

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

and

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

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

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

BACKGROUND

THE PARTIES

1. The Juniper Fund Management Corporation (“JFM”) is the fund manager, trustee and fund administrator of both the Juniper Equity Growth Fund (“JEGF”) and the Juniper Income Fund (“JIF”). JEGF and JIF are collectively referred to as the “Funds”. JFM is not registered in any capacity with the Commission but is a market participant by virtue of being a manager of assets of a mutual fund.

2. JEGF is a mutual fund trust established on November 15, 1985. According to its simplified prospectus dated July 5, 2005, JEGF invests in equity and equity-related securities of companies listed on Canadian and foreign stock exchanges.

3. Effective October 7, 2005, JEGF merged with the Capstone Balanced Fund, the Capstone Canadian Equity Fund and the Capstone Global Equity Fund (the “Merged Capstone Funds”). Unitholders of the Merged Capstone Funds received units in JEGF equivalent in value to their holdings in the Merged Capstone Funds. Total net assets of JEGF were approximately \$12.3 million as at February 26, 2006.

4. JIF was formerly the Capstone Cash Management Fund, a Canadian money market fund organized as a mutual fund trust. The Capstone Cash Management Fund was renamed JIF and its investment objectives were changed to an income fund. Total net assets of JIF were approximately \$350,000 as of February 26, 2006.
5. Until the appointment of Grant Thornton Limited (“Grant Thornton”) on May 18, 2006, Roy Brown (“Brown”) was a director of JFM. Brown is also president, chief executive officer and sole shareholder of JFM and is also known as Roy Brown-Rodrigues. Brown was registered as an officer and director of Polysecurities Inc., a limited market dealer from March 2003 until December 2005.
6. Marnie Brown is the spouse of Brown.
7. Grant Thornton is the Receiver of all the assets, undertakings and properties of JFM, JEGF and JIF. Grant Thornton was appointed Receiver by Order of the Ontario Superior Court of Justice (Commercial List) on May 18, 2006.
8. NBCN Inc. (“NBCN”) is the custodian of assets for the Funds. NBCN is registered with the Commission as a broker and investment dealer. JFM also has two margin accounts with NBCN.
9. National Bank Financial Ltd. (“NBFL”) operates one margin account in the name of Brown. NBFL is registered with the Commission as an investment dealer.
10. RBC Dominion Securities Inc. (“RBCDS”) operated a margin account in the name of Brown from approximately 2000 to November 2005. In November 2005, the RBCDS margin account was closed and the account transferred to NBFL.
11. PolySecurities Asset Management Corp. (“PAM”) is a private company whose series B preference shares are portfolio assets of JEGF.

FOCUSED COMPLIANCE REVIEW

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

13. The compliance review focused on the following areas:

- (a) verifying the existence and quality of assets in the Funds;
- (b) the Funds’ ability to meet investor redemptions within three business days after the pricing date for the securities (T+ 3 days);
- (c) the financial condition of the Funds;
- (d) the appropriateness of portfolio assets given the investment objectives set out in the Funds’ prospectuses; and
- (e) the appropriateness of JEGF’s investment in PAM.

14. The results of the focused compliance review indicated that:

- (a) the portfolio securities of the Funds were of good quality (liquid and “blue chip”) except for PAM;
- (b) purchases in the Funds were almost nil, except for large purchases by JFM and related parties and some small monthly purchases by retail clients;
- (c) the Funds were taken off FundSERV in or about November 2005 and no active marketing of the Funds was taking place;
- (d) unreconciled portfolio security positions and unreconciled cash balances in the Funds totalled \$1.2 million or about 9% of the Funds’ assets;
- (e) approximately \$1.4 million or 11% of JEGF’s net assets (including the investment in PAM) were offside with JEGF’s investment objectives;

- (f) JEGF's investment in PAM appeared to contravene subsection 111(3) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act") which prohibits mutual funds from knowingly holding an investment in an issuer in which an officer or director of the mutual fund's management company has a significant interest;
- (g) potential net asset value ("NAV") errors existed for the Funds due to unreconciled assets, mispriced portfolio securities and the failure to record liabilities on a timely basis;
- (h) inadequate books and records were maintained as evidenced by no bank reconciliations, no portfolio security reconciliations and incomplete trade and unitholder records; and
- (i) JFM acting as a mutual fund dealer without registration, as unitholders could buy and redeem units in the Funds directly with JFM.

