, procedures or processes of OAC; however, additional safeguards are also described in this Policy for application to certain Special Transactions identified in Section 12 and Section 15 where additional safeguards are particularly important.

4. FIR COMPLIANCE AND RELATED PARTY CONSIDERATIONS

OAC as a pension plan administrator is subject to the terms of the PBA, including the FIR. OAC and the Investment Entities place a high priority on compliance with the letter and the spirit of the PBA and the FIR. Subject to certain exceptions ("Permitted FIR Related Party Transactions"), such as the value of the transaction being nominal or immaterial to the plan as a whole[4], the FIR prohibits the administrator of a pension plan, such as OAC, from directly or indirectly investing in, making loans to or entering into "transactions" with a "Related Party". The FIR in effect as of December 31, 1999, which includes the definition of "transactions" and "Related Party", is reproduced as Appendix 1 to this Policy, due to the importance of the FIR and risks associated with undertaking "transactions" with Related Parties which are prohibited by the FIR.

Related Party includes the employer that formed and contributes to the pension plan for the benefit of its employees. The FIR prohibits transacting with the employer to ensure pension assets are not inappropriately used to invest in securities of the employer or are not improperly loaned to an employer, where the employer may have the ability to influence that outcome. The prohibition on the pension plan transacting with the employer responds to obvious concerns for employer pension plans about whether arm's length negotiations could ever reasonably be expected to occur due to the close relationship between the employer and its pension plan.

For OMERS, as a multi employer pension plan, inclusion of employers as a Related Party for FIR purposes has far-reaching consequences, some of which arise from the operational and governance differences between OMERS and a typical single-employer pension plan. Currently, there are approximately 900 employers participating in OMERS, and more are anticipated to join. For a multi-employer pension plan like OMERS with the safeguard of an administrator with a broadly populated Board of Directors, provision for which is made in the OMERS Act, restrictions on OAC transacting with participating employers do not necessarily raise the same kind of conflict of interest concerns that would apply to a single employer pension plan. That having been said, the prohibition is in the PBA and must be observed, and any transaction with an employer would have to be a Permitted FIR Related Party Transaction. Similarly, the Related Party definition imposes restrictions on transactions with a union representing employees of an employer.

Safeguards mandated by this Policy with respect to the FIR include the requirement to obtain analysis regarding compliance with the FIR from professional advisors that every investment transaction, within the meaning of such terms as used in the FIR, if undertaken should be compliant with the PBA and should therefore not constitute a prohibited Related Party transaction. Such analysis must be obtained from external independent legal advisors unless the senior legal officer representing the relevant Investment Entity and the OAC CLO determine that in-house legal advice would be reasonable in the circumstances, taking into consideration the complexity and monetary value of the investment transaction. A second important safeguard is the requirement that submissions made to Approving Bodies[5] regarding investment transactions identify and discuss any related party connections for FIR purposes. If the Investment transaction is a Permitted FIR Related Party Transaction due to the value of the transaction being less than 3% of the market value of the Primary Plan Fund at the time the transaction is entered into, any safeguards that are proposed

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[4] For example, this is addressed in Section 18 of the Statement of Investment Policies & Procedures of the OMERS Primary Pension Plan.

[5] For the purposes of this Policy, "Approving Body" means the Investment Committee, and TAC (as defined in Section 8 of this Policy).

recognize that the transaction, although permitted, remains a Related Party transaction for FIR purposes.

5. *INCOME TAX ACT*

The ITA, subject to certain exceptions, generally prohibits registered pension plans from, among other things, investing in certain transactions including investing in securities of an employer or members that participate in a pension plan and persons "connected with" or who do not act at "arm's length" with such persons.

Safeguards mandated by this Policy regarding investment transactions and ITA compliance in relation to prohibited transactions require the obtaining of suitable analysis from external independent professional advisors that the proposed transaction would not be prohibited by the ITA and related regulations unless the Senior Vice President, Tax of OAC together with the senior legal officer representing the relevant Investment Entity determine in writing that in-house professional advice would be reasonable in the circumstances taking into account the complexity and monetary value of the transaction. It is also OAC's policy to have investment approvals by Approving Bodies be conditional on ITA compliance to ensure that the transaction is not a prohibited investment for the purposes of the ITA.

6. OMERS ACT

The OMERS Act and related corporate statutes to which OAC and certain of the Investment Entities are subject, in whole or in part, impose requirements with respect to transactions with Directors or officers or with persons in which Directors or officers have a material interest. These requirements are in addition to the FIR and the ITA which also cover such transactions, but the provisions are not identical.

In OAC's case, a Director or an officer who is party to a material contract or transaction or who has a material interest in a person who is a party to a material contract or transaction is required to disclose the interest in writing to OAC. This combined with the fiduciary duties included in the OMERS Act by reference to the *Business Corporation Act* (Ontario) (which includes the requirement to act always in the best interest of OAC), and the fiduciary obligations imposed on OAC as plan administrator under the PBA, are important provisions with respect to the safeguarding of how Special Transactions are processed. Directors must declare conflicts of interest at their earliest opportunity as potential transactions are introduced to OAC and the OAC Board for discussion. An officer must declare any interest in a transaction as soon as the officer becomes aware that such a transaction is under consideration.

Materiality for these purposes is viewed in a different way than materiality for the FIR or for accounting purposes. Consistent with the law of fiduciaries, any interest that might be perceived to be relevant to the OAC Board must be disclosed. There is no precise formula that determines the extent of detail that is required. It will depend in each case on the nature of the arrangement and the context in which it arises. Furthermore, having made disclosure, Directors and officers must continue to place the interest of OAC and plan members ahead of their own in all of their actions.

7. OAC CODE OF CONDUCT

The OAC Code of Conduct underpins the approach of OAC to Special Transactions involving employees. It extends beyond the officers referred to in Section 6 above to all employees. It also applies to Directors. It requires disclosure of all actual, perceived or potential conflicts of interest in a timely manner.

While the Code appropriately recognizes that conflicts of interest are not of themselves wrongful or illegal (they are just a state of facts), the Code sets out the steps to be taken to avoid subsequent potential wrongful conduct, such as exercising improper influence over the selection of a supplier to OMERS. The Code's approach is simple. It starts with disclosure of any factual circumstances that raise the spectre of conflict of interest and directs the employee's manager to decide what safeguards are appropriate (unless the conflict is immaterial), including, at a minimum, segregation of duties.

