

The Attached Opinion by Stikeman Elliott LLP, Independent Counsel to A. John Page & Associates Inc., Court Appointed Monitor of Nelson Financial Group Ltd., dated August 11, 2010 is being disclosed by being posted on the Monitor's website pursuant to the Order of the Honourable Madam Justice Pepall dated August 27, 2010 ("the August 27, 2010 Order"). A copy of the August 27, 2010 Order and Madam Justice Pepall's endorsement of the same day can be obtained from the Monitor's website.

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BY E-MAIL

August 11, 2010
File No.: 129092.1001

Mr. A. John Page
A. John Page & Associates Inc.
100 Richmond St. West
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Dear Mr. Page:

Re: Nelson Financial Group Ltd.

Pursuant to the Order of Madam Justice Pepall dated July 7, 2010, our mandate has been to provide an opinion in respect of the following matters:

- (i) the legal relationship of the Applicant and all persons who, as at March 23, 2010, held Preferred Shares issued by the Applicant (the "**Preferred Shareholders**");
- (ii) whether the Preferred Shareholders have a claim provable against the Applicant within the meaning of Section 20(1)(a) of the *Companies' Creditors Arrangement Act* (the "**CCAA**") and section 121 of the *Bankruptcy and Insolvency Act* (the "**BIA**"); and if so,
- (iii) whether such claims provable are equity claims within the meaning of section 2 of the CCAA (the "**Mandate**").

In satisfying this Mandate, we have conducted a variety of meetings and "fact finding" sessions with the Monitor, the Ontario Securities Commission (the "**OSC**") and a number of Preferred Shareholders of Nelson Financial Group Ltd. ("**Nelson Financial**" or the "**Company**").¹ We have also reviewed filings to date in Nelson Financial's CCAA proceedings, and sought and reviewed background information from Nelson Financial. We have relied upon the documentation without independent investigation of the matters provided for therein for the purposes of providing our opinions expressed below. The information obtained from these sources has provided us with a context for this opinion.

TORONTO
MONTREAL
OTTAWA
CALGARY
VANCOUVER
NEW YORK
LONDON
SYDNEY

¹ Due to privacy concerns, we have not identified the names of the Preferred Shareholders who were interviewed.

Factual Background

Based on our review, we understand the following facts to be relevant, in respect of the issuance of Preferred Shares (as defined herein):

Nelson Financial

- Nelson Financial is a Pickering, Ontario based privately owned company. Nelson Financial was incorporated under the *Business Corporations Act* (Ontario) pursuant to Articles of Incorporation dated September 4, 1990.
- Nelson Financial currently has outstanding two classes of common shares and two series of preferred shares, which are non-voting ("**Preferred Shares**"). Marc Boutet, the President of Nelson Financial, is the owner of all of the issued and outstanding voting common shares.
- Nelson Financial is affiliated with Nelson Investments. Marc Boutet is the owner of all of the issued and outstanding common shares of Nelson Investments.
- Nelson Financial's principal business is vendor assisted financing. Historically, Nelson Financial offered financing in the sub-prime vehicle finance industry by offering consumer loans to sub-prime borrowers or lessees. In view of significant losses in the sub-prime auto finance industry, Nelson Financial began its gradual exit from this portion of the financing industry. Nelson Financial financed its last vehicle lease in the sub-prime auto industry in 2007 and has been winding down the portfolio of sub-prime auto leases and expects to exit the subprime vehicle finance market in 2011.
- Nelson Financial's business model has been based on being able to raise money from investors at a 12% or 10% rate of return and, in turn, use that money to extend credit at significantly higher rates to lessees in the sub prime vehicle financing business and customers in the vendor assisted financing programs.
- Nelson Financial's end customers include a mix of prime borrowers (bank quality), non prime borrowers (below bank quality) and sub prime borrowers (lowest quality).
- Nelson Financial has been experiencing continuing losses for some time. Nelson Financial's current financial difficulties have largely arisen as a result of:
 - (a) higher than anticipated losses on its non-prime and sub-prime portfolio, in particular, historical losses attributable to its vehicle financing activities; and
 - (b) its voluntary cessation of the issuance of notes and Preferred Shares, pending the completion of a review by the Ontario Securities Commission.
- Nelson Financial filed for protection under the CCAA on March 23, 2010.

Nelson Financial – Investment Opportunities

- To provide financing to customers, Nelson Financial borrowed money from investors in the exempt market pursuant to a continuous offering of unsecured promissory notes with a 12.00% rate of interest (“Notes”) and/or Preferred Shares that paid a 10.00% per annum dividend on a monthly basis.
- Until January 29, 2010, Nelson Financial had offered Notes and Preferred Shares to investors through Nelson Investment.
- Nelson Financial has approximately:
 - 685 outstanding investor loan notes totalling approximately \$37,000,000; and
 - 169 separate holdings of Preferred Shares with a par value of approximately \$15,000,000.
- Notes were documented by way of promissory Notes and term sheets. Samples of this documentation are attached at Tab “A”.
- Preferred Shares were issued in two series on April 5, 2007 and July 14, 2008 and documented by way of Articles of Amendment attached as Tab “B”. In addition to the Articles of Amendment, the term sheets were utilized and share certificates issued, samples of which are attached as Tab “C”.
- Nelson Financial had prepared Accredited Investor forms and “Know Your Client” forms, samples of which are attached at Tab “D”.
- Like the Notes, Preferred Shares were issued on the Issue Dates. Preferred Shares were issued on the second, sixteenth and twenty fifth day of each month.
- The Preferred Shares paid a cumulative 10.00% dividend payable monthly on the issue dates corresponding to the particular Preferred Share.²
- On their face, the Preferred Shares rank ahead of the common shares of Nelson Financial both as to dividend rights and as to priority on wind-up.
- At the option of the Preferred Shareholders, Nelson Financial re-invested certain dividends payable into additional Preferred Shares through a dividend reinvestment plan (“DRIP”).
- In most cases, the Preferred Shares did not provide Preferred Shareholders with retraction rights, however, Nelson Financial had the unilateral right to redeem the Preferred Shares at any time. Where a Preferred Shareholder indicated that they wanted their shares redeemed, Nelson Financial, as a matter of practice, would generally exercise its right to redeem the shares.
- Certain Preferred Shareholders were able to negotiate formal redemption rights into the terms of their Preferred Shares such that they had the right to seek redemption of their shares on 30 days notice to the Company.

² Certain Preferred Shareholders have indicated that they had negotiated with Nelson Financial a cumulative monthly dividend payment greater than 10%.

- The Monitor has inquired of Nelson Financial in respect of whether any redemption requests were outstanding at the date of the CCAA Filing. Nelson Financial has indicated that it is not aware of any such request. Through our interviews, we note one Preferred Shareholder who indicated that he had sought to redeem \$30,000 worth of Preferred Shares on March 3, 2010 and a redemption request made by a second Preferred Shareholder in March, 2010, both of which allegedly remained outstanding at the initial filing date ("**Outstanding Redemption Request**").
- Based on the Monitor's review, the Preferred Shares were documented in the books and records and financial statements of Nelson Financial as equity.
- Samples of documentation supplied by Nelson Financial to potential investors outlining the nature of the potential investment are attached at Tab "E".

Outstanding Dividends at Date of CCAA Filing

- With respect to the dividends otherwise payable on the March 16 issue date for certain of the Preferred Shares, Nelson Financial was unable to make this payment on March 16, 2010, totalling in the aggregate amount of \$53,804.00 ("**Outstanding Dividend Payments**").

Monitor's Review of Ongoing Viability of Nelson Financial – Liquidation Analysis

- Nelson voluntarily suspended distribution of its Notes and Preferred Shares on January 29, 2010 and has not raised any money from investors since that date.
- On or about March 2010, Nelson determined that, in order to fund ongoing lending at its historical lending volumes and provide for the repayment of current investors in accordance with a successful restructuring plan, it needed to locate an alternative source of funding. Since that time, Nelson has been attempting to locate alternative financing however, it has been unable to find any adequate, reasonably-priced, external source of funding.
- Nelson Financial has therefore decided to scale back its business by approximately 50% and has been working with the Monitor to create a restructuring plan that will enable it to continue in business using internal resources only.
- The Monitor has completed its viability reviews and liquidation analysis and has estimated the recovery to creditors in the event that Nelson Financial was to liquidate its assets as opposed to developing a restructuring plan that would see Nelson Financial continue in business. The Monitor has estimated that the holders of Notes and other unsecured creditors would recover approximately 38% of their investment/claim. The holders of equity claims would not receive any recovery on account of their investment.
- It is presently contemplated that existing Preferred Shareholders would have their Preferred Shares cancelled. They would then be able to either immediately claim a tax loss on their investment or perhaps be given a new form of Preferred Shares with rights to be determined.

Allegations against Nelson Financial

During the course of our review of documentation and interviews with Preferred Shareholders, various statements and allegations have been made in respect of Nelson Financial. These statements were made in the course of discussions and were not under oath. Without assessing the potential admissibility of such evidence in a formal Court or claims resolution proceeding, the information has been useful in considering potential claims and/or causes of action to be considered in this opinion.

In addition, the OSC has outlined in its Notice of Hearing and Statement of Allegations issued May 12, 2010 a number of allegations against Nelson Financial, Nelson Investment and various officers and directors, which we have also considered in determining potential claims and/or causes of actions.

From this information, we have considered and outlined a variety of potential causes of action that could form the basis of a claim against the Nelson Financial. Our intention was not to assess the viability or potential of success of such claims, but instead to identify the potential spectrum of claims that could be asserted by the Preferred Shareholders, and then assess and opine upon how such potential claims would be assessed in the context of the CCAA Proceedings. While we appreciate that Nelson Financial will seek to defend and test any allegations made against it, for purposes of this opinion we have utilized the information as alleged and assessed the nature of the underlying claims provable or equity claims, on the basis that the shareholders would be able to satisfy their burden of proof in respect of potential claims.

In our view, potential claims which may be filed into the estate could include:

- (a) Outstanding Dividend Payments;
- (b) Outstanding Redemption Requests;
- (c) Shareholder loans³;
- (d) Misrepresentation Claims – Negligent, Fraudulent and Failure to Disclose;
- (e) Oppression; and
- (f) Rescission Rights/Voidable Shares/Violation of securities legislation.

³ Raised by one investor during our discussions that an agreement had been reached that his dividends were to be re-lent to the Company, in lieu of being paid out or reinvested under DRIP.

Legal Analysis

A fulsome review of the legal issues on point is found at Schedule "1". Outlined below is a summary of the leading legal principles used to support our conclusions.

The starting point for the discussion of whether the Preferred Shareholders' potential claims constitute claims provable and/or equity claims under the BIA and/or CCAA lies with the statutory references relating to claims provable and equity claims. Our Mandate refers to various provisions of the BIA and CCAA, as recently amended, specifically:

(a) "Claims provable" as referred to in Section 121 of the BIA and Section 20(1)(a) of the CCAA, which state:

Section 121(1) of the BIA: Claims provable – All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

Section 20(1)(a) of the CCAA: Determination of amounts of claims – For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

(a) the amount of an unsecured claim is the amount

(i) in the case of a company in the course of being wound up under the Winding Up and Restructuring Act, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankrupt order has been made under the Bankruptcy and Insolvency Act, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the Bankruptcy and Insolvency Act, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor; and ("Claims Provable")

(b) "Equity claims" as referred to in Section 2 of the CCAA which states:

Section 2 – "Equity Claim" means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d) ("Equity Claims");

(c) Also relevant is the recently enacted Section 6(8) of the CCAA which provides as follows:

Section 6(8) Payment – equity claims – No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not Equity Claims are to be paid in full before the equity claim is to be paid.

In the relevant case law relating to shareholders' potential claims, the Courts often look at the issue of Claims Provable and Equity Claims simultaneously and as such the discussions and opinion below are structured in a similar format.

Equity Claims are generally understood to be those claims that are not based on the supply of goods, services or credit to a corporation, but rather are based on some wrongful or allegedly wrongful act committed by an issuer of an instrument reflecting equity in the capital of a corporation. In broad and general terms, shareholders have an equity claim in a bankrupt company such that they are not deemed creditors of the company.

Historically, common law practice was such that on the insolvency of a company, the claims of creditors rank ahead of the claims of shareholders for the return of their capital and are only entitled to share in the assets of an insolvent corporation until after all the ordinary creditors have been paid in full. This is premised on the notion that shareholders are higher risk takers, having willingly chosen to tie their investment to the fortunes of the corporation, as opposed to creditors who choose a lower level of exposure to risk. Elements considered in subordination cases were summarized in the pre-amendment case law as follows:

- (1) the claims of shareholders rank behind the claims of creditors in bankruptcy;
- (2) creditors do business on the assumption that they will rank ahead of shareholders in the event of their debtor's insolvency;

- (3) shareholders are not entitled to rescind their shares on the basis of misrepresentation after the company has become insolvent;
- (4) United States jurisprudence supports the priority of creditors in "stockholder fraud" cases; and
- (5) to allow the shareholders to rank *pari passu* with the unsecured creditors could open the floodgates to aggrieved shareholders launching misrepresentation claims.