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

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

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

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

18. As a result of the focused compliance review and further inquiries and discussions with Brown and his counsel, Staff became concerned that the Funds' NAVs were materially incorrect due to the inaccuracy and incompleteness of the Funds' assets, liabilities and units outstanding.

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

JFM'S AND BROWN'S MARGIN ACCOUNTS

20. Brown is a client of NBFL and has a margin account 116KRZ-E ("Brown's NBFL Account") which was opened with NBFL in or about November 2005. Brown had a RBCDS margin account 537-06532-2-7 ("Brown's RBCDS Account") which was closed and the account transferred to Brown's NBFL Account. Brown had approximately 120,000 JEGF units in Brown's NBFL Account and an outstanding debit balance of approximately \$350,000 as of March 15, 2006.

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

22. Staff allege that JFM and/or Brown has/have misrepresented its/his/their ownership interests in JEGF units to RBCDS, NBCN, NBFL, Compliance Staff and Staff of the Enforcement Branch.

23. Staff allege that the number of JEGF units owned by JFM and Brown as shown on the account statements for JFM's NBCN Account and Brown's NBFL Account was inconsistent

with the unitholder information as at December 31, 2005 and January 25, 2006 provided by JFM and Brown to Compliance Staff.

24. Staff allege that JFM and/or Brown improperly issued, pledged or redeemed JEGF units in the names of JFM and/or Brown to the prejudice of RBCDS, NBCN, NBFL, JEGF and the other JEGF unitholders.

RECEIVERSHIP OF JFM, JEGF AND JIF

25. On May 18, 2006, Grant Thornton was appointed Receiver of all the assets, undertakings and properties of JFM and the Funds.

26. The Receivership Order was sought as: (a) Staff were unable to identify where \$3 million in funds for the purchase of JEGF units were either deposited to or, if deposited, where the funds were withdrawn and deposited to; (b) Staff had received information that Brown and JFM had approximately 700,000 JEGF units in JFM's NBCN Account and in Brown's NBFL Account which information was inconsistent with the list of JEGF unitholders provided to Staff; and (c) major deficiencies in JFM's operation were identified in Staff's Compliance Report dated March 14, 2006.

27. The Receivership is ongoing and four receiver reports approving the conduct of the Receiver have been filed with the Court.

OFF-BOOK PURCHASES OF JEGF UNITS

28. From February to May 2005 inclusive, Brown and JFM made four purchases totalling \$4,450,000 of JEGF units on margin through RBCDS and NBCN and kept the proceeds for his/its/their own use and did not ensure that the purchase monies were paid to JEGF.

29. On February 7, 2005, Brown purchased 143,143.706 JEGF units for \$900,000 in Brown's RBCDS Account. The RBCDS cheque in the amount of \$900,000 was deposited into JEGF's Bank of Montreal account 1029-480 which account was not included in JEGF's accounting records.

30. On March 1, 2005, Brown purchased 220,025.46 JEGF units for \$1,400,000 through Brown's RBCDS Account. RBCDS settled the purchase through a wire transfer to JEGF's BMO account 1029-499 which was an account listed on JEGF's accounting records. On March 8, 2005, \$1,400,000 was wired out immediately to JEGF's CIBC bank account 68-04519 which account was not included in JEGF's accounting records.

31. On March 11, 2005, Brown purchased 110,733.212 JEGF units for \$700,000 through JFM's NBCN Account. At the request of Brown, a manual cheque in the amount of \$700,000 payable to JEGF was provided to JFM. The NBCN cheque in the amount of \$700,000 was deposited to JEGF's CIBC account 68-04519 which account was not included in JEGF's accounting records.

