



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,
PORTUS ASSET MANAGEMENT INC., BOAZ MANOR, MICHAEL MENDELSON,
MICHAEL LABANOWICH AND JOHN OGG**

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

1. Further to a Notice of Hearing dated October 5, 2005, Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

I. BACKGROUND

A. The Respondents

2. Portus Alternative Asset Management Inc. (“PAAM”), formerly Paradigm Alternative Asset Management Inc., is a corporation incorporated pursuant to the laws of Ontario on January 10, 2003. PAAM’s headquarters are located in Toronto.

3. On March 14, 2003, PAAM was registered with the Ontario Securities Commission (the “Commission”) as an Investment Counsel & Portfolio Manager (“IC/PM”) and Limited Market Dealer (“LMD”). PAAM was similarly registered in all other Canadian jurisdictions with the exception of Quebec. PAAM developed the financial products, distributed directly and indirectly to both accredited and retail investors, that are the subject of this proceeding.

2.

4. Paradigm Asset Management Inc. is a corporation incorporated pursuant to the laws of Ontario on January 8, 2003. Portus Asset Management Inc. is a corporation incorporated pursuant to the laws of Ontario on May 12, 2004. These two entities were amalgamated on May 27, 2004 and the combined entity was continued as Portus Asset Management Inc. (all three entities hereinafter collectively referred to as "PAM"). At all material times, PAM operated out of the same business premises as PAAM in Toronto. PAM was identified as the Fund Manager for the investment products offered by PAAM.

5. Portus Alternative Asset Management Inc. (BVI) ("PAAM BVI"), formerly Paradigm Alternative Asset Management Inc. (BVI), is a shell corporation incorporated pursuant to the laws of the British Virgin Islands on December 10, 2003.

6. At all material times, the business and affairs of PAAM, PAAM BVI and PAM were so inextricably intertwined that PAAM, PAAM BVI and PAM operated as a single functional entity. They are therefore referred to herein collectively as "Portus".

7. Boaz Manor ("Manor") was the President and Director of PAAM from its inception until March 4, 2005, when KPMG Inc. ("KPMG") was appointed Receiver over the assets, undertakings and properties of PAAM, PAM and other related entities (the "Receivership"). On February 19, 2003, Manor was registered with the Commission as the Associate Portfolio Manager for PAAM. Manor also held the positions of President and Secretary for PAM from January 8, 2003 to April of 2003. Manor was the chief architect of all of the investment products that are the subject of this proceeding and was a directing mind of all of the entities involved in those products.

8. Michael Mendelson ("Mendelson") became the President and Director of PAM in April of 2003, for no consideration. In or about November of 2004, Mendelson took steps (the validity of which are at issue) to transfer the ownership of PAM to a non-arms length third party and

ultimately back to Manor, for no consideration. Mendelson remained as Chief Executive Officer of PAM until his employment was terminated as a consequence of the Receivership on March 4, 2005. Mendelson was a directing mind of all of the entities involved in the investment products that are the subject of this proceeding.

9. Michael Labanowich (“Labanowich”) was Chief Compliance Officer for Portus from approximately January 15, 2003 to May 20, 2004. Labanowich “rented” his Investment Counsel/Portfolio Manager’s license to Portus from February 19, 2003 to January 20, 2005, the effective date of his resignation from Portus. Labanowich was involved with the design and implementation of the Market Neutral Preservation Fund, which was the first investment product offered by Portus.

10. From July of 2003 to May 20, 2004, John Ogg’s (“Ogg”) primary responsibilities at Portus were to negotiate “referral” agreements with dealers and to create a compliant operational structure for Portus. On May 20, 2004, Ogg was designated as Chief Compliance Officer. He held this position until March 4, 2005, at which time his employment was terminated as a consequence of the Receivership.