8. STATEMENT OF INVESTMENT AUTHORITIES

The OAC Statement of Investment Authorities (the "SIA") regulates the delegation of investment decision-making authority from the OAC Board to the President and CEO of OAC. The SIA also sets out the broad framework for delegation to the CEO of responsibilities with respect to making investment decisions up to a specified dollar amount. There are, however, limitations on such delegated authority based on considerations such as whether or not the transaction would be out of the ordinary course of business or would have a negative reputational impact on OAC. These limits on delegations affect Special Transactions, as such transactions will often not meet the test of ordinary course of business. Where these limits apply, the delegation is clawed back and the transaction will require Investment Committee oversight and approval. The delegated authorities and claw-backs of authority around transactions that raise reputational issues or are out of the ordinary course of business are also found in sub-delegations, for example, to TAC[6].

9. INVESTMENT COMMITTEE MANDATE

The Investment Committee[7] has delegated authority from the OAC Board to approve investment transactions and authorize related expenditures. The Investment Committee mandate, approved by the OAC Board, makes note of the importance of related party transactions and contemplates approval of such transactions by the Investment Committee. This Policy authorizes the delegation to TAC to approve certain Special Transactions where specified standards are met and thresholds are not exceeded as outlined in Section 13 and Section 15 below.

10. PROCESSES AND CONTROLS

Certain processes and controls have been adopted as a matter of practice to promote enhanced oversight of Special Transactions and are mandated by this Policy. Consistent with the principled approach to Special Transactions called for by this Policy, the Investment Committee pre-meeting checklist, which is used by the Committee Chair and the CIO in relation to Investment Committee agenda planning, requires that the pre-meeting planning for each meeting of the Investment Committee include a discussion of any pending Special Transactions. These pre-meeting discussions occur well ahead of Investment Committee meetings.

Similarly consistent with the objectives of the Policy, Senior Management is obligated in the preparation of submissions going to the Investment Committee or TAC to expressly identify relationships or areas of potential conflicts of interest or other factors that might require a transaction to be treated as a Special Transaction.

11. DISCLOSURE OF SPECIAL TRANSACTIONS

There are a number of important financial statement disclosure requirements relating to financial reporting which are relevant to recording and disclosure of Special Transactions and which are recognized by this Policy. Applicable requirements can be found in International Accounting Standard 24 ("IAS 24"), which provides guidance on the proper recording of information with respect to Special Transactions for financial statement disclosure and reporting purposes. IAS 24 broadly defines related parties and related party transactions for reporting and disclosure purposes.

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[6] Delegations by the Investment Committee to the CEO are sub-delegated through the CIO to TAC. TAC is a broadly representative management committee that exercises delegated authorities.
[7] The Investment Committee is a committee of the whole OAC Board.

Consistent with this Policy, IAS 24 notes that related party relationships are a normal feature of commerce and business. Having said that, IAS 24 also notes that having knowledge of an entity's relationships with related parties may affect third-party assessments of entity risk, as well as third-party knowledge of opportunities facing an organization.

If an entity has entered into any related party transactions during a reporting period, the entity is obligated to disclose the nature of the relationship as well as information about the transactions sufficient to enable users of the financial statements to understand the potential effect of the relationship on the financial statements of the entity.

12. ADDITIONAL REVIEW STANDARDS FOR DESIGNATED INVESTMENT TRANSACTIONS

In addition to the safeguards and requirements previously described or set out in this Policy which apply to specific related party or potentially prohibited transactions, additional safeguards are mandated by this Policy for Designated Special Transactions. Designated Special Transactions relate to transacting primarily with Directors and officers or former Directors and officers as well as entities with specific explicit power to appoint representatives to the Sponsors Corporation or Directors to the OAC. Designated Special Transactions fall into two categories: (i) Designated Investment Transactions as defined in this Section 12, and (ii) Designated Outsourcing Transactions as defined in Section 15.

"Designated Investment Transactions" are transactions in which OAC or an Investment Entity[8] (i) acquires or disposes of an investment asset or (ii) enters into a borrowing or lending transaction, in any such case when such transaction is between OAC or an Investment Entity, on the one hand, and, to the knowledge of any member of Senior Management aware of the transaction, any of the following persons, directly or indirectly, on the other hand:

a) any entity who has appointed a member to the OAC Board or the SC Board;
b) any individual who is a member of the OAC Board, the SC Board or the board of an Investment Entity or any individual who has been a member of such a board in the past 24 months;
c) an officer of OAC or any Investment Entity or any individual who has been an officer of OAC or any Investment Entity in the past 24 months;
d) any individual who is or has been within the past 24 months employed by OAC or an Investment Entity;
e) the spouse or common-law partner or a child ("family member") of any individual listed in b) or c);
f) a corporation or other entity that is directly or indirectly controlled (as defined in the FIR) by an individual referred to in paragraphs b), c), or e); or
g) a corporation or other entity in which an individual referred to in paragraphs b), c), or e) directly or indirectly has a substantial investment (as defined in the FIR).

Notwithstanding the foregoing, the normal course purchase or sale of equity or debt securities on a "published market" (as defined in Multilateral Instrument 61–101) by OCM shall not constitute a Designated Investment Transaction for the purposes of this Policy.

[8] For the purposes of this Policy, OMERS Investment Management Inc. and OMERS Finance Trust are included in the scope of "Investment Entity".

Where, to the knowledge of any members of the Approving Body responsible for reviewing Special Transactions or any members of the Senior Management team involved in preparing and submitting a submission document in connection with seeking approval of any such transaction, the transaction would constitute a Designated Investment Transaction, the following additional safeguards must be followed:

i) CIO Oversight

The proposed transaction must be referred to the CIO or the CEO, where the CIO is conflicted, for oversight. If there is reasonable doubt whether the transaction is a Designated Investment Transaction, it should be submitted to the CLO for a decision.

ii) External Board Counsel

Designated Investment Transactions must be referred to the OAC Board's external independent legal counsel for comment. Such comment must be forwarded to the Chair and Vice Chair of the Investment Committee and the Designated Sponsor (as defined in paragraph iii) below), and must accompany the submission materials referred to below.

iii) Submission Materials

A member of the Senior Management team designated by the CIO (a "Designated Sponsor) must prepare any submission to the Approving Body with respect to Designated Investment Transactions. Such submission documents must include in addition to the usual description of the transaction and the principal terms thereof, (i) the basis for concluding the transaction is a Designated Investment Transaction, (ii) risks and mitigants, (iii) the rationale for undertaking the Designated Investment Transaction, (iv) a description of proposed safeguards as discussed below, (v) a recommendation as to why the Designated Investment Transaction should be pursued and completed, and (vi) a review of any other factors or information that the member of the Senior Management team believes should be considered by the Approving Body.