32. On May 19, 2005, Brown purchased 220,503.0073 JEGF units through JFM's NBCN Account. On the instructions of Brown, NBCN wire transferred \$1,450,000 to JEGF's CIBC bank account 68-04519 which account was not included in JEGF's accounting records.

33. The JEGF units which were the subject of the off-book purchases discussed in paragraphs 28 to 32 above were: (i) not recorded in JEGF's books and records maintained by JFM and provided to Staff; (ii) not recorded in JEGF's daily NAV calculations; and/or (iii) not deposited and retained in JEGF's NBCN custodial account 27R000E ("JEGF's Custodial Account"). As a result, the Receiver initially concluded that the JEGF units that were transferred to Brown's NBFL Account from Brown's RBCDS Account or purchased in JFM's NBCN Account were not valid JEGF units.

34. Staff further allege that Brown and JFM's failure to deposit the funds from the off-book purchases of JEGF units to JEGF's trust account was conduct contrary to section 11.1 of National Instrument 81-102 ("NI 81-102") and contrary to subsection 116(1) of the Act.

TWO SETS OF UNITHOLDER RECORDS

35. In early February 2007, Staff became aware that Felcom Data Services Inc. ("Felcom") was the transfer agent for JEGF from approximately July 2005 to November 2005 inclusive. Felcom's unitholder list for JEGF differed from JFM's unitholder list by approximately 612,000 to 697,000 JEGF units for the period of August 2005 to the Capstone merger in October 2005.

36. Staff allege that Brown and JFM maintained two sets of records for JEGF in order to: (a) mislead RBCDS and NBCN as to the balance of JEGF units held in Browns' RBCDS Account and in JFM's NBCN Account; and (b) redeem units "acquired" in the off-book purchases set out in paragraphs 29 to 32 above.

REDEMPTIONS BY BROWN AND RELATED PARTIES OF JEGF UNITS NOT OWNED OR PAID FOR PRIOR TO THE REDEMPTIONS

37. Staff have identified numerous examples of Brown and related parties redeeming JEGF units prior to the payment of these JEGF units. In most cases, the redemptions were eventually paid by the related parties. Examples of redemptions by Brown or related parties of JEGF units not owned or paid for prior to the redemptions include:

- a. the redemption of 71,179.782 JEGF units by Windrush Abbey Leasing Limited ("Windrush") on February 2, 2005;
- b. the redemption of 69,767.4419 JEGF units by JFM on May 26, 2005;
- c. the redemption of 38,762.7907 JEGF units by JFM on May 26, 2005;
- d. the redemption of 70,631.23 JEGF units by Brown on June 15, 2005; and
- e. the redemption of 13,007.5783 JEGF units by Brown on October 30, 2005.

38. JFM's and Brown's conduct in redeeming JEGF units not yet paid for was a breach of section 9.4 of NI 81-102 which requires mutual funds to be paid for purchases of the securities of the mutual fund within three business days of the purchase failing which the purchase order is to be redeemed.

39. Staff allege that the redemptions of JEGF units by Brown and related parties amounted to interest-free loans to JFM from the JEGF unitholders. Staff allege that JFM's and Brown's conduct was a breach of their fiduciary duty to JEGF and the JEGF unitholders and a breach of their statutory duty of care owed to JEGF pursuant to subsection 116(1) of the Act.

PLEDGING OF JEGF UNITS TO NBCN

40. JFM made two in-kind transfers of JEGF units to NBCN in circumstances in which those JEGF units had not been recorded on JEGF's books and records as maintained by JFM.

Transfer of 171,430 JEGF Units to JFM's NBCN Account

41. On September 12, 2005, JFM provided authorization to NBCN to transfer 171,430 JEGF units from JEGF000-0014 to JFM's NBCN Account. Brown was the registered account holder of JEGF000-0014.

42. Staff allege that these JEGF units which were pledged by Brown were obtained from his off-book purchases of JEGF units described in paragraphs 30 and 31 above.

43. On September 23, 2005, Brown then withdrew \$498,000 from JFM's NBCN Account and the monies were ultimately used to purchase JEGF units for Brown.