B. Additional Entities Used in the Investment Products Offered by Portus

11. Numerous additional corporate entities were established and controlled by Manor in an effort to create the illusion of legitimacy with respect to the investment products at issue in this proceeding. No legitimate business purpose was served by the activities of these entities.

12. Premiers Dérives Paris Inc. (“PDP”) is a corporation incorporated in the Cayman Islands. John Dallas Campbell (“Campbell”), a high school friend of Manor with no significant prior experience or training in the investment industry, is the sole shareholder and Chief Executive Officer of this entity. Manor directed all functions performed by PDP. PDP was misrepresented to be an arms-length offshore counterparty to the Trusts (as defined in paragraph 22 below).

13. BNote Management Inc. (“BNote Management”) is a corporation incorporated in the Cayman Islands. Campbell is the sole shareholder and Chief Executive Officer of this entity; however, Manor directed all functions performed by BNote Management. BNote Management was misrepresented to be an arms-length offshore counterparty to the Trusts (as defined in paragraph 22 below).

14. BancNote Corp. was incorporated pursuant to the laws of Ontario on August 8, 2003. Mendelson was the first Director of BancNote Corp. Campbell initially held the position of President and Secretary of BancNote Corp. but became its Director on August 9, 2003. At all material times, Manor directed all functions of BancNote Corp. and Manor and/or Mendelson had signing authority with respect to the bank accounts held by or on behalf of BancNote Corp. As described herein, BancNote Corp. is one of the primary entities through which investors’ funds were improperly taken by Portus.

15. Manor caused additional corporate entities to be created in offshore jurisdictions including PDP Prudent Growth Management Inc., Edinburgh Estates S.A. Fund, AR Pioneer Fund, Eidolon Inc. and Galway Trust SA. These entities were used for the movement of investors’ funds through the investment structures offered by Portus for no legitimate business purpose.

II. THE DOMESTIC INVESTMENT STRUCTURES

A. The Market Neutral Preservation Fund – Purported Structure

16. Portus’ first product, the Market Neutral Preservation Fund (the “MNPF”), was launched in February of 2003 and closed in or about May of 2003. Approximately \$19.2 million was invested in the MNPF primarily by Canadian investors with approximately \$14 million, net of redemptions, remaining outstanding.

17. The MNPF was a non-prospectus qualified mutual fund offered directly to accredited investors by way of Offering Memorandum in reliance upon the accredited investor exemption set out in section 2.3 of OSC Rule 45-501. Units of the MNPF were sold by investment dealers to their clients.

18. Portus was the adviser and manager to the MNPF and the MNB Trust (the value of the units of which establish the returns achieved by investors in the MNPF).

19. The material elements of the MNPF structure were alleged by Portus to be as follows:

(a) the MNPF used investor funds to purchase four Canadian non-dividend paying securities (the “Canadian Basket”);

(b) the MNPF entered into a Forward Contract with a counterparty, the Royal Bank of Canada (“RBC”), such that RBC agreed to pay to the MNPF, on maturity, an amount equal to the redemption proceeds of notional units of the MNB Trust in exchange for the delivery of the Canadian Basket;

(c) RBC executed a short sale of securities equivalent to the Canadian Basket. To effect the sale, RBC borrowed the equivalent securities from RBC Dominion Securities (“RBC DS”) and funded and delivered collateral to RBC DS in the form of fixed income securities;

(d) RBC used the proceeds of the short sale to acquire units of the MNB Trust; and

(e) the MNB Trust investments consisted primarily of: a zero coupon bond; iUnits of Government of Canada 5 year bond fund (iUnits); option contracts having as their underlying asset a fund of hedge funds selected by Portus from the Lyxor platform; and forward purchase and sale agreements which obligated the MNB Trust to swap, at the forward date, the value of the iUnits for a predetermined value (approximately \$3 million) and the value of a reference portfolio consisting of securities of Edinburgh Estates S.A.