iv) Special Committee

The CIO may appoint a special committee of TAC to work with the Designated Sponsor where TAC has authority to approve the Designated Investment Transaction if required to ensure that any TAC decision is made only by non-conflicted members and to provide a sounding board for the Designated Sponsor. Where Investment Committee approval is required, the CIO will confer with the Chair of the Investment Committee (or the Vice Chair if the Chair is conflicted), who, in their discretion, may appoint a special committee of the Investment Committee for the same reasons. Any such special committee shall approve the submission documents to the Approving Body. All members of such special committee must be non-conflicted.

v) Advisors

An Approving Body or any special committee, if appointed, may engage, where it determines it is appropriate to do so, external counsel, external valuators and independent financial advisors to advise it in connection with its review of a Designated Investment Transaction.

vi) Independence of Approving Body

Any member of the Approving Body who is conflicted must be excluded from any decision of the Approving Body.

vii) Valuation

Where the Approving Body or any special committee, if appointed, determines it would be advisable to do so in the interests of plan members taking into account, among other things, the complexity of the transaction or the sensitivity of the transaction, it may require an external third-party valuation to be obtained in respect of a Designated Investment Transaction. The valuator that completes any such valuation should satisfy the independence standards applicable to formal valuations required under Multilateral Instrument 61–101.

viii) Factors Affecting Approval

In considering whether to approve a Designated Investment Transaction, the Approving Body, in addition to receiving the recommendations of any special committee, in discharging applicable fiduciary duties, must determine (A) that the transaction is on commercially reasonable terms, and, where applicable, on terms no less favourable to OAC or the Investment Entity than general market terms, and (B) that the terms of the transaction are fair and reasonable and in the interests of OMERS plan members.

13. APPROVING BODY THRESHOLDS

TAC is authorized to approve any Designated Investment Transaction if the value of the transaction is less than $25,000,000 in the aggregate. For all other Designated Investment Transactions, the approval of the Investment Committee is required. When TAC will be considering a Designated Investment Transaction, the CIO must provide a copy of the submission materials to the Chair and Vice Chair of the Investment Committee for information when such materials are provided to TAC.

If the transaction is a Designated Investment Transaction by virtue of the fact that (i) any member of Senior Management, (ii) any family member of a member of Senior Management, or (iii) any corporation or other entity that is controlled by such a member or a family member of such member, or (iv) any corporation or other entity in which such member or a family member of such member has a substantial investment, then the approval of the Investment Committee is required for such Designated Investment Transaction, regardless of the value of the transaction.

The Approving Body may impose such terms and conditions on its approval as it deems appropriate.

14. FOLLOW-ON INVESTMENTS

Where a Designated Investment Transaction has been approved by the appropriate Approving Body, follow-on additional investments or commitments may be made within the threshold limits established by this Policy without additional approvals being required, unless there has been a material change in the circumstances of the investment, in which case a new approval is required. By way of example, if the original Designated Investment Transaction was for $15 million and approved by TAC, TAC may approve an additional investment of up to $10 million as a follow-on investment before the Investment Committee's approval is required. Any follow-on investment approved by TAC in respect of any Designated Investment Transaction must be reported to the Investment Committee at the next meeting of the Investment Committee following the date of such follow-on investment.

15. DESIGNATED OUTSOURCING TRANSACTIONS

If OAC or an Investment Entity enters into a transaction to outsource (i) an investment management function or (ii) a corporate IT, investment application or pension processing function with an entity or individual listed in paragraphs a) through g) of Section 12 (a "Designated Outsourcing Transaction"), then the review standards set out in Section 12 apply to such transaction. The CIO may delegate his authority to manage the review process as set out in Section 12 with respect to a Designated Outsourcing Transaction to any other non-conflicted member of the Leadership Team. TAC is authorized to approve any Designated Outsourcing Transaction if the value of the Designated Outsourcing Transaction is less than $5,000,000 in the aggregate. For all other Designated Outsourcing Transactions, the approval of the Investment Committee is required.

16. REPORTING AND DISCLOSURE

At each regularly scheduled meeting of the Investment Committee, the CIO shall provide a report to the Investment Committee on all Permitted FIR Related Party Transactions and Designated Special Transactions that have been approved by TAC since the Investment Committee's immediately preceding meeting. Such reports shall describe the material terms of each such transaction including the factors affecting approval as set forth in Section 12 above.

The Investment Committee must provide an annual report at the end of each year to the Audit Committee covering all Permitted FIR Related Party Transactions and Designated Special Transactions to assist the Audit Committee in its deliberations regarding the discharge of its disclosure obligations with respect to the financial statements of OAC in accordance with IAS 24.

The CLO must prepare a list, following the end of each financial year, of all Designated Special Transactions, including any series of related Designated Special Transactions, entered into during that financial year that had a value in excess of $5,000,000. Such report shall be made available by OAC through its annual report or otherwise on its public website.

HISTORY

Effective Date.	April 1, 2011
Approval Dates:	January 20, 2011, March 24, 2011
Next Scheduled Date for Review:	September 2011

APPENDIX 1 – EXCERPTS FROM FEDERAL INVESTMENT REGULATIONS

FEDERAL INVESTMENT REGULATIONS, AS AT DECEMBER 31, 1999
Pension Benefits Standards Regulations, 1985
Regulations Respecting Pension Benefits Standards
SOR/87-19

Excerpt: sections 6-7 and Schedule III

6. (1) Every plan shall provide that the moneys of the pension fund are to be

(*a*) invested in accordance with Schedule III; and
(*b*) invested
(i) in a name that clearly indicates that the investment is held in trust for the plan and, where the investment is capable of being registered, registered in that name,
(ii) in the name of a financial institution, or a nominee thereof, in accordance with a custodial agreement or trust agreement, entered into on behalf of the plan with the financial institution, that clearly indicates that the investment is held for the plan, or
(iii) in the name of The Canadian Depository for Securities Limited, or a nominee thereof, in accordance with a custodial agreement or trust agreement, entered into on behalf of the plan with a financial institution, that clearly indicates that the investment is held for the plan.

(2) For the purposes of subsection (1), "custodial agreement" means an agreement providing that

(*a*) an investment made or held on behalf of a plan pursuant to the agreement
(i) constitutes part of the plan's pension fund, and
(ii) shall not at any time constitute an asset of the custodian or nominee; and
(*b*) records shall be maintained by the custodian that are sufficient to allow the ownership of any investment to be traced to the plan at any time.