Transfer of 246,964 JEGF Units to JFM's NBCN Account

44. On November 29, 2005, Brown faxed a transfer order confirmation to NBCN which confirmed the transfer of 246,964 JEGF units to JFM's NBCN Account from JEGF fund account JEGF 000-0012. JFM was the registered account holder of JEGF000-0012.

45. On November 30, 2005, Brown confirmed by e-mail to NBCN that 246,964 JEGF units should have been transferred to JFM's NBCN Account because NBCN had mistakenly recorded the transfer as 246.964 JEGF units.

46. Staff allege that neither Brown nor JFM owned the 246,964 JEGF units which were pledged to NBCN.

47. Staff allege that Brown used the margin available from this transfer of JEGF units for his own benefit including: (a) a payment to Brown's and Marnie Brown's line of credit; and (b) purchase of JEGF units in the names of JFM and Southgate Investment Trust ("Southgate").

IMPROPER USE OF JEGF's ASSETS

48. In or about February 2005, Brown turned JEGF's Custodial Account from a cash account to a margin account.

49. Mutual funds are prohibited by section 2.6 of NI 81-102 from borrowing cash or providing a security interest over portfolio assets unless: (a) the transaction is a temporary measure to accommodate redemption requests and the outstanding amount of all borrowing does not exceed five percent of the net assets of the mutual fund; or (b) otherwise permitted by NI 81-102.

50. On March 24 and 29, 2005, Brown/JFM withdrew \$1,248,000 and \$703,143.57 by drawing on the margin available in JEGF's Custodial Account. These monies were used to purchase JEGF units in the names of Brown and JFM on March 31, 2005 and \$122,000 was deposited to a CIBC bank account in the name of the Juniper Pooled Income and Property Fund. Most of these JEGF units were redeemed by Brown and the proceeds used to purchase Brown's matrimonial home, provide additional margin for the off-book purchase of JEGF units referred to in paragraph 32 and to repay the margin on JEGF's Custodial Account.

51. Other examples of a misuse of JEGF's Custodial Account include:

(a) on September 27, 2005, JFM withdrew \$248,211.00 as partial payment for the purchase of the Merged Capstone Funds; and

(b) on November 16, 2005, JFM withdrew \$637,000 for the purchase of JEGF units for Marnie Brown and JFM.

52. Staff allege that the borrowing within JEGF's Custodial Account as set out in paragraphs 50 and 51 is contrary to section 2.6 of NI 81-102, a breach of JFM's and Brown's statutory duty of care owed by Brown and JFM pursuant to subsection 116(1) of the Act.

53. Staff allege that JFM and Brown failed to maintain all custodial assets with one custodian contrary to subsection 6.1(1) of NI 81-102 and acted as custodian of JEGF assets including cash, GICs and preference shares of PAM contrary to subsection 6.1(6) of NI 81-102.

54. Brown further failed to include the purchase and redemption of JEGF units in JEGF's NAV calculation contrary to section 14.4 of National Instrument 81-106 ("NI 81-106").

MISLEADING STAFF OF THE COMMISSION

55. Compliance Staff conducted a voluntary interview of Brown during its focused compliance review from December 13 to 15, 2005 and Staff of the Enforcement Branch conducted a voluntary interview of Brown on April 18, 25, 26 and May 2, 2006. During these interviews, Brown misled Staff concerning the following:

- a. that any discrepancy in the number of JEGF units in JFM's NBCN Account and Brown's NBFL Account was due to problems with the JFM's record keeping system;
- b. the existence of units of Juniper Equity Growth (Private Class Series) Fund;
- c. the relationship between Brown and Windrush;
- d. the relationship between Brown and PAM;
- e. the relationship between Brown and Southgate and/or Southgate Trust;
- f. Brown failed to identify all of JEGF's and JFM's bank accounts and advised Staff that all such past and present bank accounts had been identified;
- g. the role of Felcom as JFM's transfer agent and the services provided to JFM by Felcom;
- h. the number of JEGF units transferred in-kind to NBCN; and
- i. the transfers of JEGF units to Stonewall Landscape Ltd. and D-Tech Consulting.