20. Based on the foregoing, for the MNPF to realize value, the MNB Trust was required to dispose of its assets for cash and then distribute its net asset value to RBC, as its sole unitholder. Pursuant to the RBC Forward Contract, RBC would then deliver the net asset value of the MNB Trust units held by it to the MNPF and the MNPF would deliver the Canadian Basket to RBC. RBC would then use the Canadian Basket to repay the securities loan used for the short sale. The MNPF could then distribute proceeds equal to the net asset value of the MNB Trust units to the MNPF investors.

B. The Market Neutral Preservation Fund – Implementation

21. The MNB Trust did not purchase the iUnits referred to in subparagraph 19(e) above. These funds (approximately \$5.9 million) appear to have been transferred to other entities of the Portus group rather than being invested on behalf of investors in the MNPF.

C. The BancNote and BancLife Trust Series – Purported Structure

22. In July of 2003, following the close of the MNPF, Portus began offering the BancNote Trust series and, subsequently, the BancLife Trust series (collectively, the “Trusts”) products.

23. In or about July of 2003, Portus began opening managed accounts for clients. Through these managed accounts, clients were to receive the economic value of units in the Trusts with a guaranteed return of at least the principal invested. In addition, the structure was to provide investors with: favourable tax treatment (through the use of derivatives involving arms-length offshore counterparties); 100% Canadian content for registered accounts; and a possible up-side return based on the performance of underlying hedge funds (Portus' promotional materials indicated an historical annual return of 7%).

24. The BancLife Trust structure was virtually identical to the BancNote Trust structure except that a death benefit group term life policy was attached. The death benefit available pursuant to the policy was equal to 20% of the original amount deposited in the structure, up to a maximum deposit of \$100,000 and a maximum death benefit of \$20,000. Benefits were alleged to be payable to beneficiaries on a tax-free basis.

25. In total, approximately \$730 million was invested in the Trusts by approximately 25,000 Canadian investors, the majority of whom are resident in Ontario. Approximately half of these investors invested in tax-deferred plans such as RRSPs and RRIFs.

26. The outstanding series of the BancNote Trust are Series II, III, IV, V, VI, VIa, VIII, VIIIa, X, Xa, XII and XIIa. The outstanding series of the BancLife Trust are Series I and II.

27. The investment structure used by Portus to achieve the above result/return and tax benefits was purported to be as follows:

Step 1: The Referral Process:

Clients were "referred" to Portus by referral agents, both registered and unregistered. Referral agents received a referral fee comprised of 4%-5% of the account contribution

made and a trailer fee comprised of 1% of Portus' assets under management and 25% of any performance fee earned by Portus.

Step 2: Opening a Managed Account:

Clients and/or their referring agent completed an account application form and sent it to PAAM together with their account contribution (a minimum contribution of \$5,000 was required). By signing the application form, clients accepted the terms of the managed account agreement which they were provided by their referring agent. Portus then purported to open a "discretionary managed account" for its clients.

Step 3: The Purchase of Equities and Options:

An alleged arms-length offshore counterparty (PDP) purchased Canadian equities (the "Canadian Equities"), on a weekly basis, on behalf of Portus' clients. Portus, on behalf of its clients, then entered into option contracts with the alleged arms-length offshore counterparties (PDP and BNote Management) which had the effect of a swap such that, at maturity, the economic value of the units of the Trusts would be swapped for the economic value of the Canadian Equities. The option contracts were over-the-counter derivative contracts which were not prospectus qualified.

Step 4: The Purchase of Trust Units:

BNote Management purchased units of the various Trust series. BNote Management and Manor are the only unitholders of the Trusts (with Manor allegedly having nominally seeded each of the Trust series).

Step 5: The Purchase of the Notes:

The Trusts purchased five to seven year notes issued by Société Générale Canada (SGC) which were to be principal protected, if held to maturity (the "Notes"). The return on the Notes, at maturity, was the greater of the principal amount invested or the returns achieved by an underlying fund of hedge funds selected by Portus from the Lyxor platform.