7. The administrator of a plan shall maintain a current record that clearly identifies every investment held on behalf of the plan, the name in which the investment is made and, where appropriate, the name in which the investment is registered.

7.1 (1) The administrator of a plan shall, before the later of July 1, 1994 and the day on which the plan is registered, establish, on behalf of the plan, a written statement of investment policies and procedures in respect of the plan's portfolio of investments and loans, including

(*a*) categories of investments and loans, including derivatives, options and futures,
(*b*) diversification of the investment portfolio,
(*c*) asset mix and rate of return expectations,
(*d*) liquidity of investments,
(*e*) the lending of cash or securities,
(*f*) the retention or delegation of voting rights acquired through plan investments,
(*g*) the method of, and basis for, the valuation of investments that are not regularly traded at a public exchange, and
(*h*) related party transactions permitted under section 17 of Schedule III and the criteria to be used to establish whether a transaction is nominal or immaterial to the plan,

having regard to all factors that may affect the funding and solvency of the plan and the ability of the plan to meet its financial obligations.

(2) The statement of investment policies and procedures referred to in subsection (1) shall include a description of the factors referred to in that subsection and the relationship of those factors to those policies and procedures.

(3) The administrator of a plan shall submit the statement of investment policies and procedures referred to in subsection (1)

(*a*) to any pension council that has been established, within 60 days after the later of

(i) the day on which the statement is established, and

(ii) the day on which the pension committee is established; and

(*b*) where a plan is a defined benefit plan, to the actuary to the plan on or before the day that is the later of

(i) 60 days after the day on which the statement is established, and

(ii) the day on which the actuary is appointed.

7.2 (1) The administrator of a plan shall review and confirm or amend the statement of investment policies and procedures referred to in subsection 7.1(1) at least once each plan year.

(2) A copy of all amendments to the statement of investment policies and procedures shall be submitted, within 60 days after the statement is amended,

(*a*) to any pension council that has been established; and
(*b*) where the plan is a defined benefit plan, to the actuary to the plan.

SCHEDULE III

(Section 6)

PERMITTED INVESTMENTS

Interpretation

1. In this Schedule,

"child", in respect of a person, means

(*a*) the natural or adopted child of the person,
(*b*) the natural or adopted child of the person's spouse, or
(*c*) the spouse of a natural or adopted child of the person; (*enfant*)

"debt obligation" means a bond, debenture, note or other evidence of indebtedness of an entity; (*titre de créance*)

"entity" means

(*a*) a corporation, trust, partnership or fund or an unincorporated association or organization, or
(*b*) Her Majesty in right of Canada or of a province or the government of a foreign country or of a political subdivision of a foreign country, or an agency thereof; (*entité*)

"investment corporation", in respect of a plan, means a corporation that

(*a*) is limited in its investments to those that are authorized for the plan under this Schedule,
(*b*) holds at least 98 per cent of its assets in cash, investments and loans,
(*c*) does not issue debt obligations,
(*d*) obtains at least 98 per cent of its income from investments and loans, and
(*e*) does not lend any of its assets to, or invest any of its moneys in, a related party of the plan; (*société de placement*)

"loan" includes a deposit, financial lease, conditional sales contract, repurchase agreement and any other similar arrangement for obtaining money or credit, but does not include investments in securities or the making of an acceptance, endorsement or other guarantee; (*prêt*) "market terms and conditions", in respect of a transaction, means terms and conditions, including those relating to price, rent or interest rate, that would apply to a similar transaction in an open market under conditions requisite to a fair transaction between parties who are at arm's length and acting prudently, knowledgeably and willingly; (*conditions du marché*)

"person" includes an entity; (*personne*)

"public exchange" means

(*a*) the Alberta Stock Exchange,
(*b*) the Montreal Stock Exchange,
(*c*) the Toronto Stock Exchange,
(*d*) the Vancouver Stock Exchange,
(*e*) the Winnipeg Stock Exchange,
(*f*) in France, the Stock Exchange (Paris),
(*g*) in the United Kingdom, The Stock Exchange (London), and
(*h*) in the United States,
(i) the American Stock Exchange,
(ii) the Boston Stock Exchange,
(iii) the Chicago Board of Trade,
(iv) the Cincinnati Stock Exchange,
(v) the Detroit Stock Exchange,
(vi) the Midwest Stock Exchange,
(vii) the National Association of Securities Dealers Automated Quotation System,
(viii) the National Stock Exchange,
(ix) the New York Stock Exchange,
(x) the Pacific Coast Stock Exchange,
(xi) the Philadelphia-Baltimore-Washington Stock Exchange,
(xii) the Pittsburgh Stock Exchange,
(xiii) the Salt Lake Stock Exchange, or
(xiv) the Spokane Stock Exchange; (*bourse*)

"real estate corporation" means a corporation incorporated to acquire, hold, maintain, improve, lease or manage real property other than real property that yields petroleum or natural gas; (*société immobilière*)

"real property" includes a leasehold interest in real property; (*biens immeubles*)

"related party", in respect of a plan, means a person who is

(*a*) the administrator of the plan or who is a member of a pension committee, board of trustees or other body that is the administrator of the plan,
(*b*) an officer, director or employee of the administrator of the plan,
(*c*) a person responsible for holding or investing the assets of the plan, or any officer, director or employee thereof,
(*d*) an association or union representing employees of the employer, or an officer or employee thereof,
(*e*) an employer who participates in the plan, or an employee, officer or director thereof,
(*f*) a member of the plan,
(*g*) where the employer is a corporation, a person who directly or indirectly holds, or together with the spouse or a child of the person holds, more than 10 per cent of the voting shares carrying more than 10 per cent of the voting rights attached to all voting securities of the corporation,
(*h*) the spouse or a child of any person referred to in any of paragraphs (*a*) to (*g*),
(*i*) where the employer is a corporation, an affiliate of the employer,
(*j*) a corporation that is directly or indirectly controlled by a person referred to in any of paragraphs (*a*) to (*h*),
(*k*) an entity in which a person referred to in paragraph (*a*), (*b*), (*e*) or (*g*), or the spouse or a child of such a person, has a substantial investment, or
(*l*) an entity that holds a substantial investment in the employer,

but does not include Her Majesty in right of Canada or of a province, or an agency thereof, or a bank, trust company or other financial institution that holds the assets of the plan, where that person is not the administrator of the plan; (*apparenté*)