CONDUCT CONTRARY TO THE PUBLIC INTEREST

56. Staff allege that Brown's and JFM's off-book purchases of JEGF units and the subsequent pledging of JEGF units to NBCN and/or NBFL including the keeping of two sets of

JEGF unitholder records was conduct contrary to the record-keeping requirements in subsection 19(1) of the Act and section 18.1 of NI 81-102 and contrary to the public interest.

57. Staff allege that the redemptions of units not owned or paid for at the time by JFM and/or Brown was conduct contrary to subsection 9.4 of NI 81-102 and contrary to the public interest.

58. Staff allege that JFM's and Brown's use of JEGF's Custodial Account was contrary to section 2.6 of NI 81-102 and contrary to the public interest.

59. Staff allege that JFM and/or Brown has/have improperly permitted JEGF to guarantee JFM's outstanding cash balances in accounts including JFM's Margin Account and JFM's NBCN account 27R005E contrary to section 112 of the Act and section 2.6 of NI 81-102.

60. Staff allege that JEGF provided prohibited loans to JFM contrary to subsection 111(1)(a) and section 112 of the Act and contrary to the public interest.

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

62. Staff allege that JFM and Brown did not exercise its powers and discharge their duties honestly, in good faith and in the best interests of the Funds and did not exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, contrary to subsection 116(1) of the Act and contrary to the public interest. JFM and Brown breached their statutory duty of care to the Funds by: (i) failing to ensure that the proceeds from the sale of units were paid to JEGF; (ii) maintaining two sets of unitholder records for JEGF; (iii) redeeming JEGF units which had not yet been paid for; (iv) making in-kind transfer of JEGF units which units had not been recorded on JEGF's books and records maintained by JFM; (v) improperly issuing or transferring JEGF units in the names of JFM and Brown which were not properly issued JEGF units or which were not owned by either JFM or Brown; (vi) borrowing amounts secured by JEGF's Custodial Account; (vii) failing to have complete supporting records of unitholders and their trades; (viii) failing to prepare accurate NAV calculations for the Funds which resulted in material NAV errors; (ix) failing to keep proper books and records contrary to subsection 19(1) of the Act; (x) failing to have an adequate process for the pricing of

the Funds' portfolio securities; and (xi) failing to ensure that the Funds' portfolio holdings complied with the fundamental investment objectives of the Funds and with Ontario securities law.

63. Staff allege that JFM failed to maintain accurate records of the unitholders and the units held by each unitholder contrary to section 18.1 of NI 81-102 and subsection 19(1) of the Act and contrary to the public interest.

64. Staff allege that material NAV errors for the Funds have resulted from JFM's and Brown's failure to put in place an adequate process and a system of controls for the calculation of the Funds' NAV.

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

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

67. Staff allege that JEGF's simplified prospectus, information circular and annual information form contained misleading or untrue statements contrary to subsections 56(1) and/or 122(1) of the Act and contrary to the public interest.

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

69. Staff allege that Brown, as an officer and director of JFM, has authorized, permitted or acquiesced in breaches of subsections 19(1), 25(1)(a), 56(1), 111(1)(a), 111(2)(c)(ii), 111(3), 112, 116(1) and 122(1) of the Act and in breaches of subsections 2.6, 6.1(1), 6.1(6), 9.4, 11.1, 15.2(1) and 18.1 of NI 81-102 and subsections 14.2(1) and 14.4 of NI 81-106 and in doing so has

acted contrary to section 129.2 of the Act and engaged in a conduct contrary to the public interest.

70. Staff allege that Brown, as an officer and director of JFM, has authorized, permitted or acquiesced in a misrepresentation of JFM's and/or Brown's ownership interest in JEGF units and in the issuance, pledging and redemption of JEGF units to JFM and/or Brown and in so doing has prejudiced other JEGF unitholders, JEGF, RBCDS, NBCN and NBFL and engaged in conduct contrary to the public interest.

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

Dated at Toronto this 5th day of July, 2007