D. The BancNote and BancLife Trusts – Implementation

28. The investment structure described above was not, in fact, implemented by Portus in that:
- (a) the Canadian Equities were not purchased;
 - (b) the BancNote Trust Series III through XIIa, were not validly constituted;

(c) the option agreements with the counterparties were not valid; and

(d) the counterparties were not arms-length but instead, were entities created and controlled by Manor with a view to creating the illusion of legitimacy for the Trust structures.

29. Portus did not actively manage clients' individual accounts and did not provide any initial or ongoing portfolio management services or advice to investors.

30. In reality, clients' funds (with the exception of approximately 13.3% which was improperly used by Portus, as set out in paragraphs 47 - 50 below) were pooled and invested directly into the Trusts, regardless of suitability.

31. The Trusts are non-prospectus qualified mutual funds. Subject to certain enumerated exemptions, the distribution of the securities of a mutual fund to investors without filing prospectuses is contrary to section 53 of the *Securities Act*, R.S.O. 1990. c. S.5, as amended (the "Act") which prohibits such distribution unless a preliminary prospectus and prospectus have been filed and receipts therefor obtained. In addition, in accordance with subsection 25(1)(a) of the Act, in the absence of an applicable exemption, entities are not permitted to trade in securities without being registered appropriately.

32. As a consequence of the foregoing, none of the exemptions from the registration and prospectus requirements contained in the Act were available to Portus and Portus' conduct was in breach of sections 53 and 25 of the Act.

III THE OFFSHORE INVESTMENT STRUCTURE

A. Offshore Structure - Purported Structure

33. From late 2003 until the Receivership, Portus purported to offer an identical investment structure to that of the Trusts for clients who opened international accounts (the “Offshore Structure”). Investments in this structure were made in US dollars.

34. The client documentation and marketing information prepared for the Offshore Structure were the same in all material respects to that of the Trusts. Portus’ staff in Toronto performed all sales and back-office administration for the Offshore Structure in substantially the same manner as for the Trusts.

35. Approximately 900 accounts were opened with respect to the Offshore Structure with funds totalling approximately \$52.8 million (US). The majority of the clients in the Offshore Structure were Canadian investors.

B. Offshore Structure – Implementation

36. All of the documentation (including electronic data) with respect to the Offshore Structure was deleted or destroyed at Manor’s direction. Staff’s investigation of the Offshore Structure has been seriously and irreparably harmed as a consequence of Manor’s conduct in this respect. There is no evidence of the existence of the Offshore Structure as represented by Portus.

37. None of the funds invested by clients were actually placed in the purported Offshore Structure. Rather, under the direction of Manor, these funds were transferred between numerous companies and bank accounts in multiple jurisdictions on three continents for no apparent business purpose.

38. To date the Receiver has frozen \$35.2 million (US) of the \$52.8 million (US) invested. Of the remaining \$17.6 million (US), \$11 million (US) was used by Manor to purchase precious metals and stones, \$2,722,000 (US) was used by Manor to pay legal fees and cash of at least (Euro) 1.6 million was withdrawn by Manor in Europe. Manor has failed or refused to return these funds and assets to investors.

IV. "COMPLIANCE" DEFICIENCIES AT PORTUS

39. Staff conducted an investigation and compliance review of Portus between January 24, 2005 and February 18, 2005 (the "Review"). During the Review, the following compliance deficiencies were noted in relation to the purported investment structures being offered by Portus:

(a) Portus did not properly collect and assess Know Your Client ("KYC") and suitability information, contrary to subsection 1.5(1) of OSC Rule 31-505, in that:

- i. suitability assessments were not performed prior to October of 2004;
- ii. suitability information collected was inadequate, incomplete and not properly followed-up;
- iii. all clients were put into the same investment structure; and
- iv. no client applications were rejected for suitability reasons.