"resource corporation" means a corporation that has, at all times since the date on which it was incorporated,

> (*a*) limited its activities to acquiring, holding, exploring, developing, maintaining, improving, managing, operating or disposing of Canadian resource properties,
> (*b*) restricted its investments and loans, other than investments in Canadian resource properties or property to be used in connection with Canadian resource properties owned by it and loans secured by Canadian resource properties to persons resident in Canada for the exploration or development of such properties, to investments and loans authorized for a plan under this Schedule, and
> (*c*) not borrowed money other than for the purpose of earning income from Canadian resource properties; (*société minière*)

"security" means

> (*a*) in respect of a corporation, a share of any class of shares of the corporation or a debt obligation of the corporation, and includes a warrant of the corporation, but does not include a deposit with a financial institution or an instrument evidencing such a deposit, and
> (*b*) in respect of any other entity, any ownership interest in or debt obligation of the entity; (*titre ou valeur mobilière*)

"transaction" includes

> (*a*) the making of an investment in securities,
> (*b*) the taking of an assignment of, or otherwise acquiring, a loan made by a third party,
> (*c*) the taking of a security interest in securities, and
> (*d*) any modification, renewal or extension of a prior transaction,

but does not include a payment of pension benefits or other benefits, a transfer of pension benefit credits or a withdrawal of contributions from a plan; (*opération*)

"voting share" means a share of any class of shares of a corporation that carries voting rights under all circumstances, by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled. (*action avec droit de vote*)

2. For the purposes of this Schedule, the making, holding or acquiring of an investment indirectly by an administrator on behalf of a plan, the holding, acquiring or owning of property indirectly by an administrator on behalf of a plan or the lending of money indirectly by an administrator on behalf of a plan includes the holding, making, acquiring, owning or lending of an investment, a property or money, as the case may be, by

> (*a*) a real estate corporation, resource corporation or investment corporation in which the moneys of the plan have been invested in accordance with section 12, 13 or 14;
> (*b*) a real estate corporation, resource corporation or investment corporation of which a corporation referred to in paragraph (*a*) holds securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the real estate corporation, resource corporation or investment corporation; or
> (*c*) a mutual or pooled fund or trust fund in which the moneys of the plan have been invested.

3. (1) For the purposes of this Schedule,

> (*a*) a person or plan controls a corporation if securities of the corporation to which are attached more than 50 per cent of the votes that may be cast to elect the directors of the corporation are beneficially owned by the person or plan and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation;
> (*b*) a person or plan controls an unincorporated entity, other than a limited partnership, if more than 50 per cent of the ownership interests into which the unincorporated entity is divided are

beneficially owned by the person or plan and the person or plan is able to direct the business and affairs of the unincorporated entity;
(*c*) the general partner of a limited partnership controls the limited partnership; and
(*d*) a trustee of a trust controls the trust.

(2) For the purposes of this Schedule, a person or plan who controls an entity controls any other entity that is controlled by the entity.

4. For the purposes of this Schedule, a corporation is a subsidiary of another corporation if it is controlled by the other corporation.

5. For the purposes of this Schedule, one entity is affiliated with another entity if the entity is controlled by the other entity or if both entities are controlled by the same person.

6. For the purposes of this Schedule, a person or plan has a substantial investment in

(*a*) an unincorporated entity if the person, the plan or an entity controlled by the person or plan beneficially owns more than 25 per cent of the ownership interests in the unincorporated entity; and
(*b*) a corporation if
(i) the voting rights attached to voting shares of the corporation that are beneficially owned by the person or plan, or by an entity controlled by the person or plan, exceed 10 per cent of the voting rights attached to all of the outstanding voting shares of the corporation, or
(ii) shares of the corporation that are beneficially owned by the person or plan, or by an entity controlled by the person or plan, represent ownership of more than 25 per cent of the shareholders' equity of the corporation.

7. For the purposes of this Schedule, a person or plan is associated with

(*a*) a corporation that the person or plan controls and every affiliate of every such corporation;
(*b*) a person who controls the person or plan;
(*c*) a partner who has a substantial investment in a partnership in which the person or plan has a substantial investment;
(*d*) a trust or estate in which the person or plan has a substantial investment or for which the person or plan serves as trustee or in a similar capacity to a trustee;
(*e*) the spouse of the person; and
(*f*) a brother, sister or child or other descendant of the person, or the spouse thereof.

Application

8. This Schedule does not apply in respect of

(*a*) an insured plan or a plan in respect of which all benefits are provided through an annuity contract issued by the Government of Canada; or
(*b*) investments held in an unallocated general fund of a person authorized to carry on a life insurance business in Canada.

Quantitative Limits

9. (1) The administrator of a plan shall not directly or indirectly lend moneys of the plan equal to more than 10 per cent of the total book value of the plan's assets to, or invest moneys equal to more than 10 per cent of the total book value of the plan's assets in,

(*a*) any one person;
(*b*) two or more associated persons; or
(*c*) two or more affiliated corporations.

(2) Subsection (1) does not apply in respect of moneys of a plan held by a bank, trust company or other financial institution to the extent that the moneys are fully insured by the Canada Deposit Insurance Corporation, by the Canadian Life and Health Insurance Compensation Corporation or by

any similar provincial body established for the purpose of providing insurance against loss of deposits with trust companies or other financial institutions.

(3) Subsection (1) does not apply in respect of investments in

(*a*) a segregated fund or mutual or pooled fund that complies with the requirements applicable to a plan that are set out in this Schedule;
(*b*) an unallocated general fund of a person authorized to carry on a life insurance business in Canada;
(*c*) an investment corporation, real estate corporation or resource corporation;
(*d*) securities issued or fully guaranteed by the Government of Canada, the government of a province, or an agency thereof;
(*e*) a fund composed of mortgage-backed securities that are fully guaranteed by the Government of Canada, the government of a province, or an agency thereof; or
(*f*) a fund that replicates the composition of a widely recognized index of a broad class of securities traded at a public exchange.

10. (1) The administrator of a plan shall not, directly or indirectly, invest moneys of the plan in real property or Canadian resource properties if, at the time the investment is made,

(a) the book value of the investment in any one parcel of real property or Canadian resource property exceeds 5 per cent of the book value of the plan's assets;
(b) the aggregate book value of all investments in Canadian resource properties exceeds 15 per cent of the book value of the plan's assets; or
(c) the aggregate book value of all investments in real property and Canadian resource properties exceeds 25 per cent of the book value of the plan's assets.