The common law practice of subordinating shareholders' claims was recently formalized through Section 6(8) of the CCAA. In light of Section 6(8), should the Preferred Shareholders' Claims be found to be Equity Claims, they will be subordinated to the position of the unsecured creditors and Noteholders.

To determine whether the Preferred Shareholders Claims are Claims Provable or Equity Claims requires a review of the statutory definitions (Claims Provable and Equity Claims); the substance of the investment; and the nature of the various underlying claims.

In determining the substance of the investment, it has been recognized that certain arrangements may be perceived as being hybrid in nature – namely, they contain both debt and equity characteristics. There are certain features of the Preferred Shares which would appear to be debt instruments or hybrid instruments containing both debt and equity features. For example, monthly payments based on set percentages; non-discretionary set monthly dividend payments; the redeemable nature of the shares; and the Term Sheets reflect that both the Notes and Preferred shares had similar purposes i.e. to finance the Company's business operations.

The Articles of Amendment also include references to the "preferred" nature of the Preferred Shares vis a vis common shareholders. Some investors were clearly confused by the use of the term "preferred" in respect of their investments and the Articles of Amendment do not clarify the situation entirely.

However, the factors which support the conclusion that the Preferred Shares were in substance equity include: the references in the Articles of Amendment and Term Sheet in favour of common shareholders only; issuance of share certificates; receipt of dividend payments versus interest payments; and receipt of dividend tax credits and T3 tax forms relating to dividend income.

Despite the conclusion that both debt and equity features can co-exist in the given transaction, case law has advised that a characterization review should not be easily distracted by aspects which are only incidental or secondary in nature to the main thrust of the agreement. Rather, the analysis requires determining the true intention of the parties based upon the words chosen in the supporting documents. Turning to the supporting documents, namely the Articles of Amendment and the Term Sheets, while they do contain certain debt features, based upon the form and content of these documents, it would appear that the Preferred Shares were equity

instruments. The manner in which the Preferred Shares were recorded as equity and not debt in the books and records of the company also support this conclusion.

In respect of the underlying nature of the potential claims, while the case law provides for a broad range of causes of action which would historically have been considered an equity claim, the recently enacted definition of Equity Claim expands these claims further. The legislators had an opportunity to provide further distinctions or refinement to the definition, yet they did not do so and as such we are left with a broad reaching definition. As such, in our view the majority of potential claims to be raised by the Preferred Shareholders would fall into the definition of Equity Claims. Based on the evidence known to us at present, the only causes of action which fall outside the definition would be:

- those Preferred Shareholders with judgments in hand prior to the CCAA filing; and
- those Preferred Shareholders who had made independent shareholder loans to Nelson Financial.

The balance of the proposed claims are in our view claims made *qua* Preferred Shareholder and/or are ancillary to their claims as shareholders, and relate to:

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation, or
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or in Quebec, the annulment, of a purchase or sale of an equity interest

and as such fall within the definition of Equity Claims.

The perceived inequity that shareholders who allege they were induced inappropriately into investing in shares would have their claims subordinated, is not lost upon the author and others who have reviewed this issue. For example, Professor Janis Sarra notes:

...subordinating all claims of equity investors, fails to recognize that equity investors, while investing in ordinary business risk and risk of insolvency, do not assume risk of corporate fraud or violations of securities legislation, fair trade practices legislation, or criminal codes. Such subordination arguably punishes the innocent shareholder for the misconduct of corporate management, which was never part of the shareholders' bargain. Moreover, it treats shareholders' rights to statutory remedies differently in

and outside of insolvency, whereas creditors do not face this differential treatment.

In commenting on language of the proposed amendments, Professor Sarra notes:

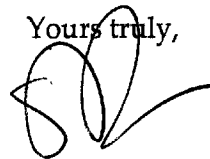
...A statutory amendment that specifies "unless the court determines that it is 'fair and equitable' or 'fair and reasonable' to order otherwise", would grant the court authority to exercise its discretion in particular circumstances based on the equities in the case. It would allow the court to approve a remedy in cases where damages are sought for egregious conduct on the part of the debtor corporation and its officers. The other options would be remove damage claims arising out of securities law violations from the above proposed definition of equity claim because, arguably, such claims are not equity claims. The proposed Canadian legislation as currently framed fails to recognize that claims for damages arising out of deception or statutory violations are more similar to claims by creditors for breach of contracts or commercial arrangements than they are to ordinary claims by shareholders to the residual equity in the firm.

Professor Sarra acknowledges however that such an issue or proposed change to the statute would require the legislators involvement.

The statutory language of the definition of Equity Claims as drafted by the legislators does not provide for the restrictive interpretation of Equity Claims as the Preferred Shareholders would undoubtedly prefer.

This opinion is solely for the benefit of the addressee in satisfying the Mandate as provided in Justice Pepall's Order of July 7, 2010, and not for the benefit of any other person.

Yours truly,

A handwritten signature in black ink, appearing to be 'Elizabeth Pillon', written over the words 'Yours truly,'.

Elizabeth Pillon

EP/as

TAB 1

Legal Analysis

Shareholders' Potential Claims

Statutory References

Shareholders' Potential Claims – Do they constitute Claims Provable and/or Equity Claims under the *Bankruptcy and Insolvency Act* (the “BIA”)¹ and/or the *Companies' Creditors Arrangement Act* (the “CCAA”)²? The starting point for this discussion lies with the statutory references relating to claims provable and equity claims. Our Mandate refers to various provisions of the BIA and CCAA, as recently amended, specifically:

(a) “Claims provable” as referred to in Section 121 of the BIA and Section 20(1)(a) of the CCAA, which state:

Section 121(1) of the BIA: Claims provable – All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.³

Section 20(1)(a) of the CCAA: Determination of amounts of claims – For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

(a) the amount of an unsecured claim is the amount

(i) in the case of a company in the course of being wound up under the Winding Up and Restructuring Act, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankrupt order has been made under the Bankruptcy and Insolvency Act, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the Bankruptcy and Insolvency Act, but if the amount so provable is not admitted by the company, the amount is to be

¹ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as am. (the “BIA”).

² *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36, as am. (the “CCAA”).

³ BIA, *supra* note 1, at section 121(1).

determined by the court on summary application by the company or by the creditor; and ("**Claims Provable**")⁴

(b) "Equity claims" is referred to in section 2 of the CCAA which states:

Section 2 – "Equity Claim" means a claim that is in respect of an equity interest, including a claim for, among others,

(a) a dividend or similar payment,

(b) a return of capital,

(c) a redemption or retraction obligation,

(d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or in Quebec, the annulment, of a purchase or sale of an equity interest, or

(e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); ("**Equity Claims**")⁵

(c) also relevant is the recently enacted Section 6(8) of the CCAA which provides as follows:

Section 6(8) Payment – equity claims – No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not Equity Claims are to be paid in full before the equity claim is to be paid.⁶

General Interpretation Principles

In reviewing the recent statutory amendments, we have considered the following statutory interpretation principles:

- The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.⁷
- Every Act "shall be deemed to be remedial" and ... every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning, and spirit."⁸

⁴ CCAA, *supra* note 2, at section 20(1)(a).

⁵ *Ibid.*, at section 2.

⁶ *Ibid.*, at section 6(8).

⁷ *Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 S.C.R. 27 (S.C.C.) at para 21 ("*Rizzo*").

⁸ *Ibid.*, citing *Interpretation Act*, R.S.O. 1980, c. 219, section 10.

Case Law

In the relevant case law relating to shareholders' potential claims, the Courts often look at the issue of Claims Provable and Equity Claims simultaneously and as such the discussions and opinion below are structured in a similar format.

Six cases are often cited in respect of issues of shareholders' potential claims into a bankruptcy or CCAA proceeding:

- *Canada Deposit Insurance Corp. v. Canadian Commercial Bank* ("CDIC");⁹
- *Central Capital Corp. Re* ("Central Capital");¹⁰
- *Blue Range Resources Corp. Re* ("Blue Range");¹¹
- *National Bank of Canada v. Merit Energy Ltd* ("National Bank");¹²
- *I. Waxman & Sons Ltd., Re* ("Waxman");¹³ and
- *Earthfirst Canada Inc., Re* ("Earthfirst").¹⁴

Our research has discovered two cases which have addressed (indirectly) the recent amendments to the CCAA and BIA in the context of Equity Claims: the *Earthfirst* decision and *JED Oil Inc., Re* ("JED Oil")¹⁵. While these cases offer some commentary on the statutory amendments, their applications were limited. The pre-amendment case law referred to above therefore continues to offer some guidance and assistance on these issues in the Nelson Financial proceedings.

Claims Provable and Equity Claims

Returning to the statutory provisions, while definitions are provided for the terms Claims Provable and Equity Claims, the underlying terms referred to therein are not themselves defined in the BIA or CCAA, and as such it is necessary to return to general definitions.

⁹ *Canada Deposit Insurance Corp. v. Canadian Commercial Bank* (1992), 1992 CarswellAlta 298 (S.C.C.) ("CDIC").

¹⁰ *Central Capital Corp., Re.*, (1995), 29 C.B.R. (3d) 33, 1995 CarswellOnt 31 (Ont. Gen. Div. [Commercial List]); affirmed (1996), 38 C.B.R. (3d) 1, 1996 CarswellOnt 316 (C.A.) at para 99 ("Central Capital")

¹¹ *Blue Range Resources Corp., Re* (2000), 2000 Carswell Alta 12 (Alta. Court of Queen's Bench) at para 25 ("Blue Range")

¹² *National Bank of Canada v. Merit Energy Ltd.* (2001), 2001 CarswellAlta 913 (Alta. Court of Queen's Bench) at para 77, aff'd by 2002 CarswellAlta 23 (Alta C.A.) ("National Bank").

¹³ *I. Waxman & Sons Ltd., Re* (2008), 2008 CarswellOnt 1245 (Ont. Sup. Ct. [Commercial List]) at para 18 ("Waxman").

¹⁴ *EarthFirst Canada Inc., Re* (2009), 2009 Carswell Alta 1069 (Alta Court of Queen's Bench) ("EarthFirst")

¹⁵ *JED Oil Inc., Re* (2010), 2010 CarswellAlta 861 (Alta Court of Queen's Bench) ("JED Oil").

Claims Provable

Debt is broadly defined in *Black's Law Dictionary*¹⁶:

- (1) Liability on a claim; a specific sum of money due by agreement or otherwise.
- (2) The aggregate of all existing claims against a person, entity or state.
- (3) A nonmonetary thing that one person owes another, such as goods or services.
- (4) A common-law writ by which a court adjudicates claims involving fixed sums of money.¹⁷

In *Central Capital*, a case involving shareholders' potential claims, Justice Weiler cited the *Black's Law Dictionary* definition of debt in her decision:

A sum of money due by certain and express agreement. A specified sum of money owing to one person from another, including not only obligation of debtor to pay but right of creditor to receive and enforce payment. A fixed and certain obligation to pay money or some other valuable thing or things, either in the present or in the future. In a still more general sense, that which is due from one person to another, whether money, goods or services. In a broad sense, any duty to respond to another in money, labour, or service; it may be even a moral or honorary obligation, unenforceable by legal action. Also, sometimes an aggregate of separate debts, or the total sum of the existing claims against person or company. Thus we speak of the "national debt", the "bonded debt" of a corporation, etc. ¹⁸

Claims Provable encompass debts that are presently due, as well as unmatured debts that will become due in the future. Such claims also include unliquidated claims against the debtor (i.e. rights of action that, if successful, will result in a judgment or order for the payment of money. The claim may be founded in contract, tort, unjust enrichment, or some other source of obligation.¹⁹

¹⁶ *Black's Law Dictionary*, 9th ed. 2009 ("*Black's Law Dictionary*").

¹⁷ *Ibid.*, at pg. 462.

¹⁸ *Central Capital*, *supra* note 8, at para 99.

¹⁹ Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra, *The 2010 Annotated Bankruptcy and Insolvency Act* (Toronto: Carswell, A Division of Thompson Reuters Canada Limited, 2010) at pgs 602 - 605 ("*Holden & Morawetz*")

Similar to the definition of debt, liability is also broadly defined and includes almost every character of hazard or responsibility. *Black's Law Dictionary* defines liability as follows:

1. The quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment.
2. A financial or pecuniary obligation; debt.²⁰

In order to be a provable claim within the meaning of section 121 of the BIA, the claim must be recoverable by legal process.²¹ Claims Provable may also include contingent claims that will only become payable if certain preconditions or events were to occur. Generally, contingent claims that may end in the payment of money, which have been determined and valued and not found incapable of being fairly estimated, are provable, so long as they are not too "remote or speculative in nature."²²

Equity Claims

While not defined terms in the BIA or the CCAA, the following definitions from *Black's Law Dictionary* provide guidance on those elements which constitute an "equity claim" pursuant to section 2 of the CCAA.