(b) Portus maintained deficient and, in some instances, no books and records, contrary to subsection 19(1) of the Act, and subsections 113(1), 113(3)1, 113(3)6 and 113(3)10 of Regulation 1015 to the Act, and Portus failed to provide Staff with numerous books and records required to be maintained, contrary to subsection 19(3) of the Act, in that:

- i. records of monthly calculations of minimum free capital were not prepared or maintained;
- ii. trade instructions were not maintained regarding the alleged purchase and sale of securities;

- iii. the trades allegedly conducted on behalf of the Trusts were not contained in the trading blotter;
 - iv. Staff were not provided with: sufficient evidence to ascertain client holdings, ledgers and/or other records that accurately reflect assets, liabilities, income, expenses and capital accounts; back-up information regarding Net Asset Value calculations; supporting documentation regarding performance data included in marketing materials; and, accurate and, in some cases any, back-up support for the alleged reconciliation of deposits and investments prepared by Ali Hamid; and
 - v. Minutes of board of directors', management, portfolio management and executive meetings were either not kept or were withheld from Staff.
- (c) The activities of Manor, as Associate Portfolio Manager, were not the subject of review by Labanowich, as Senior Portfolio Manager, contrary to subsections 3.3(2) and (3) of OSC Rule 31-502;
- (d) Portus engaged in improper or inadequate pricing of the units of the Trusts, contrary to subsection 116(1) of the Act and 2.1 of OSC Rule 31-505, in that:
- i. prices were calculated exclusively by Manor with a view to creating the perception of linear growth. This was not in accordance with the manner of pricing disclosed in the relevant offering memoranda;
- (e) Interim or audited financial statements of the Trusts were not filed with the Commission, contrary to subsections 77(2) and 78(1) of the Act; and
- (f) Portus maintained inadequate policies, procedures and internal controls in several key areas of business, contrary to subsection 1.2 of OSC Rule 31-505, in that:
- i. the written policies and procedures manuals for Portus' IC/PM management operations did not adequately address several key issues, including but not limited to: the collection and updating of KYC and suitability information; the preparation, review and monitoring of monthly capital calculations; the preparation and maintenance of trade orders; and the performance of research;

- ii. Portus did not follow all of the policies and procedures contained in its procedures manual (e.g. money laundering and supervision of Associate Portfolio Manager);
- iii. written policies and procedures for Fund Manager activities did not exist and oversight of Fund Manager activities was inadequate;
- iv. the following weaknesses in internal controls were identified: funds were deposited into bank accounts that were not designated as trust accounts; there was a co-mingling of the BancNote and BancLife Trusts' assets into one broker account with the account name "Market Neutral Preservation Fund"; separate accounts were not established for the cash and underlying investments for each series of the Trusts, all of the notes and invested cash received from investors in the Trusts were co-mingled in the MNPF accounts; the cash and investments from the MNB Trust were also held in the MNPF account where they were also co-mingled with the cash and underlying investments for each series of the Trusts; cheques were accepted on which the payee was not identified as PAAM; inadequate reviews were performed with respect to referral agreements, client statements, client confirmations and bank account reconciliations; bank reconciliations were not prepared; ongoing monitoring of clients' holdings was not performed; and
- v. Portus' most recent statement of policies was not filed with the Commission, contrary to paragraph 223(3)(a) of the Regulation.

40. In an effort to conceal the illegality of the investments being offered by Portus and to further conceal Portus' improper and undisclosed use of client funds (as described in paragraphs 47 - 50 below), Manor alleged that the above deficiencies were matters of compliance.

41. In fact, had proper record-keeping been performed, the impropriety and/or illegality of the structures would have been self-evident.

42. Despite his position as Chief Compliance Officer of Portus from January 15, 2003 to May 20, 2004 and his written acknowledgements of that designation to the Commission, Labanowich did not perform a compliance function at Portus at any time. Further, Labanowich "rented" his IC/PM license to Portus for the duration of his employment and took on none of the associated legal duties and responsibilities. Portus required Labanowich's IC/PM license to function in accordance with its registration.