(2) Where real property is subdivided into two or more parcels and the beneficial ownership of the real property remains the same, or where a person directly or indirectly acquires two or more parcels for consolidation, the real property shall be treated as one parcel for the purposes of the investment limits set out in this section.

11. (1) Subject to subsection (2), the administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation.

(2) Subsection (1) does not apply in respect of investments in securities of

(*a*) a real estate corporation;
(*b*) a resource corporation; or
(*c*) an investment corporation.

12. (1) The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a real estate corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation, unless the administrator first obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will

(*a*) file with the Superintendent, at such intervals or times as the Superintendent directs,
(i) copies of its annual financial statements,
(ii) copies of its audited financial statements in respect of fiscal years ending after December 31, 1994,
(iii) a list clearly identifying the assets of the corporation and the market value of each asset,
(iv) a list of the names of its officers, directors and shareholders, and
(v) a certificate stating that the corporation is complying with its undertaking;
(*b*) permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office and to examine its books and records;
(*c*) limit its activities to acquiring, holding, maintaining, improving, leasing or managing real property other than real property that yields petroleum or natural gas;

(*d*) not carry on the activities referred to in paragraph (*c*) in respect of any real property that is not owned by, or on behalf of, or mortgaged to,

(i) the plan,
(ii) the corporation,
(iii) any other real estate corporation in which securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation have been invested in by, or on behalf of, the plan pursuant to this subsection, or
(iv) any other real estate corporation in which securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation are owned by the corporation or by a real estate corporation referred to in subparagraph (iii);

(*e*) procure, at the request of the Superintendent and at its own expense, an appraisal by one or more accredited appraisers of any parcel of real property owned by it or on its behalf;
(*f*) not lend any of its assets to, or invest any of its moneys in, a related party of the plan;
(*g*) restrict its investments and loans, other than investments in real property or in the securities of other real estate corporations, to those authorized for the plan under this Schedule; and
(*h*) not invest, or hold an investment, in securities of any other real estate corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation, unless the corporation first obtains and deposits with the Superintendent an undertaking by the other real estate corporation not to invest, or hold an investment, in the securities of any other real estate corporation.

(2) A list of assets referred to in subparagraph (1)(*a*)(iii)

(*a*) shall not include any asset, other than an asset referred to in paragraph (1)(*g*), that is not authorized under this Schedule; and
(*b*) shall value any securities that are included in the assets of the corporation at a value not exceeding the market value thereof.

(3) Any financial statement of a plan filed pursuant to subsection 12(3) of the Act shall value the common shares of the real estate corporation held by, or on behalf of, the plan at a value not greater than the amount obtained by multiplying

(*a*) an amount equal to the total assets of the corporation less the sum of its total liabilities and its preferred capital stock
by
(*b*) the number of common shares of the corporation held by, or on behalf of, the plan divided by the total number of the issued and outstanding common shares of the corporation.

13. (1) The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a resource corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation, unless the administrator first obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will

(*a*) file with the Superintendent, at such intervals or times as the Superintendent directs,

(i) copies of its annual financial statements,
(ii) copies of its audited financial statements in respect of fiscal years ending after December 31, 1994,
(iii) a list clearly identifying the assets of the corporation and the market value of each asset,
(iv) a list of the names of its officers, directors and shareholders, and
(v) a certificate stating that the corporation is complying with its undertaking;

(*b*) permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office and to examine its books and records;
(*c*) limit its activities to acquiring, holding, exploring, developing, maintaining, improving, managing, operating or disposing of Canadian resource properties;
(*d*) not carry on the activities referred to in paragraph (*c*) in respect of any Canadian resource property that is not owned by, or on behalf of,

(i) the plan,
(ii) the corporation,

(iii) any other resource corporation in which securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation have been invested in by, or on behalf of, the plan pursuant to this subsection, or
(iv) any other resource corporation in which securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation are owned by the corporation or by a resource corporation referred to in subparagraph (iii);

(*e*) procure, at the request of the Superintendent and at its own expense, an appraisal by one or more accredited appraisers of any Canadian resource property owned by it;
(*f*) not lend any of its assets to, or invest any of its moneys in, a related party of the plan;
(*g*) restrict its investments and loans, other than investments in Canadian resource property or properties to be used in connection with Canadian resource properties owned by it, loans secured by Canadian resource properties to persons resident in Canada for the exploration or development of such properties and investments in the securities of other resource corporations, to investments and loans authorized for the plan under this Schedule;
(*h*) not borrow money other than for the purpose of earning income from Canadian resource properties; and
(*i*) not invest, or hold an investment, in securities of any other resource corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation, unless the corporation first obtains and deposits with the Superintendent an undertaking by the other resource corporation not to invest, or hold an investment, in the securities of any other resource corporation.

(2) A list of assets referred to in subparagraph (1)(*a*)(iii)

(*a*) shall not include any asset, other than an asset referred to in paragraph (1)(*g*), that is not authorized under this Schedule; and
(*b*) shall value any securities that are included in the assets of the corporation at a value not exceeding the market value.

(3) Any financial statement of the plan filed pursuant to subsection 12(3) of the Act shall value the common shares of the resource corporation held by, or on behalf of, the plan at a value not greater than the amount obtained by multiplying

(*a*) an amount equal to the total assets of the corporation set out in the balance sheet less the sum of its liabilities and its preferred capital stock
by
(*b*) the number of common shares of the corporation held by, or on behalf of, the plan divided by the total number of the issued and outstanding common shares of the corporation.

14. The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of an investment corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation, unless the administrator first obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will

(*a*) file with the Superintendent, at such intervals or times as the Superintendent directs,
(i) copies of its annual financial statements,
(ii) copies of its audited financial statements in respect of fiscal years ending after December 31, 1994,
(iii) a list clearly identifying the assets of the corporation and the market value of each asset,
(iv) a list of the names of its officers, directors and shareholders, and
(v) a certificate stating that the corporation is complying with its undertaking;

(*b*) permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office and to examine its books and records;
(*c*) hold at least 98 per cent of its assets in cash, investments and loans;
(*d*) not issue debt obligations;
(*e*) obtain at least 98 per cent of its income from investments and loans;
(*f*) not lend any of its assets to, or invest any of its moneys in, a related party of the plan; and

(*g*) not invest, or hold an investment, in securities of any other investment corporation if there are attached to those securities more than 30 per cent of the votes that may be cast to elect the directors of that corporation, unless the corporation first obtains and deposits with the Superintendent an undertaking by the other investment corporation not to invest, or hold an investment, in the securities of any other investment corporation.