Dividend - A portion of a company's earnings or profits distributed pro rata to its shareholders, usually in the form of cash or additional shares.²³

Redemption - 1. The act or an instance of reclaiming or regaining possession by paying a specific price. 2. A debtor's right to repurchase property from a buyer who obtained the property at a forced sale initiated by a creditor. 2. The reacquisition of a security by an issuer. Redemption usually refers to the repurchase of a bond before maturity, but it may also refer to the repurchase of stock and mutual-fund shares. 4. The payment of a defaulted mortgage debt by a borrower who does not want to lose the property.²⁴

²⁰ *Black's Law Dictionary*, *supra* note 14 at pg. 997.

²¹ See: *Farm Credit Corp. v. Holowach (Trustee of)*, [1985] 5 W.W.R. 87 (Alta. C.A.) at para 7, leave to appeal to the Supreme Court of Canada dismissed at [1989] 4 W.W.R. 1xx.

²² *National Bank*, *supra* note 10, at para 77.

²³ *Black's Law Dictionary*, *supra* note 14, at pg. 547.

²⁴ *Ibid.*, at pg. 1390.

Return of Capital – Revenue that represents the repayment of cost or capital and thus is not taxable as income.²⁵

Retraction – The act of taking or drawing back.²⁶

Rescission – 1. A party's unilateral unmaking of a contract for a legally sufficient reason, such as the other party's material breach, or a judgment rescinding the contract; voidance. Rescission is generally available as a remedy or defence for a non-defaulting party and is accompanied by restitution of any partial performance, thus restoring the parties to their pre contractual positions – Also termed avoidance. 2. An agreement by contracting parties to discharge all remaining duties of performance and terminate the contract.²⁷

Equity Claims are generally understood to be those claims that are not based on the supply of goods, services or credit to a corporation, but rather are based on some wrongful or allegedly wrongful act committed by an issuer of an instrument reflecting equity in the capital of a corporation.²⁸ In broad and general terms, shareholders have an equity claim in a bankrupt company such that they are not deemed creditors of the company.²⁹

Subordination of Equity Claims

Historically, common law practice, as explained by Laskin J.A. in *Central Capital*, was such that on the insolvency of a company, the claims of creditors rank ahead of the claims of shareholders for the return of their capital and are only entitled to share in the assets of an insolvent corporation until after all the ordinary creditors have been paid in full.³⁰ This is premised on the notion that shareholders are higher risk takers, having willingly chosen to tie their investment to the fortunes of the corporation, as opposed to creditors who choose a

²⁵ *Ibid.*, at pg. 1432.

²⁶ *Ibid.*, at pg. 1431.

²⁷ *Ibid.*, at pg. 1420-1421.

²⁸ Standing Senate Committee on Banking Trade and Commerce, *Debtors and Creditors Sharing the Burden*, 2003 at 158 ("Standing Senate Committee Report").

²⁹ Houlden & Morawetz, *supra* note 17, citing *Re Patricia Appliance Shops Ltd.* (1922), 2 C.B.R. 466 (Ont. S.C.) ("*Patricia Appliance Shops*"). In *Patricia Appliance Shops*, the court held at p. 468: "A shareholder is not a creditor who can prove a claim at all, in these sense in which the word 'claim' is used in the Act. A claim, capable of proof, must be for a debt and not merely for a share in the ultimate distribution of the assets (if any) available for the shareholders."

³⁰ In addition, see, for example, *Canadian Airlines Corp., Re.* (2000), 2000 CarswellOnt Alta 662 (Alta. Court of Queen's Bench) ("*Canadian Airlines*") at para 143 where Paperny J. opined: "[w]here a company is insolvent, only the creditors maintain a meaningful stake in its assets. Through the mechanism of liquidation or insolvency legislation, the interests of shareholders are pushed to the bottom rung of the priority ladder ... Shareholders cannot reasonably expect to maintain an interest in an insolvent company where creditor's claims are not being paid in full ... CCAA proceedings have recognized that shareholders may not have 'a true interest to be protected' because there is no reasonable prospect of economic value to be realized by the shareholders given the existing financial misfortunes of the company..."

lower level of exposure to risk.³¹ Elements considered in subordination cases were summarized by Justice Romaine in *Blue Range* (and followed subsequently) as:

- (1) the claims of shareholders rank behind the claims of creditors in bankruptcy;
- (2) creditors do business on the assumption that they will rank ahead of shareholders in the event of their debtor's insolvency;
- (3) shareholders are not entitled to rescind their shares on the basis of misrepresentation after the company has become insolvent;
- (4) United States jurisprudence supports the priority of creditors in "stockholder fraud" cases; and
- (5) to allow the shareholders to rank *pari passu* with the unsecured creditors could open the floodgates to aggrieved shareholders launching misrepresentation claims.³²

The subordination of shareholders' claims in bankruptcy has been settled law in the United States since its codification in statute in section 510(b) of the Bankruptcy Code in 1978.³³ In recent years, legislators and commentators began considering the issue of codifying the common law practice of subordinating shareholders' claims into Canadian insolvency legislation. In 2003 the Senate Committee on Banking Trade and Commerce observed that:

In view of recent corporate scandals in North America, the Committee believes that the issue of equity claim must be addressed in insolvency legislation. In our view, the law must recognize the facts in insolvency proceedings: since holders of equity have necessarily accepted – through their acceptance of equity rather than debt – that their claims will have a lower priority than claims for debt, they must step aside in a bankruptcy proceeding. Consequently, their claims should be afforded lower ranking than secured and unsecured creditors, and the law, in the interests of fairness and predictability – should reflect both this lower priority for holders of equity and the notion that they will not participate in a restructuring or recover anything until all

³¹ I. Waxman, *supra* note 11 at para 18; see also *Central Capital*, *supra* note 8 at para 149.

³² *BlueRange*, *supra* note 9 at paras 26, 29 and 33.

³³ *Bankruptcy Code* § 510(b) states: "For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal to the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock."

other creditors have been paid in full. From this perspective, the Committee recommends that: the *Bankruptcy and Insolvency Act* be amended to provide that the claim of a seller or purchaser of equity securities, seeking damages or rescission in connection with the transaction, be subordinated to the claims of ordinary creditors. Moreover, these claims should not participate in the proceeds of a restructuring or bankruptcy until other creditors of the debtor have been paid in full.³⁴

The common law practice of subordinating shareholders' claims was recently formalized through Section 6(8) of the CCAA. It has been suggested in commentary on the then proposed amendments that one factor that may have driven the amendments was pressure to align the Canadian provisions with those in the United States.³⁵

As further explored below, it is worth noting that the subsections of the recently defined Equity Claim arguably go beyond, and in certain circumstances override, the pre-amendment caselaw in respect of the nature of Equity Claims to be subordinated to the claims of unsecured creditors.

Characterization of the Claim

Prior to the recent amendments to the CCAA and BIA, while common law practice was to subordinate Equity Claims in insolvency proceedings, the Courts did express reservation on embracing a blanket subordination rule. Historically, whether specific shareholder claims should be deemed debt for purposes of determining a Provable Claim has been determined by first considering the substance of the investment and then the nature of the underlying claim.

Substance of the Investment

The Supreme Court of Canada case *CDIC* is pivotal in providing guidance on how to determine the substance of an investment. As noted by Iacobucci J. it is not uncommon for a transaction to contain both debt and equity features, however this does not, in itself, pose an insurmountable obstacle in characterizing the substance of the investment. As Iacobucci J. stated:

... I see nothing wrong in recognizing the arrangement for what it is, namely, one of a hybrid nature, combining elements of both debt and equity but which, in substance, reflects a creditor-debtor relationship ... It is permissible, and often required, or desirable, for debt and equity to coexist in the given financial transaction without altering the substance of the agreement. Furthermore, it does not follow that each and every aspect of such an agreement

³⁴ Standing Senate Committee Report, *supra* note 26, at 159.

³⁵ See: Janis Sarra, "From Subordination to Parity: An International Comparison of Equity Securities Law Claims in Insolvency Proceedings" (2007) 16 Int. Insolv. Re., 181 at 209 ("*Sarra*").

must be given the exact same weight when addressing a characterization issue. Again, it is not because there are equity features that it is necessarily an investment in capital. This is particularly true when, as here, the equity features are nothing more than supplementary to and not definitive of the essence of the transaction. When a court is searching for the substance of a particular transaction, it should not too easily be distracted by aspects which are, in reality, only incidental or secondary in nature to the main thrust of the agreement.³⁶

In determining the substance of the relationship, the Courts also look to what the parties intended. In *CDIC*, Iacobucci J. stressed the importance of the parties' intentions and the need to examine the words chosen in the transaction's supporting documents to determine such intention:

As in any case involving contractual interpretation, the characterization issue facing this Court must be decided by determining the intention of the parties to the support agreements. This task, perplexing as it sometimes proves to be, depends primarily on the meaning of the words chosen by the parties to reflect their intention.³⁷

In *Central Capital*, Justice Laskin set out the challenge when dealing with the characterization of preferred shares:

Preferred shares have been called "compromise securities" and even "financial mongrels": Grover and Ross, *Materials and Corporate Finance* (1975), at p. 49. Invariably the conditions attaching to preferred shares contain attributes of equity and, at least in an economic sense, attributes of debt. Over the years financiers and corporate lawyers have blurred the distinction between equity and debt by endowing preferred shareholders with rights analogous to the rights of creditors. One example of this is the right of redemption – the right of the corporation to compel preferred shareholders to sell their shares back to the corporation. Another example, as it is the case before us, is the right of retraction – the right of shareholders to compel the corporation to buy back their shares on a specific date for a specific price....If the certificate or instrument contains features of both equity and debt – in other words if it is hybrid in character – then the Court must determine the "substance" of the relationship between the holder of the certificate and the company.³⁸

³⁶ *CDIC*, *supra* note 7, at para 55.

³⁷ *Ibid.*, at para 52.

³⁸ *Central Capital*, *supra* note 8, at paras 117 and 119.

Application to the Facts

In determining the substance of the investment, it has been recognized that certain arrangements may be perceived as being hybrid in nature – namely, they contain both debt and equity characteristics. There are certain features of the Preferred Shares which would appear to be debt instruments, or hybrid instruments containing both debt and equity features. For example, monthly payments based on set percentages; non-discretionary set monthly dividend payments; the redeemable nature of the shares; and the Term Sheets reflect that both the Notes and Preferred shares had similar purposes i.e. to finance the Company's business operations.

The Articles of Amendment also include references to the "preferred" nature of the Preferred Shares vis a vis common shareholders. Some investors were clearly confused by the use of the term "preferred" in respect of their investments and the Articles of Amendment do not clarify the situation entirely.³⁹

However, the factors which support the conclusion that the Preferred Shares were in substance equity include: the references in the Articles of Amendment and Term Sheet in favour of common shareholders only; issuance of share certificates; receipt of dividend payments versus interest payments; and receipt of dividend tax credits and T3 tax forms relating to dividend income.

Despite the conclusion that both debt and equity features can co-exist in the given transaction, case law has advised that a characterization review should not be easily distracted by aspects which are only incidental or secondary in nature to the main thrust of

³⁹ Liquidation, Dissolution and Winding-Up Rights. In the event of the liquidation, dissolution, winding-up or other distribution of assets of the Corporation, the holders of the Preferred Shares will be entitled to receive the amount paid per share thereon together with all accrued and unpaid dividends, whether or not earned or declared, the whole before any amount shall be paid to holders of the Class A common shares, the Class B common shares and any other shares of the Corporation ranking junior to the Preferred Shares. [Articles of Amendment dated April 5, 2007, Schedule A, para 4]

Participation upon Liquidation, Dissolution or Winding-Up: In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the holders of the Series A Shares shall be entitled to receive the Redemption Amount of such shares and shall not share further in any final distribution. [Articles of Amendment dated April 5, 2007, Schedule B, para 6]

Dividends Preferential. Except with the consent in writing of the holders of all the Series B Shares outstanding, no dividends shall at any time be declared and paid on or set apart for payment on the Class A common shares, the Class B common shares or on any other shares ranking junior to the Series B Shares on any financial year unless and until the accrued preferential cumulative cash dividends on all the Series B Shares outstanding have been declared and paid or set apart for payment. [Articles of Amendment dated July 14, 2008, Schedule A, para 4]

Participation upon Liquidation, Dissolution or Winding-Up. In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the holders of the Series B Shares shall be entitled to receive the Redemption Amount of such shares and shall not share further in any final distribution. [Articles of Amendment dated July 14, 2008, Schedule A, para 6]

the agreement. Rather, the analysis requires determining the true intention of the parties based upon the words chosen in the supporting documents. Turning to the supporting documents, namely the Articles of Amendment and the Term Sheets, while they do contain certain debt features, based upon the form and content of these documents, it would appear that the Preferred Shares were equity instruments. The manner in which the Preferred Shares were recorded as equity and not debt in the books and records of the company also support this conclusion.