43. Labanowich, in his capacity as IC/PM and Chief Compliance Officer for Portus, should have been aware of the above-listed deficiencies. Further, it is Staff's position that Labanowich should have taken all reasonable steps, commensurate with his registration status, his position at Portus and his corresponding duties to investors, to remedy such deficiencies and to determine whether such deficiencies were, in fact, indicia that the investment structures being offered by Portus were not as they were alleged to be.

44. Given their prevalence and significance, Ogg, in his capacity as Chief Compliance Officer for Portus from May 20, 2004 to March 4, 2005, should also have known of the above-listed deficiencies. It is the position of Staff that he too should have taken all reasonable steps, commensurate with his position at Portus and his corresponding duties to investors, to remedy such deficiencies and to determine whether such deficiencies were, in fact, indicia that the investment structures being offered by Portus were not as they were alleged to be.

V. INVESTORS WERE MISLED

A. The Nature of the Investment was not Adequately Disclosed

45. Conflicting information was provided to clients as to the nature of their investment. Clients were led to believe through marketing, client confirmations and other materials prepared and disseminated by Portus that they were investing directly in the Trusts. However, clients were, concurrently, required to sign managed account agreements granting Portus full discretion over their investments and were led to believe that their investments would receive favourable tax treatment.

46. In addition, employees of Portus and, as a consequence, referring agents, were not provided with an accurate description of the investment products offered by Portus and, therefore, largely believed that the structure was such that clients were investing directly in the

Trusts (both domestic and offshore). This belief was routinely conveyed to clients of Portus by Portus' wholesalers and employees and by referral agents.

B. The "Fees" Taken Were Not Disclosed to Investors

47. In relation to the investment structures (both domestic and offshore), the fee disclosure made by Portus was contained in the managed account agreement which describes the applicable fees as 2.25% of the market value of the assets in each managed account plus 18% of the growth in the market value of these assets over and above their previous highest market value. Pursuant to the disclosure, these fees were to be calculated and accrued weekly and paid at the end of each quarter.

48. The offering memorandum for the Trusts (which was, but should not have been, provided to investors) described the fees for unitholders identically to the disclosure contained in the above-referenced managed account agreement.

49. In contrast to its disclosure, Portus took approximately 13.3% of the principal invested by clients prior to the investment of funds (approximately \$95.4 million) and allegedly used those funds for the ongoing operations of Portus. For instance, a portion of these funds were used to pay management fees, performance fees, referral fees (4% or 5%), trailer fees (1% plus other performance fees) and salaries. These funds were also used to satisfy redemption requests. Portus has not provided Staff with an adequate or complete accounting of the remainder of these funds.

50. The aforementioned use of investor funds means that the operation was not sustainable without the infusion of new funds from investors.

VI. MANOR MATERIALLY MISLED STAFF

51. During the Review Manor provided Staff with false or misleading information in an effort to conceal: the illegality of the investment structures offered by Portus; the inappropriate and undisclosed use of investors' funds to fund the ongoing operations of Portus; and Manor's personal use of investors' funds. Specifically:

(a) late in the evening of February 16, 2005 and continuing until early in the morning on February 17, 2005, under Manor's direction: electronic files were deleted; email accounts were deleted; servers were re-formatted; and the hard drives of approximately 60 desktops and 30 laptops were re-formatted. Staff cannot determine the exact content of this data. However, document recovery results confirm that client records were included in the data;

(b) late in the evening of February 16, 2005 and continuing until early in the morning on February 17, 2005, Manor systematically collected all back-up tapes and duplicate electronic copies of the records referred to in subparagraph (a) above. Manor has failed or refused to produce all of these tapes and records to Staff;