15. For the purposes of sections 16 and 17,

(*a*) where a transaction is entered into by, or on behalf of, a plan with a person who the administrator of the plan, or any person acting on the administrator's behalf, knows will become a related party to the plan, the person shall be considered to be a related party of the plan in respect of the transaction; and
(*b*) the fulfilment of an obligation under the terms of any transaction, including the payment of interest on a loan or deposit, is part of the transaction and not a separate transaction.

16. (1) Subject to sections 17 and 18, the administrator of a plan shall not, directly or indirectly,

(*a*) lend the moneys of the plan to a related party or invest those moneys in the securities of a related party; or
(*b*) enter into a transaction with a related party on behalf of the plan.

(2) Subject to sections 17 and 18, during the period of twelve months after the day on which a person ceases to be a related party of a plan, the administrator of the plan shall not, directly or indirectly,

(*a*) lend the moneys of the plan to that person or invest those moneys in the securities of that person; or
(*b*) enter into a transaction with that person on behalf of the plan.

17. (1) The administrator of a plan may enter into a transaction with a related party on behalf of the plan if

(*a*) the transaction is required for the operation or administration of the plan; and
(*b*) the terms and conditions of the transaction are not less favourable to the plan than market terms and conditions.

(2) The administrator of a plan may invest the moneys of the plan in the securities of a related party if those securities are acquired at a public exchange.

(3) The administrator of a plan may enter into a transaction with a related party on behalf of the plan if the value of the transaction is nominal or the transaction is immaterial to the plan.

(4) For the purposes of subsection (3), in assessing whether the value of a transaction is nominal or whether a transaction is immaterial, two or more transactions with the same related party shall be considered as a single transaction.

General

18. Sections 9 to 16 do not apply in respect of

(*a*) investments in a corporation that are held by, or on behalf of, a plan as a result of an arrangement, within the meaning of subsection 192(1) of the *Canada Business Corporations Act*, for the reorganization or liquidation of the corporation or for the amalgamation of the corporation with another corporation, if the investments are to be exchanged for shares or debt obligations;

(*b*) assets that are acquired by, or on behalf of, a plan through the realization of a security interest held by, or on behalf of, the plan and that are held for a period not exceeding two years from the day on which the assets were acquired.

COST COMPARISON

Current real estate operating costs of OMERS and Borealis and OMERS Infrastructure management fees pre and post real estate consolidation and Borealis restructuring.

	CURRENT (million $)	POST (million $)
BOREALIS MANAGEMENT FEES		
Real Estate Asset Management Fees	19.70	-
Infrastructure and Private Equity Fees		
Managed Debt	.60	.60
Equity	20.00	10.00
Standby Fees	.80	.80
Trustee Structure Fee	.50	-
Private Equity Fund Fee	2.00	2.00
Sub Total	**43.60**	**13.40**
ADDITIONAL FEES		
Multi Residential Fees	1.70	1.70
Industrial Fees	0.70	.70
International Private Fund Fees	3.90	3.90
Heitman Public Foreign Fee	0.40	.40
Sub Total	**6.70**	**6.70**
OMERS Real Estate Staff Transfer to Oxford	1.40	1.40
BREMI Operations Transfer minus offset for duplication (12.00 minus 3.00)	-	9.00
Total	**51.70**	**30.50**
COST REDUCTION	**21.20**	

Infrastructure and Private Equity Management Fees	
Current	23.9
Post	13.4
Reduction	**10.5**
Real Estate Operating Costs	
Current	27.8
Post	17.1
Reduction	**10.7**

The Governance Reform Project at OMERS Administration Corporation

Introduction

This memorandum outlines the Governance Reform Project ("GRP") at OMERS Administration Corporation ("OAC"). The GRP was initiated in April of 2007 and stretched over approximately 24 months. It was a comprehensive review of OAC's existing governance systems.

The systems and controls in place today are robust and underpin the broader OMERS commitment to deliver on the pension promise to plan beneficiaries and stakeholders.

The Origins of the GRP

In June 2006, as a result of the OMERS Act, 2006[1] OMERS became autonomous (or independent) from the Ontario government. Prior to that time, the Ontario government had acted as plan sponsor, and OMERS in effect was a public sector organization with its board members being appointed by Order in Council. A new corporation, OMERS Sponsors Corporation, took over the duties of the Ontario government as plan sponsor overseeing plan design, contribution rates and the appointment of Directors of OAC.

With autonomy, OMERS now functions without government involvement competing with an array of private sector organizations, like Manulife, and other large investment firms, as well as other pension plans, for investment opportunities.

Administration of the pension plans and management of the investment function falls to OAC. OAC is the legal successor to "OMERS" as it then was under the legislation preceding the OMERS Act, 2006. The Board of Directors of the predecessor corporation became the Board of Directors of OAC (the "Board"). This bi-cameral governance structure under the OMERS Act, 2006 was intended to allow for greater stakeholder engagement and responsibility.

Among the governance challenges flowing from the new Act were the following:

- the absence of a clearly identifiable "owner" among the many stakeholder groups; the Province would no longer play a dominant role;
- the challenge of equipping the Board with the skills to oversee investment and pension administration with the Province having turned over responsibility for director appointments to the Sponsors Corporation;
- meeting the imperative for retirement security while needing to deliver significant investment returns; and
- working within a new structure that did not easily fit into traditional private, public, or not-for-profit governance models. [2]

In late 2006 and early 2007, in light of the new Act, some external challenges faced by the Board, the resignation of the incumbent CEO, and a new CEO who wanted to clearly

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[1] *Ontario Municipal Employees Retirement System Act, 2006*, S.O. 2006, c. 2.

[2] Coincidental with the OMERS Act, 2006 the Legislature also passed a separate statute called the *Ontario Municipal Employees Retirement System Review Act, 2006*, S.O. 2006, c. 9, Sch. K, which mandated a Ministerial review of the OMERS governance structure in 2012.

understand the expectations of the Board and sponsor groups, the Board recognized the value that would flow from a governance review.

The GRP Process

(a) External Advisors

The Board in consultation with Management decided to hire two external advisors, one of which was McCarthy Tétrault and the second being John T. Dinner Board Governance Services. The two advisors were directed to work together to assist the Board by working through its Governance Committee.