Nature of Claim

After analyzing the substance of the investment, the Courts have indicated that the next step requires determining the nature of the claim. According to Weiler J.A. in *Central Capital*, relying upon *CDIC*, where words alone are insufficient to reach a conclusion as to the true nature of the agreement, a court must look to the surrounding circumstances to conclude “whether the true nature of the relationship is that of a shareholder who has equity in the company or whether it is that of a creditor owed a debt or liability.”⁴⁰ In determining the nature of the claim, the question that must be considered is whether the alleged share exchange loss derives from and is inextricably intertwined with the shareholder’s interest in the [bankrupt] company? If the nature of the claim is in substance a claim by a shareholder for a return of what it invested qua shareholder, it is an equity claim that is subordinate to the creditors’ claims.⁴¹

The Courts have explored the issue of whether a shareholder’s potential claim should be deemed debt or equity in a variety of circumstances and potential causes of action, many of which are relevant to the present circumstances. Outlined below is an overview of the existing case law (and application to the present circumstances). Based upon discussions with and documents provided by individual Preferred Shareholders, the Monitor, and the Ontario Securities Commission, a variety of potential causes of action have been identified (as outlined above), which are in turn discussed below.

Outstanding Dividend Payments

Section 42 of the *Canada Business Corporations Act*⁴² and Section 38(3) of the *Ontario Business Corporations Act*⁴³ prevent a corporation from declaring or paying a dividend when it does not meet certain solvency requirements.

Pursuant to the pre-amendment case law in respect of Equity Claims, if dividends had been declared on shares but not paid, the Courts held that a debt was created and shareholders had Claims Provable for the amount of the outstanding dividend.⁴⁴ If,

⁴⁰ *Central Capital*, *supra* note 8 at para 67.

⁴¹ *Blue Range*, *supra* note 9, at para 25.

⁴² *Business Corporations Act*, R.S.C. 1985, c. C-44, as am., at section 36 (“CBCA”).

⁴³ *Business Corporations Act*, R.S.O. 1990, c.B.16, as am., at section 38(3) (“OBCA”).

⁴⁴ *Farmers’ Oil & Supply Co.*, [1944] 3 W.W.R. 110 (Sask. K.B.) at para 10.

however dividends had accrued, but were undeclared and unpaid at the date of insolvency, the dividends were not considered debt.⁴⁵

In *Jed Oil*⁴⁶, the Alberta Queen's Bench recently considered the issue of whether dividend claims of preferred shareholders were debt or equity. C.A. Kent J. relied upon the Ontario Court of Appeal's decision in *Central Capital* as being instructive in addressing the issue. While the decision was post amendments to the CCAA, the Court does not appear to have looked to the expanded definition of Equity Claims. The shares in issue had a set 10% dividend rate in the share terms, payable on a quarterly basis. Despite what was argued to have been a pre-set quantum of dividends, the Court held the dividends to be an equity claim.

According to Justice Kent, the issue that she had to decide was whether the dividends were declared before February 1, 2008. This required concluding that the wording of the shares meant that the dividends were declared as of the date of issuance of the shares, with the result being that the shareholders became creditors of the company from the date their shares were issued. Justice Kent was of the view that the substance of the relationship between the shareholders and the corporation at the time they purchased their shares was not that of creditor and debtor; rather the shareholders were risk takers. In order for the shareholders to become creditors from the time the shares were issued would require more explicit wording than what was contained in these shares at present. As such, Justice Kent held that the preferred shareholders were excluded from the unsecured creditors' class such that they were not entitled to any distribution within that class.⁴⁷

Application to the Facts

In light of the statutory definition of Equity Claim (Section 2(a) of the CCAA), which specifically includes dividends and does not distinguish between accrued, unpaid, declared or undeclared dividends, it appears that outstanding and unpaid dividends would now be captured in the definition of Equity Claims. Had the legislators intended to distinguish between various types of dividends, it was available for them to do so. Any analysis of the CCAA is to be guided by the modern rule of statutory interpretation, namely, that "the words of the Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."⁴⁸

The Outstanding Dividend Claim would be captured by the definition of Equity Claims. Nelson Financial would not have been in a position to pay the dividends in light of their insolvency situation and as such the outstanding dividend portion remains an equity claim.

Retraction Rights/ Outstanding Redemption Requests

⁴⁵ *Central Capital*, *supra* note 8 at para 96.

⁴⁶ *JED Oil*, *supra* note 13, at para 8.

⁴⁷ *Ibid.*, at para 16-17.

⁴⁸ *Rizzo*, *supra* note 28, at para 21.

In *Central Capital* the Court considered the issue of whether the holders of retractable preferred shares should be treated as creditors rather than shareholders under the CCAA. The preferred shareholders argued that the right of retraction constituted a future contingent liability of the corporation and was, therefore, a debt provable in bankruptcy. The preferred shareholders' claims were denied and the preferred shareholders appealed. The Court of Appeal found that the true nature of the relationship between the preferred shareholders and the debtor company was that of shareholders. The shareholders continued to be shareholders after the retraction date and remained shareholders at the time of the company's reorganization. The Court held that although the shareholders had a right to receive payment, the effect of the solvency provisions in the Canada Business Corporations Act⁴⁹, namely section 36 which states that a corporation's ability to redeem its redeemable shares is subject to its articles and a solvency requirement, meant that there was no right to enforce payment. Justice Laskin, concurring with Weiler J.A., stated that while the relationship between the preferred shareholders and the company had the characteristics of both debt and equity, in substance, the preferred shareholders were shareholders and neither the existence nor the exercise of retraction rights turned them into creditors.⁵⁰

In arriving at its conclusion, the Court considered the relevant statutory provisions which prevent a corporation from redeeming shares while insolvent, the articles of the corporation, and certain policy considerations. With respect to the articles, the court noted that the common features of a debtor-creditor relationship were not evident in the corporation's articles. Specifically:

[t]he agreements between the parties contain no express provisions that the redemption of the shares is in repayment of a loan. The corporation was not obliged to create any fund or debt instrument to ensure that it could redeem the shares on the retraction date. There is no indemnity in the event that the money is not repaid on the retraction date. There is no provision for the payment of any interest after the retraction date in the event that the money is not repaid on the retraction date. There is no provision that after the retraction date and in the event of insolvency, the appellants would have the right to have the company wound up ... There is no provision that upon a winding up or insolvency the parties are entitled to rank *pari passu* with the creditors as was the case in *Canada Deposit Insurance Corp. v. Canadian Commercial Bank*, *supra*.⁵¹ [Emphasis added]

⁴⁹ CBCA, *supra* note 42, at section 38(3)..

⁵⁰ *Central Capital*, *supra* note 8, at para 140.

⁵¹ *Ibid.*, at para 87. While not in the context of retraction rights, the court's commentary in *Laronge Realty Ltd. v. Golconda Inv't. Ltd* (1986), 1986 CarswellBC 496 (B.C.C.A.) ("*Laronge*") on the relevant features of an agreement which the court considered to determine whether the shareholders' claim were loans as opposed to capital contributions is noteworthy. In dismissing the appeal and upholding the trial judge's holding that the shareholders' claims be postponed to those of other ordinary creditors, the court relied upon the English case *Re Meade*, [1951] Ch. 774 (Div. Ct.) ("*Meade*") to conclude that in this case, as in *Meade*, "there was no agreement for

Application to the Facts

The Preferred Shareholders had, in practise, the right to seek redemption of their Preferred Shares according to the evidence of Marc Boutet. In addition, there is evidence of some Preferred Shareholders documenting this redemption right as a formal term of their investment. Finally, there are at least two alleged cases of Outstanding Redemption Requests at the date of the CCAA filing.

While retraction/redemptions rights existed and in some cases may have been exercised pre-filing, given the terms of the Preferred Shares (similar to those referenced in *Central Capital*), and the expanded definition in Section 2(c) of the CCAA, those rights are captured by the definition of Equity Claims.

Indemnity Claims

The issue of indemnity claims found in the issuance of flow through shares indemnifying a shareholder in respect of failed payments or lost tax relief was considered in *Earthfirst* and *National Bank*. In *Earthfirst*, Justice Romaine considered whether such indemnity claims were debt claims or claims for the return of an equity investment. Justice Romaine, relied on the reasoning in *National Bank*, and held that:

[w]hile it may be true that equity may become debt, such as in the case of declared dividends or a claim reduced to a judgment debt, **the indemnity claim in this case had not undergone a transformation from its original purpose as a "sweetener" to the offering of common shares**, even if individual subscribers have since sold the shares to which it was attached. The renunciation of flow-through tax credits, despite the payment of a premium, for this feature, can be characterized as incidental or secondary to the equity features of the investment, a marketing feature that provided an alternative to the share plus warrant tranche of the public offering for investors who found the feature attractive. [Emphasis added]⁵²

Further, Justice Romaine noted that while not yet in force, the then proposed amendments to the CCAA would capture a contribution or indemnity in respect of a claim regarding a dividend or similar payment, the return of capital, a redemption or retraction clause, a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission of a purchase or sale of an equity interest, within the definition of "equity claim."⁵³

Application to the Facts

repayment of money or for payment of interest or for the giving of any security; the only distinguishing factor is the entry on the books of the company, an item, which was entitled to very little weight when regard is had to the whole of the evidence."

⁵² *Earthfirst*, *supra* note 12 at para 4.

⁵³ *Ibid.*, at para 5

We are unaware of any specific situation where Preferred Shareholders seek to claim ancillary benefits associated with the Preferred Shares.

Shareholders Loan

The issue of Shareholder loans has been addressed in a number of cases including *Provost Shoe Shops Ltd., Re ("Provost Shoe Shops")*⁵⁴, *Laronge Realty Ltd. v. Golconda Investments Ltd. ("Laronge")*⁵⁵ and *Marusba Holdings Ltd. Re ("Marusba Holdings")*⁵⁶. The question in each case was whether funds advanced or reinvested into the company by a shareholder were advances in capital or separate debt. The case which appears closest to our fact situation is *Provost Shoe Shops*, where the Court considered an appeal of a trustee's disallowance of the claim of the sole shareholder in regard to outstanding shareholders' loans. The Court examined the transaction, including the declaration of dividends and the return by the shareholder to the particular company the exact amount of the dividend to which it was entitled. The Court also noted that the transaction was based on advice received by the companies from its accountants and solicitors as a tax saving measure and how each company had recorded the transaction on its company records as a shareholder loan. Further, in the years following the declaration of the dividend and the return of the funds to each company, the companies made payments on the loans.

The Court allowed the appeal and held:

This finding is based on the fact that the transactions were clearly recorded on the books of each company as a loan and that it continued to be so described up to the time of the bankruptcy. More importantly, however, is the fact that substantial payments were made on these loans. The fact that no documents were prepared to show the existence of the loan and that no interest was payable does not satisfy me that this was anything other than a loan arrangement. It is also significant that the loan arrangements were made on the advice of the companies' accountants and lawyers. There appears to be nothing improper with the arrangement as entered into in 1983. At that time the companies were prospering and taking advantage of a procedure to save taxes cannot be described as being improper on its face.⁵⁷

Further, noteworthy is the B.C.S.C's decision in *Marusba Holdings* which is similar in facts and the Court held:

⁵⁴ *Provost Shoe Shops Ltd. Re*, (1993) 1993CarswellNS 27 (N.S. Supreme Court, in Bankruptcy) ("*Provost Shoe Shops*")

⁵⁵ *Laronge Realty Ltd. v. Golconda Investments Ltd.* (1986), 1986CarswellBC 496 (B.C.C.A.) ("*Laronge*")

⁵⁶ *Marusba Holdings Ltd. Re* (1998), 1998CarswellBC892 (B.C. Supreme Court) ("*Marusba*")

⁵⁷ *Provost Shoe Shops*, *supra* note 54, at para 28.

That the funds advanced to the company by its shareholder were in the nature of a demand loan (as opposed to a capital contribution), even though there was no expectation of repayment until the company was profitable. The fact that an advancement of funds did not contain terms as to time for repayment does not render the advancement something other than a loan. Rather, it is presumptively a debt due, owing and payable on demand.