(c) late in the evening of February 16, 2005 and continuing until early in the morning on February 17, 2005, under Manor's direction, voluminous paper files, the exact content of which cannot be known by Staff, were removed or destroyed. Such documentation included materials with respect to the Offshore Structure;

(d) in or about February of 2005, Manor collected documentation evidencing the movement of funds with respect to the Offshore Structure from his legal counsel, Anthony Malcolm. Manor has failed or refused to produce such documentation to Staff;

(e) during the Review, documents were created by temporary employees hired by Manor to work during the evenings out of office space located in First Canadian Place and elsewhere. They include documents evidencing the purchase of the Canadian Equities and documents evidencing the option contracts. When necessary, Manor directed Campbell to sign the above documentation prior to presentation to Staff and the documentation was back-dated;

(f) Manor repeatedly reiterated to Staff that the investment structures offered by Portus were as set out in paragraphs 23 - 27 above. By way of example:

- i. Manor told Staff that the alleged counterparties for the Trusts were resident offshore and were arms' length; and
- ii. Manor told Staff that the Canadian Equities were purchased by a counterparty (PDP) and were held in client name (although Manor later told Staff that PDP did not, in fact, purchase the Canadian Equities but was obliged to do so in five years' time); and

(g) Manor obstructed the Review and Staff's ongoing investigation of this matter by: refusing to answer questions about the Offshore Structure; directing employees of Portus not to discuss the Offshore Structure with Staff; directing the destruction of all documents relating to the Offshore Structure; instructing Campbell to remain outside of Ontario and not to speak to Staff; and fleeing the jurisdiction.

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

52. It is the position of Staff that the conduct engaged in by the respondents constituted breaches of Ontario securities law and conduct contrary to the public interest in that:

- (a) with respect to the Trusts and the Offshore Structure, Portus, under the direction of Manor, engaged in the distribution of securities without filing prospectuses and obtaining receipts therefor contrary to section 53(1) of the Act, in circumstances where the exemptions were unavailable, or where reliance on exemptions constituted an abuse of the exemptions contrary to the purposes and objects of the Act;

- (b) with respect to the Trusts and the Offshore Structure, Portus, under the direction of Manor, traded in units of the Trusts without being registered to do so, contrary to section 25(1)(a) of the Act, in circumstances where exemptions were unavailable, or where reliance on exemptions constituted an abuse of the exemptions contrary to the purposes and objects of the Act;

- (c) Portus misrepresented the nature of the investments being made by investors and the fees associated with those investments;

- (d) investors were deprived of the protections afforded by prospectus disclosure; continuous disclosure filings; the liquidity and transparency afforded by an exchange-traded investment; and industry protection fund coverage;

- (e) by engaging in the conduct described herein, Portus and each of Manor, Mendelson, Labanowich and Ogg, failed to deal fairly, honestly and in good faith with clients, contrary to sections 2.1(1) and 2.1(2) of OSC Rule 31-505 respectively;

- (f) by engaging in the conduct described herein, Portus failed to exercise its powers and discharge its duties as a Fund Manager honestly, in good faith, and in the best interests of the mutual funds and, in connection therewith, failed to exercise the degree of care, diligence and skill expected of a reasonably prudent Fund Manager in the circumstances, contrary to section 116(1) of the Act;

(g) as a consequence of their positions of seniority and responsibility at Portus, Manor, Mendelson, Labanowich, and Ogg authorized, permitted or acquiesced in Portus' violations of the requirements of Ontario securities laws and breaches of duty described in subparagraphs (a)-(f) above;

(h) Manor knowingly made statements and provided evidence and information to Staff that was materially misleading or untrue in an effort to hide the violations of Ontario securities laws and breaches of duty described in subparagraphs (a)-(f) above;

(i) the course of conduct engaged in by Manor, Mendelson, Labanowich and Ogg as described herein compromised the integrity of Ontario's capital markets, was abusive to Ontario's capital markets and was contrary to the public interest.

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

DATED AT TORONTO this 5th day of October, 2005