(b) Work Plan

The GRP was based on a comprehensive GRP Work Plan developed by the Board's consultants and adopted by the Board. The GRP Work Plan was built around key principles, including the following:

- the Board of Directors would adopt a governance mission and vision;
- while facilitated by outside advisors, the Project would be very much owned by the Board of Directors and Management working together;
- the need for consensus on how to generally divide responsibilities between the Board and Management in the interests of OAC and its stakeholders (a two-day offsite facilitated session comprising Management and the Board dedicated to this subject occurred in July 2007);
- a desire to focus not only on documents and terms of reference like committee mandates and work plans, but also to integrate this with governance processes, human resources at OAC and relationship dynamics to ensure that the governance priorities of OAC, once determined, would become part of the DNA of OAC;
- the design of the governance framework for OAC would take into account private sector standards and leading practices, but would also very much be focused on building a customized approach to governance to suit the needs of the OAC; and
- the Project would be comprehensive.

With respect to mission and vision, the participants in the GRP decided upon a simple key approach which would be to adopt leading governance standards suitable for OAC and be recognized by an external reputable body as a leading governance organization.

(c) Key Developments

As the GRP progressed throughout 2007 and 2008, some of the building blocks of OAC governance which emerged and would ultimately be recognized in the governance documents and processes of OAC included:

- clarity around the process and responsibilities behind developing a strategy for OAC and how Management and the Board would participate in that process;
- the importance of creating a comprehensive succession plan to underpin governance continuity;
- recognition of the importance of the relationship between governance objectives and the people at OAC who would have to implement governance;

- the importance of being absolutely clear about the division of responsibilities among the Board, its Committees and Management to ensure clear accountability; and
- the importance of trust and respect at the Board and Management level and the positive impact of trust and respect on quality effective decision-making.

Results of the GRP

The results of the GRP are evident today from the Governance Manual and Governance Handbook as well as in the processes and people who are closely linked to governance at OAC.

(a) Documents and Policies

The OAC now has the following operational documents and written materials in place:

- clear mandates for the Board, its Committees as well as Management designed to ensure, in the words of some members of the Board, that "the Board stays out of the weeds";
- detailed work plans for the Board and its Committees;
- clear role descriptions for the Board Chair, individual Directors and the CEO;
- numerous policies which are overseen by the Board or its Committees and reviewed regularly further to sunset provisions covering subjects like the Code of Conduct, managing complaints, board education, the statement of investment policies and procedures, asset valuations and financial management and reporting;
- a documented approach to oversight of transactions which are out of the ordinary course of business or which involve related parties (the final step of which will be a related party transactions policy);
- standardized agendas and checklists applicable to preparing for effective and efficient Board and Committee meetings; and
- an electronic system for delivery of documents to Directors to ensure they are delivered in a timely and efficient manner for Committee and Board meetings.

There are many other operational documentary aspects to the GRP which are set forth in the Governance Manual, Governance Handbook and Statement of Investment Authorities and related sub-delegation documents.

While there were many conventional outputs from the GRP such as Committee and Board work plans, detailed delegations, monitoring principles and standards, key role descriptions, meeting templates and so forth, there were also some unusual outputs of the GRP. An example is the development and adoption by the Board and Management of a document which focuses on the dynamics between the Board and Management which is now found in the Governance Handbook (as opposed to the Governance Manual) titled "Board/Management Dynamics – Conduct Guiding Principles and Commitments". Another less conventional documentary output of the GRP was a mandate for the Management team itself.

(b) People

In addition to documented systems and controls, the GRP from early on recognized the importance of people and their training as a key ingredient of a workable governance plan for OAC. The GRP therefore focused on Director education as well as management governance bench strength. Informed decision-making and many other governance objectives are animated by Directors and managers who have governance training. As such, Board members are now expected to attend the Directors College or an equivalent.

The senior Management team at OAC includes not only a Chief Executive Officer who was a key driver of the GRP, but also several new officers with governance experience. The Chief Operating Officer, the Chief Legal Officer[3] and the Chief Human Resources Officer all have significant experience or backgrounds in governance. The hiring process placed a high value on such experience.

The Board of Directors now has its own dedicated Corporate Secretary[4] and Board Secretariat. There is a full time Vice President dedicated to compliance that came on board prior to the GRP, though her role has been enhanced and supported by additional resources as a result of the GRP. In addition, there are dedicated research personnel that now maintain a well-stocked Governance Repository in electronic form.

(c) Processes

The third leg of the GRP was directed at developing processes and systems to help ensure that the Governance Manual and Governance Handbook would not simply be put up on the shelf. The processes and systems that are part of governance at OAC today ensure that governance objectives and priorities adopted by OAC are part of ongoing life in the organization. While there are too many processes to mention them all, a few of them are mentioned to illustrate the importance of processes.

1. Every Committee and Board meeting since completion of the GRP has included an assessment process at the end of the meeting covering meeting dynamics, the quality of the materials made available for the meeting, whether the Board or Committee was presented with alternative courses of action for decision-making and whether the Board or Committee spent its time wisely during the meeting on key issues.

2. The GRP spent considerable time examining the content of submissions from Management to the Board and its Committees. Was the right information being provided to support effective decision-making and was an appropriate context created in submission documents to promote quality decision making? Submissions now must include an assessment of alternatives, an assessment of risks, and an assessment of factors such as whether the matter is out of the ordinary course of business or involves a related party.

3. Before every Board and Committee meeting there is a pre-meeting involving Management and the appropriate Chair and Vice Chair. The proposed agenda is reviewed against a checklist of key items including whether the matter to be brought before the Board or one of its Committees squarely fits within its work plan and thus is something for which the Board or the Committee is accountable, what members of Management will need to be present and what external advisors, if any, will be required to support informed and effective decision-making. Each proposed agenda item is also evaluated from the point of view of whether it is ordinary course or otherwise.

There are many other processes in use today which stem from the GRP including annual committee reporting against work plans, annual board performance assessments, individual Director assessments and annual evaluations of external consultants.

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[3] The current Chief Legal Officer was one of the two external advisors on the GRP project.
[4] The Corporate Secretary has significant governance experience.

Conclusion

The systems and controls now in place, many of which reflect the 2007 and 2008 governance review, have been recognized by the Conference Board of Canada. OAC was the runner up in the 2009 annual National Awards in Governance for organizations in the broader public sector.

The OAC's approach, which combines (i) documents, (ii) key people within OAC with training, and (iii) processes, has given OAC a robust governance system appropriate for the organization and supportive of its key responsibilities.