The Court in *Provost Shoe Shops* distinguished *Laronge* where the Court considered the claims of 10 shareholders of a bankrupt company who had made advances to the company which were in precise proportion to their shareholdings. In *Laronge*, the shareholders' advances were shown on the company books as loans, however, there was no evidence of any promise by the bankrupt company to repay and no payments were made. Further, there was no agreement to pay interest. The fact that the shareholders in *Laronge* had advanced the funds in proportion to their shareholding interests, together with the terms of the agreement they had entered into following the bankruptcy (which entitled each shareholder to recover a pro rata percentage of what each had advanced to the company) resulted in the court's conclusion that the advances were "advancements of capital."

Application to the Facts

One of the Preferred Shareholders has alleged that in lieu of accepting his dividend payments or agreeing to reinvest his dividend payments through the DRIP plan, the money was loaned to the Company and interest on these amounts paid. While there is some basis to argue such a claim is incidental to the shareholders' share interest, the case law above would support that an independent loan could survive and be treated separate from the question of the Preferred Shareholding. Therefore, if this Preferred Shareholder (or any others who allege they had independent Shareholders loans) is able to satisfy the burden of proof that such a loan arrangement was agreed to, such a loan would be independent of the share terms and in respect of the unpaid dividends only would constitute a Claim Provable.

Misrepresentation Claims – Negligent, Fraudulent and Failure to Disclose/Oppression

In *Blue Range*, the Court considered whether a shareholder allegedly induced by fraud to purchase shares of a debtor corporation had a claim in equity or debt. Justice Romaine relied on the *CDIC* and *Central Capital* decisions in her reasoning. Justice Romaine pointed out that there is a discrepancy between those scenarios where a party with a claim in tort or debt is a shareholder is coincidental and incidental (such as where a shareholder is also a regular trade creditor of a corporation or slips and falls outside the corporate office and has a claim in negligence against the corporation) and cases, where the very core of the claim is whether the consideration paid for the shares was based on misrepresentation. In the former, Justice Romaine implied that the shareholder's unsecured claim would rank *pari passu* with the other general unsecured creditors. In this particular case, however, the shareholder had no cause of action until it acquired the shares of the company. The tort claim derived from the shareholder's status as shareholder, and not from a tort unrelated to that status. Justice Romaine acknowledged that the shareholder did not claim rescission, rather claimed an award of damages measured as the difference between the "true" value of

the shares and their “misrepresented value.” Romaine J. determined, however, that a tort award could only represent a return of what the shareholder invested in equity. As such, the true nature of the claim was in substance a claim by a shareholder for a return of what it invested qua shareholder, rather than an ordinary tort claim.⁵⁸

In *National Bank*, the company, Merit Energy Ltd., had been found guilty of misrepresentation in a prospectus that was filed by it in respect of an issuance of flow-through shares. The company declared bankruptcy and the shareholders filed claims against the bankrupt estate for the amount of their invested equity. Relying upon the decision in *Blue Range*, the Court held that the shareholders were not creditors of the company, since they were seeking the return of invested equity. LoVecchio J. held that the claim for rescission or damages based on misrepresentation is derived from the shareholders’ status as shareholders. In particular, he notes:

Regardless of how they are framed, the form the actions take cannot overcome the substance of what is being claimed. It is plain from the Prospectus and the Subscription and Renunciation Agreement that the Flow-Through Shareholders invested in equity. It is equally plain from their actions that what they seek to recoup, in substance, is their investment. As in *Blue Range Resource Corp., Re*, the “very core” of these claims arises from the circumstances surrounding the acquisition of Merit shares. The Flow-Through Shareholders had no cause of action until they acquired the Flow-Through Shares and their claims include a direct claim for return of capital in their request for rescission and in the case of a damage claim, just as in *Blue Range Resource Corp., Re*, the measure of damages enables them to recover the purchase price of the shares.⁵⁹

Even in the case where shareholders are using the statutory provisions to make their claims in damages or rescission, as opposed to the tort basis used in *Blue Range*, the Court in *National Bank* held that in substance the claims remain shareholders claims for the return of an equity investment and any right to a return of this investment is limited by the basic common law principles that shareholders rank after creditors in these circumstances.

These conclusions are incorporated in the statutory definition of Equity Claims and specifically 2(b) return of capital and 2(d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or in Quebec, the annulment, of a purchase or sale of an equity interest.

We have been unable to locate any case law specifically addressing oppression claims. Arguably, claims based on these grounds would also fall within the concept of monetary loss and the policy grounds applicable to misrepresentation claims.

⁵⁸ *Blue Range*, *supra* note 9 at para 22-25 and 57

⁵⁹ *National Bank*, *supra* note 10 at para 49 and 50.

Application to the Facts

The Preferred Shareholders would arguably have claims based on misrepresentations (negligent and fraudulent), and failure to disclose material information. Based on the pre-amendment case law and the statutory definition, each of these claims made *qua* shareholder will fall within the definition of Equity Claim.

The perceived inequity that shareholders who allege they were induced inappropriately into investing in shares would have their claims subordinated is not lost upon the author and others who have reviewed this issue. For example, Professor Janis Sarra in her paper notes:

...subordinating all claims of equity investors, fails to recognize that equity investors, while investing in ordinary business risk and risk of insolvency, do not assume risk of corporate fraud or violations of securities legislation, fair trade practices legislation, or criminal codes. Such subordination arguably punishes the innocent shareholder for the misconduct of corporate management, which was never part of the shareholders' bargain. Moreover, it treats shareholders' rights to statutory remedies differently in and outside of insolvency, whereas creditors do not face this differential treatment.⁶⁰

Professor Sarra notes in commenting on the language of the (then proposed) amendments relating to Equity Claims:

A statutory amendment that specifies "unless the court determines that it is 'fair and equitable' or 'fair and reasonable' to order otherwise", would grant the court authority to exercise its discretion in particular circumstances based on the equities in the case. It would allow the court to approve a remedy in cases where damages are sought for egregious conduct on the part of the debtor corporation and its officers. The other options would be remove damage claims arising out of securities law violations from the above proposed definition of equity claim because, arguably, such claims are not equity claims. The proposed Canadian legislation as currently framed fails to recognize that claims for damages arising out of deception or statutory violations are more similar to claims by creditors for breach of contracts or commercial arrangements than they are to ordinary claims by shareholders to the residual equity in the firm.⁶¹

Further, in recommending a proposed policy option in rectifying the perceived inequity, Professor Sarra notes:

⁶⁰ Sarra, *supra* note 35, at pg 187.

⁶¹ *Ibid.*, at pg. 210-211.

The fourth option would be to treat all shareholder claims arising out of securities law violations as unsecured creditor claims on the basis that these liabilities are remedies to which investors are entitled under various statutes providing protection to investors. It is unclear that there has been cogent public policy rationale advanced for the proposition that shareholders and creditors should be treated differently in respect of securities laws violations where neither contracted for fraud risk. It also seems unclear why jurisdictions are moving on the one hand to enhance the remedies available to securities holders for corporate misconduct and on the other hand proposing that if the conduct is sufficiently egregious that satisfaction of claims makes the company insolvent, then the claims are completely subordinated to other interests in the firm. Parity in treatment of claims arising from statutory violations would remedy this problem...It is unclear why damage claims arising from securities law violations should be subordinated when other types of tort claims are not; and this discrepancy in treatment is an issue that needs to be addressed by legislators.⁶²

However, the statutory language of the definition of Equity Claims as it presently reads incorporates directly the concept of monetary loss resulting from the purchase of an equity interest. There is no carve out for negligent or fraudulent misrepresentations or claims based on securities violations in the definition. The statutory rules of interpretation, the pre-amendment case law, and specifically the grounds referred to by Justice Romaine in *Blue Range* further support such subordination, notwithstanding what will clearly be a difficult conclusion for individual Preferred Shareholders to accept.

Rescission Rights/Voidable shares/Violation of Securities Legislation

The issue of claims to rescind shares was addressed in the *Blue Range* and *National Bank* decisions. In the case where shareholders are using the statutory provisions to make their claims in damages or rescission, as opposed to the tort basis used in *Blue Range*, the Court in *National Bank* held that in substance the claims remain shareholders claims for the return of an equity investment and any right to a return of this investment is limited by the basic common law principles that shareholders rank after creditors in these circumstances.⁶³

Romaine J., in *Blue Range*, also made reference to rescission cases in both Canada and the United Kingdom which articulate that once a company is insolvent, shareholders are not permitted to rescind their shares.⁶⁴ For example, in *Northwestern Trust Co.*,⁶⁵ Duff J. referred to the long settled principle that a shareholder who has the right to rescind his shares on

⁶² *Ibid.*, at pg. 224.

⁶³ *National Bank*, *supra* note 10, at para 50.

⁶⁴ *Blue Range*, *supra* note 9, at para 37.

⁶⁵ *Northwestern Trust Co.*, [1926] S.C.R. 412 (S.C.C.)

grounds of misrepresentation will lose that right if he fails to exercise it before the commencement of winding-up proceedings.⁶⁶

The statutory definition of Equity Claims also specifically addresses rescission rights in 2(b) "return of capital", 2(c) "redemption or retraction obligations", and 2(d) "monetary loss resulting from ... the rescission, or in Quebec, the annulment, of a purchase or sale of an equity interest".

Application to the Facts

In light of the insolvency of Nelson Financial, it would no longer be available for a Preferred Shareholder to claim rescission of their shares. Attempts to do so through violations of the *Securities Act* or the common law or claims for monetary loss in lieu would each be captured in the definition of Equity Claim.

Judgment Creditor

In *Waxman*⁶⁷ in the context of a bankruptcy, Pepall J. considered a motion for advice and directions as to whether the claim of a judgment creditor against the bankrupt's estate should be allowed. The judgment is based on a number of causes of action and includes claims arising from the judgment creditor's status as a former shareholder of the bankrupt company. Fourteen unsecured trade creditors relying on the doctrine of equitable subordination took the position that their claims as creditors should be paid in full prior to any distribution to the judgment creditor, as the judgment creditor's claim was rooted in equity as opposed to debt.⁶⁸

Pepall J. looked first to the characterization of the claim and held that the judgment was a debt claim properly provable in bankruptcy. In arriving at this conclusion, Her Honour considered the general proposition (as articulated in *Central Capital*, amongst other cases) that equity investors rank below creditors in bankruptcy, which principle is premised on the understanding that shareholders have chosen to be higher risk takers. In the characterization of the claim, the central issue that Pepall J. considered was whether a claim that originates in equity always remains in equity. In these particular circumstances, the claim was not for a return of invested capital; rather, in substance it related primarily to dividends and bonuses declared in prior years when the company was solvent. Relying on *Central Capital* for the proposition that declared dividends are treated as debt that is provable in bankruptcy, the Court concluded that case law exists to support the position that equity may become debt. Further when considering Section 121 of the BIA, to be a Claim Provable, it must be recoverable by legal process. Since the judgment creditors constitute a claim recoverable by legal process, Justice Pepall distinguished *Waxman* on its facts from *Blue Range* and *National Merit* explaining that those cases involved causes of

⁶⁶ *Blue Range*, *supra* note 9 at para 37-38.

⁶⁷ *Waxman*, *supra* note 11.

⁶⁸ *Ibid*, at para 1.

action that had been asserted in court proceedings but for which no judgment had been rendered.⁶⁹

The statutory definition of Equity Claim does not appear to override the conclusion that claims reduced to judgements prior to the insolvency filing will be Claims Provable.

Application to the Facts

While we are unaware of any judgements obtained by Preferred Shareholders prior to Nelson Financial's CCAA filings, such judgment creditors would have Claims Provable.

⁶⁹ *Ibid*, at para 18-26.

TAB A



NELSON FINANCIAL
GROUP LTD.

PROMISSORY NOTE

Amount: \$ __,000.00

FOR VALUE RECEIVED, the undersigned, Nelson Financial Group Ltd. acknowledges itself indebted and hereby promises to pay **Investor Name** (the "Holder"), the principal sum of __ Thousand Dollars (\$ __,000.00) in lawful money of Canada (the "Principal") together with interest thereon in like money on the unpaid portion from time to time of the Principal until the Principal is repaid in full at the rate of 12% per annum, calculated monthly, not in advance, and shall be payable both before and after default and or judgment as well after as before maturity.

Interest (accruing from and in respect of the 16th day of __, 2010) calculated as aforesaid shall be payable monthly in the amount of \$ __ on the 16th day of each month starting __, 2010 and the Principal shall become due and be paid in full on the 16th day of __, 20__. The Holder has the option to redeem the Principal amount each year in the month of __.

Arrears of interest from time to time shall bear interest calculated and payable in the same manner as provided for above.

In the event that the undersigned shall at any time default in the payment of any interest due hereunder, then without prejudice to any other rights that the Holder may have, the Principal together with any unpaid interest shall immediately be accelerated and become due and payable forthwith.

This promissory note may not be assigned, discounted, pledged or hypothecated by the Holder and by any subsequent holder of this promissory note. This promissory note is not intended by the parties to be, and is not, a negotiable instrument.

The provisions of this promissory note shall be governed by and construed in accordance with the Province of Ontario and the federal laws of Canada applicable therein.

This note is subordinated, please see the Term Sheet for details.

Dated at Pickering, Ontario, this __ day of __, 2010

Investor Name(s) – Print Please

Investor Signature(s)

Date

Nelson Financial Group Ltd.
Stephanie Sobol, General Manager

Nelson Investment Group Ltd.
Marc Boutet, President



**NELSON FINANCIAL
GROUP LTD.**

**TERM SHEET
FIXED RATE INVESTMENT**

ISSUER	Nelson Financial Group Ltd.
OFFER VOLUME	Unlimited
PURPOSE	To finance the Company's business operations
SUBSCRIPTION PERIOD	January 10 th , 2007 to December 31 st , 2007
TENURE	1 – 5 year maximum
MATURITY	See Promissory Note
INTEREST RATE	Fixed at 12% per annum, until maturity on; see Promissory Note
PRINCIPAL PAYMENTS	Principal will be repaid at maturity on; see Promissory Note
INTEREST PAYMENTS	The first interest payment will become due and payable on (see Promissory Note). Thereafter, interest will be paid monthly, until maturity. The final interest payment will be paid on; see Promissory Note.
TAXATION	Taxable
BUSINESS DAY	In the event that a payment day occurs on a day other than a business day, such payments will be made on the business day preceding that date. Interest will be calculated up to the actual payment date with 360 day calculations.
MINIMUM PURCHASE	\$150,000.00 \$10,000.00 – limited to accredited investors
CLOSING	Currently, closing is estimated to occur on or before; see Promissory Note
PAYMENT OPTIONS	Interest payments will be made electronically (EFT)
REPORTING REQUIREMENTS	Company issues investors annual T-5 slips
RELATED ISSUER	Nelson Investment Group Ltd.
DEPOSITS	Made to Nelson Financial Group Ltd.

The Lender acknowledges and agrees that the Borrower incur "Debt" in connection with institutional lenders, including but not limited to banks and institutional funds, and the Lender hereby agrees to subordinate for all purposes its rights and remedies under this Promissory Note to the rights and remedies of the lender(s) of the Debt pursuant to any security agreements entered into in connection with the Debt and the indebtedness thereunder such that the Debt Lenders' security interests shall rank, in all circumstances and for all purposes, in priority to the security interests of the Lender against the existing and future undertaking and assets of the Borrower, without any limitation. Each Debt Lender shall be entitled to rely upon this postponement and subordination as if it had been and is a party to this Promissory Note.

TAB B

For Ministry Use Only
À l'usage exclusif du ministère

Ontario Corporation Number
Numéro de la société en Ontario

CERTIFICATE

The name of the corporation is: **CERTIFICATE**

The name of the corporation is: **CERTIFICATE**

Ontario Corporation Number
Numéro de la société en Ontario

911152

APRIL 05 AVRIL, 2007

**ARTICLES OF AMENDMENT
STATUTS DE MODIFICATION**

Form 3
Business
Corporations
Act

Formule 3
Loi sur les
sociétés par
actions

- 1 The name of the corporation is: (Set out in BLOCK CAPITAL LETTERS)
Dénomination sociale actuelle de la société (écrire en LETTRES MAJUSCULES SEULEMENT):

NELSON FINANCIAL GROUP LTD.

- 2 The name of the corporation is changed to (if applicable): (Set out in BLOCK CAPITAL LETTERS)
Nouvelle dénomination sociale de la société (s'il y a lieu) (écrire en LETTRES MAJUSCULES SEULEMENT):

- 3 Date of incorporation/amalgamation:
Date de la constitution ou de la fusion:

1990-09-14

(Year, Month, Day)
(année, mois, jour)

- 4 Complete only if there is a change in the number of directors or the minimum / maximum number of directors.
Il faut remplir cette partie seulement si le nombre d'administrateurs ou si le nombre minimal ou maximal d'administrateurs a changé.

Number of directors is/are: or minimum and maximum number of directors is/are:
Nombre d'administrateurs: ou nombres minimum et maximum d'administrateurs:

Number: or minimum and maximum
Nombre: ou minimum et maximum

- 5 The articles of the corporation are amended as follows:
Les statuts de la société sont modifiés de la façon suivante:

See pages 1A through to and including 1E attached.

1. The Articles of the Corporation are amended to:
 - (a) split the existing 100 issued and outstanding Class A common shares into 1,500,000 issued and outstanding Class A common shares;
 - (b) split the existing 100 issued and outstanding Class B common shares into 1,500,000 issued and outstanding Class B common shares;
 - (c) remove Sections 4(a), (b), (c) and (e) from the Articles of Amendment filed by the Corporation on August 8, 2003;
 - (d) increase the authorized capital of the Corporation by the creation of Preferred Shares, issuable in series;
 - (e) provide that the Preferred Shares, issuable in series shall have attached to them the rights, privileges, restrictions and conditions as set out at Schedule "A";
 - (f) create the first series of Preferred Shares and to designate them as Series A Preferred Shares;
 - (g) provide that the Series A Preferred Shares shall consist of 2,800,000 shares and shall have attached to them the rights, privileges, restrictions and conditions as set out at Schedule "B".

SCHEDULE "A"

PREFERRED SHARES

Subject to the rights of any class of shares that are expressed to rank prior to them, the Preferred Shares shall have the following rights, privileges, restrictions and conditions:

1. ***Directors' Rights to Issue in One or More Series*** The Preferred Shares may at any time or from time to time be issued in one or more series, each series to consist of such number of shares as may, before the issue thereof, be determined by resolution of the Board of Directors of the Corporation.
2. ***Directors to Fix Terms of Each Series***. The directors of the Corporation shall (subject as hereinafter provided) by resolution fix, from time to time, before the issue thereof, the rights, privileges, restrictions and conditions attaching to the Preferred Shares of each series including, without limiting the generality of the foregoing, the rate or amount of dividends or the method of calculating dividends, the dates of payment thereof, the redemption and/or purchase prices and terms and conditions of redemption and/or purchase, any voting rights, any conversion rights and any sinking fund or other provisions, the whole to be subject to the issue of a certificate of amendment setting forth the rights, privileges, restrictions and conditions attaching to the Preferred Shares of such series.
3. ***Ranking of Preferred Shares***. The Preferred Shares of each series shall, with respect to the payment of dividends and the distribution of assets in the event of liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, rank on a parity with the Preferred Shares of every other series and be entitled to priority over the Class A common shares, the Class B common shares and over any other shares of the Corporation ranking junior to the Preferred Shares. The Preferred Shares of any series may also be given such other preferences, not inconsistent with provisions hereof, over the Class A common shares, the Class B common shares and over any other shares of the Corporation ranking junior to the Preferred Shares as may be fixed in accordance with paragraph 2 hereof.
4. ***Liquidation, Dissolution and Winding-Up Rights***. In the event of the liquidation, dissolution, winding-up or other distribution of assets of the Corporation, the holders of the Preferred Shares will be entitled to receive the amount paid per share thereon together with all accrued and unpaid dividends, whether or not earned or declared, the whole before any amount shall be paid to holders of the Class A common shares, the Class B common shares and any other shares of the Corporation ranking junior to the Preferred Shares.

SCHEDULE "B"

SERIES A PREFERRED SHARES

The following are the rights, privileges, restrictions and conditions attached to the Series A Preferred Shares (the "Series A Shares"):

1. **Number of Series A Shares.** The Series A Shares shall consist of 2,800,000 shares.
2. **Non-Voting.** Except as required by the *Business Corporations Act*, the holders of the Series A Shares shall not be entitled to receive notice of or to attend any meetings of shareholders of the Corporation.
3. **Cumulative Dividends:** The holders of the Series A Shares, in priority to the holders of the Class A common shares, the Class B common shares and all other shares ranking junior to the Series A Shares, shall be entitled to receive and the Corporation shall pay thereon, as and when declared by the board of directors of the Corporation out of the assets of the Corporation properly applicable to the payment of dividends, fixed preferential cumulative cash dividends at the rate of 10% per annum on the Redemption Price (as hereinafter defined) per share. Such dividends shall be payable monthly on the first day of each month in each year and shall accrue and be cumulative the date of issue. If on any dividend payment date the dividend payable on such date is not paid in full on all the Series A Shares then issued and outstanding, such dividend, or the unpaid part thereof, shall be paid at a subsequent date or dates in priority to dividends on the Class A common shares, the Class B common shares and any other shares ranking junior to the Series A Shares. The holders of Series A Shares shall not be entitled to any dividends other than or in excess of the preferential cumulative cash dividends hereinbefore provided.
4. **Dividends Preferential:** Except with the consent in writing of the holders of all the Series A Shares outstanding, no dividend shall at any time be declared and paid on or set apart for payment on the Class A common shares, the Class B common shares or on any other shares ranking junior to the Series A Shares in any financial year unless and until the accrued preferential cumulative cash dividends on all the Series A Shares outstanding have been declared and paid or set apart for payment.
5. **Redemption**
 - a. **Right to Redeem.** Subject to the *Business Corporations Act*, the Corporation may redeem or purchase the Series A Shares in accordance with the following terms and conditions. In these share provisions, "Redemption Price" shall be equal to amount paid per share. The "Redemption Amount" for each Series A Share shall be the Redemption Price together with all dividends which shall have accrued thereon and which shall be treated as accruing to the date of such redemption.

b. Redemption at the Option of the Corporation

- i. **Right to redeem.** The Corporation may redeem all or from time to time any of the outstanding Series A Shares on payment to the holders thereof of the Redemption Amount. If less than all of the outstanding shares are to be redeemed, the shares to be redeemed shall be selected by lot or (disregarding fractions) pro rata to the number of shares registered in the name of each shareholder or in such other manner as the directors may determine with the written consent of all the holders of the Series A Shares.
 - ii. **Notice.** At least 30 days before the redemption date the Corporation shall give written notice of redemption to each holder of the shares to be redeemed. The notice shall set out the Redemption Amount, the redemption date, the place of redemption and the number of shares to be redeemed. Accidental failure to give such notice shall not affect the validity of any redemption.
 - iii. **Payment.** On and after the redemption date the Corporation shall cause the Redemption Amount to be paid to or to the order of the holders of the shares to be redeemed, on surrender of the certificates representing such shares at the redemption place. Such shares shall thereupon be redeemed. From and after the redemption date, the holders of the shares called for redemption shall cease to be entitled to any rights of shareholders in respect thereof except to receive the Redemption Amount, unless it is not paid or deposited in accordance herewith (in which case their rights shall remain unimpaired).
 - iv. **Deposit.** The Corporation may at any time deposit the Redemption Amount of any Series A Shares called for redemption with any Canadian chartered bank or trust company or solicitors of the Corporation named in the notice of redemption or in a subsequent notice to the holders of the shares in respect of which the deposit is made, in a special account for the holders of such shares. On the date of deposit (or redemption date, if later) the shares in respect of which such deposit is made shall be redeemed and from and after such date the rights of their holders shall be limited to severally receiving out of the moneys so deposited, without interest, the Redemption Amount of their redeemed shares upon surrender to such bank, trust company or solicitors, as the case may be, of the certificates representing such shares. Any interest on such deposit belongs to the Corporation.
6. **Participation upon Liquidation, Dissolution or Winding-Up:** In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the

holders of the Series A Shares shall be entitled to receive the Redemption Amount of such shares and shall not share further in any final distribution.

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6. The amendment has been duly authorized as required by sections 168 and 170 (as applicable) of the *Business Corporations Act*.
La modification a été dûment autorisée conformément aux articles 168 et 170 (selon le cas) de la Loi sur les sociétés par actions.
7. The resolution authorizing the amendment was approved by the shareholders/directors (as applicable) of the corporation on
Les actionnaires ou les administrateurs (selon le cas) de la société ont approuvé la résolution autorisant la modification le

2007/3/23

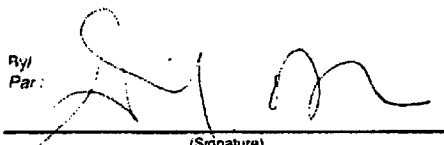
(Year, Month, Day)
(année, mois, jour)

These articles are signed in duplicate.
Les présents statuts sont signés en double exemplaire.

FINANCIAL GROUP LTD.

(Name of Corporation) (If the name is to be changed by these articles set out current name)
(Dénomination sociale de la société) (Si l'on demande un changement de nom, indiquer ci-dessus la dénomination sociale actuelle).

By/
Par:



(Signature)
(Signature)

PRESIDENT

(Description of Office)
(Fonction)

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Usage exclusif du ministère



Ministry of
Government Services

Ministère des
Services gouvernementaux

Ontario Corporation Number
Numéro de la société en Ontario

911152

CERTIFICATE

This is to certify that those articles
are effective on

CERTIFICAT

Ceci certifie que les présents statuts
entrent en vigueur le

JULY 14 JUILLET, 2008

Form 5
Business
Corporations
A-1

Form 5
Sociétés par
actions

**ARTICLES OF AMENDMENT
STATUTS DE MODIFICATION**

- 1 The name of the corporation is (Set out in BLOCK CAPITAL LETTERS)
Dénomination sociale actuelle de la société (écrite en LETTRES MAJUSCULES SEULEMENT)

NELSON FINANCIAL GROUP LTD.

- 2 The name of the corporation is changed to (Set out in BLOCK CAPITAL LETTERS)
Nouvelle dénomination sociale de la société (si il y a lieu) (écrite en LETTRES MAJUSCULES SEULEMENT)

- 3 Date of incorporation/amalgamation
Date de la constitution ou de la fusion

1990-09-14

Year/Month/Day
Année-Mois-Jour

- 4 Complete only if there is a change in the number of directors or the minimum / maximum number of directors.
Il faut remplir cette partie seulement si le nombre d'administrateurs ou si le nombre minimal ou maximal d'administrateurs a changé

Number of directors is are OR minimum and maximum number of directors is are
Nombre d'administrateurs ou nombres minimum et maximum d'administrateurs

Number or minimum and maximum
Nombre ou minimum et maximum

- 5 The articles of the corporation are amended as follows
Les statuts de la société sont modifiés de la façon suivante

See pages 1A to 1C attached.

The Articles of the Corporation are amended to:

- (a) create the second series of Preferred Shares and to designate them as Series B Preferred Shares; and
- (b) provide that the Series B Preferred Shares shall consist of 2,000,000 shares and shall have attached to them the rights, privileges, restrictions and conditions as set out at Schedule "A".

SCHEDULE "A"**SERIES B PREFERRED SHARES**

The following are the rights, privileges, restrictions and conditions attached to the Series B Preferred Shares (the "Series B Shares"):

1. **Number of Series B Shares.** The Series B Shares shall consist of 2,000,000 shares.
2. **Non-Voting.** Except as required by the *Business Corporations Act*, the holders of the Series B Shares shall not be entitled to receive notice of or to attend any meetings of shareholders of the Corporation.
3. **Cumulative Dividends.** The holders of the Series B Shares, in priority to the holders of the Class A common shares, the Class B common shares and all other shares ranking junior to the Series B Shares, shall be entitled to receive and the Corporation shall pay thereon, as and when declared by the board of directors of the Corporation out of the assets of the Corporation properly applicable to the payment of dividends, fixed preferential cumulative cash dividends at the rate of 10% per annum on the Redemption Price (as hereinafter defined) per share. Such dividends shall be payable monthly on the first day of each month in each year and shall accrue and be cumulative the date of issue. If on any dividend payment date the dividend payable on such date is not paid in full on all the Series B Shares then issued and outstanding, such dividend, or the unpaid part thereof, shall be paid at a subsequent date or dates in priority to dividends on the Class A common shares, the Class B common shares and any other shares ranking junior to the Series B Shares. The holders of Series B Shares shall not be entitled to any dividends other than or in excess of the preferential cumulative cash dividends hereinbefore provided.
4. **Dividends Preferential.** Except with the consent in writing of the holders of all the Series B Shares outstanding, no dividend shall at any time be declared and paid on or set apart for payment on the Class A common shares, the Class B common shares or on any other shares ranking junior to the Series B Shares in any financial year unless and until the accrued preferential cumulative cash dividends on all the Series B Shares outstanding have been declared and paid or set apart for payment.
5. **Redemption**
 - (a) **Right to Redeem.** Subject to the *Business Corporations Act*, the Corporation may redeem or purchase the Series B Shares in accordance with the following terms and conditions. In these share provisions, "**Redemption Price**" shall be equal to amount paid per share. The "**Redemption Amount**" for each Series B Share shall be the Redemption Price together with all dividends which shall have accrued thereon and which shall be treated as accruing to the date of such redemption.

(b) **Redemption at the Option of the Corporation**

(i) **Right to Redeem.** The Corporation may redeem all or from time to time any of the outstanding Series B Shares on payment to the holders thereof of the Redemption Amount. If less than all of the outstanding shares are to be redeemed, the shares to be redeemed shall be selected by lot or (disregarding fractions) pro rata to the number of shares registered in the name of each shareholder or in such other manner as the directors may determine with the written consent of all the holders of the Series B Shares.

(ii) **Notice.** At least 30 days before the redemption date the Corporation shall give written notice of redemption to each holder of the shares to be redeemed. The notice shall set out the Redemption Amount, the redemption date, the place of redemption and the number of shares to be redeemed. Accidental failure to give such notice shall not affect the validity of any redemption.

(iii) **Payment.** On and after the redemption date the Corporation shall cause the Redemption Amount to be paid to or to the order of the holders of the shares to be redeemed, on surrender of the certificates representing such shares at the redemption place. Such shares shall thereupon be redeemed. From and after the redemption date, the holders of the shares called for redemption shall cease to be entitled to any rights of shareholders in respect thereof except to receive the Redemption Amount, unless it is not paid or deposited in accordance herewith (in which case their rights shall remain unimpaired).

(iv) **Deposit.** The Corporation may at any time deposit the Redemption Amount of any Series B Shares called for redemption with any Canadian chartered bank or trust company or solicitors of the Corporation named in the notice of redemption or in a subsequent notice to the holders of the shares in respect of which the deposit is made, in a special account for the holders of such shares. On the date of deposit (or redemption date, if later) the shares in respect of which such deposit is made shall be redeemed and from and after such date the rights of their holders shall be limited to severally receiving out of the moneys so deposited, without interest, the Redemption Amount of their redeemed shares upon surrender to such bank, trust company or solicitors, as the case may be, of the certificates representing such shares. Any interest on such deposit belongs to the Corporation.

(c) **Participation upon Liquidation, Dissolution or Winding-Up.** In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the holders of the Series B Shares shall be entitled to receive the Redemption Amount of such shares and shall not share further in any final distribution.

- 6 The amendment has been duly authorized as required by sections 16A and 170 as applicable of the *Business Corporations Act*
 La modification a été dûment autorisée conformément aux articles 16A et 170 selon le cas de la Loi sur les sociétés par actions.
- 7 The resolution authorizing the amendment was approved by the shareholders, directors, as applicable of the corporation on
 Les actionnaires ou les administrateurs selon le cas de la société ont approuvé la résolution autorisant la modification le

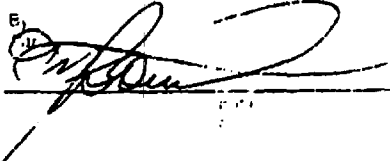
2008-Jun-23

 Marc Boulet, Dir.
 Directeur Général

These articles are signed in duplicate
 Les présents statuts sont signés en double exemplaire

NELSON FINANCIAL GROUP LTD.

 In witness whereof, the same has been signed by the authorized signatory in the presence of the undersigned, the Secretary of the Corporation, on the day and date first above written.

By 

 Marc Boulet, Dir.
 Directeur Général

Marc Boulet - Director

 Description of Office:
 (if applicable)

TAB C



NELSON FINANCIAL
GROUP LTD.

TERM SHEET
PREFERRED SHARE INVESTMENT

ISSUER	Nelson Financial Group Ltd.
ISSUE	Series B Preferred Shares
PAR VALUE	Each share is issued at and remains fixed at \$25.00 in lawful money of Canada.
OFFER VOLUME	\$50,000,000.00
PURPOSE	To finance the Company's business operations
SUBSCRIPTION PERIOD	July 14 th , 2008 to December 31 st , 2010
DIVIDEND	10% per annum Principal sum of ____ Thousand Dollars (\$____) in lawful money of Canada - \$____ monthly dividend – into Dividend Reinvestment Plan (DRIP) beginning on the __ day of __, 2009
PAYMENTS	The first dividend payment will become due and payable 1 month after the investment is made. Thereafter, dividends will be paid monthly.
TAXATION	Taxable, eligible for the dividend tax credit
BUSINESS DAY	In the event that a payment day occurs on a day other than a business day, such payments will be made on the business day preceding that date.
MINIMUM PURCHASE	\$150,000.00 \$10,000.00 – limited to accredited investors
PAYMENT OPTIONS	Dividend payments will be made electronically (EFT)
REPORTING REQUIREMENTS	Company issues investors annual T-3 slips
RELATED ISSUER	Nelson Financial Group Ltd.
DEPOSITS	Made to Nelson Financial Group Ltd.
CERTIFICATE	This document (<i>Preferred Share Term Sheet</i>) contains the "rights, privileges, restrictions and conditions" as pertaining to the Certificate.
OTHER TERMS	Preferred shares are non-voting (except where voting as a class is required), redeemable at the option of the Company and rank ahead of common shares. Dividends are cumulative and no dividends shall be paid on common shares if preferred share dividends are in arrears.

Investor Name(s) – Print Please

Investor Signature(s)

Date

Nelson Financial Group Ltd.
Stephanie Sobol, General Manager

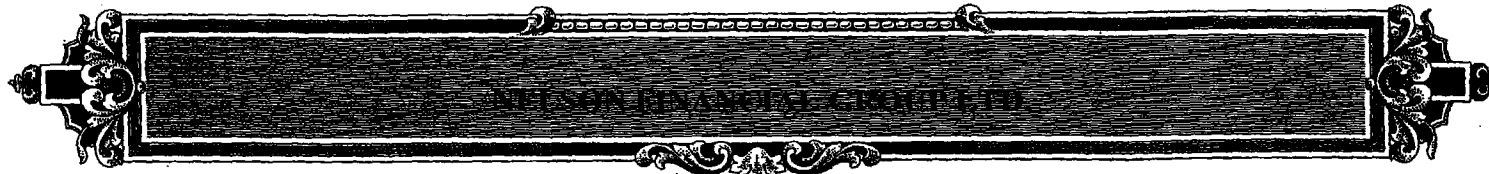
Nelson Investment Group Ltd.
Marc Boutet, President

No. SBP-83

INCORPORATED UNDER THE LAW OF THE PROVINCE OF ONTARIO

400.00

Shares



This is to Certify that
is the registered holder of
fully paid and non-assessable

-- 400.0000 --

-- Series B Preferred --

shares of

NELSON FINANCIAL GROUP LTD.

The class or series of shares represented by this Certificate has rights, privileges, restrictions or conditions attached thereto and the Corporation will furnish to the holder, on demand and without charge, a full copy of the text of,

(i) the rights, privileges, restrictions and conditions attached to the said shares and to each class authorized to be issued and to each series insofar as the same have been fixed by the directors, and

(ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series, if applicable.
LIEN ON SHARES. The corporation has a lien on the shares represented by this Certificate for any debt of the shareholder to the Corporation.

RESTRICTIONS ON TRANSFER. There are restrictions on the right to transfer the shares represented by this Certificate.

IN WITNESS WHEREOF the Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the seal of the Corporation this 23rd day of June 2009

TAB D

SCHEDULE C

ACCREDITED INVESTOR CERTIFICATE

TO: NELSON FINANCIAL GROUP LTD. ("Nelson")
AND TO: NELSON INVESTMENT GROUP LTD. (the "Agent")

In connection with the acquisition by the undersigned of the Investment, the undersigned represents and warrants to Nelson and the Agent that the undersigned has read the following definition of "accredited investor" from section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* and certifies that the undersigned is an accredited investor as indicated below (check one):
"accredited investor" means:

- (a) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1,000,000 ☒
- (b) an individual whose net income before taxes exceeded \$200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year ☐
- (c) an individual who, either alone or with a spouse, has net assets of at least \$5,000,000 ☐
- (d) a person registered under the securities legislation of a jurisdiction of Canada as an advisor or dealer, other than a person registered solely as a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador) ☐
- (e) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d) ☐
- (f) a person, other than an individual or investment fund, that has net assets of at least \$5,000,000 as shown on its most recently prepared financial statement ☐

The foregoing representation is true and accurate as of the date of this certificate and will be true and accurate as of the Closing.

Capitalized terms not defined in this Schedule C, shall have the respective meanings attributed to them in the attached Promissory Note.

Dated: 11 - Feb., 2009

Name of Subscriber (Please Print)

Marc Boutet

Name of witness (if the Subscriber is an individual)

Signature of Subscriber

Signature of witness



**NELSON FINANCIAL
GROUP LTD.**

Know Your Client Update

Date of previous KYC: 8

Personal Information – changes/updates since previous?

Date 03 Feb 09

Name _____ Home Tel _____

Cell _____ Bus _____ Fax _____

Address _____

Email _____

Citizenship _____

Marital Status _____ Do you have any dependents? _____

What is your time horizon in relation to your investment goals? _____

Occupation and Education - changes/updates since previous?

Occupation _____ Employer _____

Length of time with current employer _____

Annual Income and Net Worth - changes/updates since previous?

Annual Income \$ _____

Sources of income _____

Is your level of income consistent or does it vary? _____

Financial obligations? _____

Net worth \$ _____

Are your assets liquid? _____

Are there any tax considerations? _____

Risk Tolerance – changes/updates since previous?

Do you understand the concept of risk and return? _____

Investment Objectives – changes/updates since previous?

What do you want to achieve? _____

When do you want to achieve this goal? _____

Do you have more than one goal? _____

Investment Knowledge and Experience – changes/updates since previous?

Have you invested in any additional securities? _____

Do you understand this investment (risk, tax implications, details)? _____

Additional notes attached: yes ☐

no ☐

ID provided: ☐ Passport

☐ Driver's Licence

☐ Birth Certificate

☒ No Changes

Signatures: Client _____

Rep _____

Compliance Officer _____

TAB E



Investment Opportunity

Background

Nelson Financial Group Ltd., incorporated in 1990, is a privately owned acceptance corporation providing financing for conditional sales contracts as well as consumer, corporate and commercial lending.

The principal, Marc Boutet, offers 30+ years experience in the investment banking and finance industries, with the growth and ongoing success of Nelson Group, a testament to his prudent and proven management expertise.

The Concept

We are primarily focused on customers that are often ignored and/or under serviced by the traditional banks and financial services companies. Nelson Financial Group Ltd. has recognized this marketplace opportunity and extends consumer loans and credit cards to individuals under specific terms and conditions. Floorplan financing is offered to auto dealers and Nelson manages a vehicle lease portfolio. We also factor vendor receivables such as computers, air/water purification, time share vacations and dry goods & frozen meats food vendors.

Our management model recognizes the nature of the credit risk and mitigates the risk via proactive measures and prudent management practices.

Interest Rates and Returns

We extend credit at rates ranging from 29.9% to our consumer and vendor driven business, with the investor offered a 12.00% or 10.00% fixed rate of return per annum. The remaining spread is utilized by Nelson Financial Group Ltd. for portfolio management, administration, underwriting and profit.

Investment Opportunity

There are two investment opportunities available: a 12% per annum, interest income and a 10% per annum dividend.

12% - Interest Income

Fixed term investment yielding 12.00% per annum with a 1-5 year term. There are two options for repayment (a) blended monthly repayments or (b) interest only monthly repayments. Both are fully amortized over the term of the investment.

Example: Repayment options for \$100,000.00 @ 12.00% over 1 year.

(a) Interest payment of \$1,000.00 each month for 12 months. Total repayment to investor **\$112,000.00** or

(b) Fully amortized blended principal and interest payment of \$8,884.88 each month for 12 months. Total repayment to investor **\$106,618.55**

Investment Documentation (enclosed):

- Term Sheet
- Promissory Note

-
- Amortization Schedule – Details the specific dates and repayment amounts for the term of the investment.

10% - Dividend

Fixed term investment yielding 10.00% per annum. There are two options for repayment (a) monthly dividend (\$833.33 monthly on \$100,000) or (b) a DRIP (Dividend Re-Investment Plan).

Investment Documentation (enclosed):

- Term Sheet

Taxation Reporting Requirements: Nelson Investment Group Ltd. issues to each investor annually, T5 slips outlining interest income earned on their investment and/or T3 slips outlining dividends. Investors can be individuals or companies. A valid social insurance number (or business number) and mailing address are required for interest income reporting. Monthly repayments are paid according to investor instructions.

Asset Management Model: Nelson Financial Group Ltd. clearly recognizes the nature of the clientele. Given the generally prudent portfolio management practices, Nelson has implemented a pro-active, no nonsense risk reducing strategy which has proven to be both efficient and highly effective. Our customer service specialists are experienced, sophisticated and well trained. Utilizing the latest technologies they effectively manage the individual portfolio treating every client with professionalism, courtesy and respect.

Our portfolio management system and structure is a practical, sensible and workable approach to protecting our security interests, maintains and enhances the quality of cash flow payment streams, encourages our clients to act reasonably and responsibly and improves the quality of the aggregate loan portfolio. It continues to be a winning strategy and time tested proven asset management formula for ongoing success.

Summary: For the investor, our management practices, procedures and operations offer a sound overall portfolio management, a clear demonstration of our professional capabilities, confirmation of our commitment to ongoing success and an attractive safe high-yield income generating investment.

Take advantage of this passive, profitable fixed rate income investment today and start enjoying a fixed real dollar monthly interest income payment within 30 days.

References

Bank: TD Canada Trust, 2 King Street East, Oshawa, ON
Acct# 3184-52049848-01, Contact: Chad Mills 905-576-7741

Memberships/Associations:

Better Business Bureau: (BBB) www.bbbmwo.ca

National Automotive Finance Association: (NAF) www.nafassociation.com

Ontario Motor Vehicle Industry Association: (OMVIC) www.omvic.on.ca

Investor References:

Available upon request



**NELSON FINANCIAL
GROUP LTD.**

**TERM SHEET
FIXED RATE INVESTMENT**

ISSUER	Nelson Financial Group Ltd.
OFFER VOLUME	Unlimited
PURPOSE	To finance the Company's business operations
SUBSCRIPTION PERIOD	January 1 st , 2008 to December 31 st , 2008
TENURE	1 – 5 year maximum
MATURITY	See Promissory Note
INTEREST RATE	Fixed at 12% per annum, until maturity on; see Promissory Note
PRINCIPAL PAYMENTS	Principal will be repaid at maturity on; see Promissory Note
INTEREST PAYMENTS	The first interest payment will become due and payable on (see Promissory Note). Thereafter, interest will be paid monthly, until maturity. The final interest payment will be paid on; see Promissory Note.
TAXATION	Taxable
BUSINESS DAY	In the event that a payment day occurs on a day other than a business day, such payments will be made on the business day preceding that date. Interest will be calculated up to the actual payment date with 360 day calculations.
MINIMUM PURCHASE	\$150,000.00 \$10,000.00 – limited to accredited investors
CLOSING	Currently, closing is estimated to occur on or before; see Promissory Note
PAYMENT OPTIONS	Interest payments will be made electronically (EFT)
REPORTING REQUIREMENTS	Company issues investors annual T-5 slips
RELATED ISSUER	Nelson Investment Group Ltd.
DEPOSITS	Made to Nelson Financial Group Ltd.

The Lender acknowledges and agrees that the Borrower incur "Debt" in connection with institutional lenders, including but not limited to banks and institutional funds, and the Lender hereby agrees to subordinate for all purposes its rights and remedies under this Promissory Note to the rights and remedies of the lender(s) of the Debt pursuant to any security agreements entered into in connection with the Debt and the indebtedness thereunder such that the Debt Lenders' security interests shall rank, in all circumstances and for all purposes, in priority to the security interests of the Lender against the existing and future undertaking and assets of the Borrower, without any limitation. Each Debt Lender shall be entitled to rely upon this postponement and subordination as if it had been and is a party to this Promissory Note.

Investor Name(s) – Print Please

Investor Signature(s)

Date

Nelson Financial Group Ltd.
Marc Boutet

Nelson Investment Group Ltd.
Pete Knoll, Compliance



**NELSON FINANCIAL
GROUP LTD.**

PROMISSORY NOTE

Amount: \$ ____

FOR VALUE RECEIVED, the undersigned, Nelson Financial Group Ltd. acknowledges itself indebted and hereby promises to pay **Investor Name**, the principal sum of ____ Thousand Dollars (\$ ____) in lawful money of Canada (the "Principal") together with interest thereon in like money on the unpaid portion from time to time of the Principal until the Principal is repaid in full at the rate of 12% per annum, calculated monthly, not in advance, and shall be payable both before and after default and or judgment as well after as before maturity.

Interest (accruing from and in respect of the ____ day of ____, 2008) calculated as aforesaid shall be payable monthly in the amount of \$ ____ .00 on the ____ day of each month starting ____, 2008 and the Principal shall become due and be paid in full on the ____ day of ____, 20**.

Arrears of interest from time to time shall bear interest calculated and payable in the same manner as provided for above.

In the event that the undersigned shall at any time default in the payment of any interest due hereunder, then without prejudice to any other rights that **Investor Name** may have, the Principal together with any unpaid interest shall immediately be accelerated and become due and payable forthwith.

This promissory note may not be assigned, discounted, pledged or hypothecated by **Investor Name** and by any subsequent holder of this promissory note. This promissory note is not intended by the parties to be, and is not, a negotiable instrument.

The provisions of this promissory note shall be governed by and construed in accordance with the Province of Ontario and the federal laws of Canada applicable therein.

This note is subordinated, please see the Term Sheet for details.

Dated at Pickering, Ontario, this ____ day of ____, 2008

Investor Name(s) – Print Please

Investor Signature(s)

Date

Nelson Financial Group Ltd.
Marc Boutet

Nelson Investment Group Ltd.
Pete Knoll, Compliance



**NELSON FINANCIAL
GROUP LTD.**

PROMISSORY NOTE

Amount: \$ __.00

FOR VALUE RECEIVED, the undersigned, Nelson Financial Group Ltd. acknowledges itself indebted and hereby promises to pay **Investor Name**, the principal sum of ____ Thousand Dollars (\$ __.00) in lawful money of Canada (the "Principal") together with interest thereon in like money on the unpaid portion from time to time of the Principal until the Principal is repaid in full at the rate of 12% per annum, calculated monthly, not in advance, and shall be payable both before and after default and or judgment as well after as before maturity.

The Principal and such interest (accruing from and in respect of the ____ day of ____, 20**) shall be payable in blended monthly installments of principal and interest in the amount of \$ ____ each on the ____ day of each month in each year from and including the ____ day of __, 20** to and including the ____ day of ____, 20** (each said installment to be applied firstly in payment of interest and secondly on account of the Principal). A ____ year amortization schedule is attached.

Arrears of interest from time to time shall bear interest calculated and payable in the same manner as provided for above.

In the event that the undersigned shall at any time default in the payment of any interest due hereunder, then without prejudice to any other rights that **Investor Name** may have, the Principal together with any unpaid interest shall immediately be accelerated and become due and payable forthwith.

This promissory note may not be assigned, discounted, pledged or hypothecated by **Investor Name** and by any subsequent holder of this promissory note. This promissory note is not intended by the parties to be, and is not, a negotiable instrument.

The provisions of this promissory note shall be governed by and construed in accordance with the Province of Ontario and the federal laws of Canada applicable therein.

This note is subordinated, please see the Term Sheet for details.

Dated at Pickering, Ontario, this ____ day of ____, 2008

Investor Name – Print Please

Investor Signature

Date

Nelson Financial Group Ltd.
Marc Boutet

Nelson Investment Group Ltd.
Pete Knoll, Compliance

Amortization Schedule*

Investor: Sample

Pay Frequency: Monthly, Principal and Interest

Loan Amt: \$100,000.00

Term: 24

*This Schedule is based on 30 Days to first payment and a 360 day year.

Nominal Interest (APR) 12.00%

Payment #	Date	Last Date	Payment	Interest	Principal	Balance
1	2/2/2008	1/2/2008	\$4,707.35	\$1,000.00	\$3,707.35	\$96,292.65
2	3/2/2008	2/2/2008	\$4,707.35	\$962.93	\$3,744.42	\$92,548.23
3	4/2/2008	3/2/2008	\$4,707.35	\$925.48	\$3,781.86	\$88,766.37
4	5/2/2008	4/2/2008	\$4,707.35	\$887.66	\$3,819.68	\$84,946.68
5	6/2/2008	5/2/2008	\$4,707.35	\$849.47	\$3,857.88	\$81,088.80
6	7/2/2008	6/2/2008	\$4,707.35	\$810.89	\$3,896.46	\$77,192.34
7	8/2/2008	7/2/2008	\$4,707.35	\$771.92	\$3,935.42	\$73,256.92
8	9/2/2008	8/2/2008	\$4,707.35	\$732.57	\$3,974.78	\$69,282.14
9	10/2/2008	9/2/2008	\$4,707.35	\$692.82	\$4,014.53	\$65,267.62
10	11/2/2008	10/2/2008	\$4,707.35	\$652.68	\$4,054.67	\$61,212.95
11	12/2/2008	11/2/2008	\$4,707.35	\$612.13	\$4,095.22	\$57,117.73
Totals:			2008	\$51,780.82	\$8,898.55	\$42,882.27
12	1/2/2009	12/2/2008	\$4,707.35	\$571.18	\$4,136.17	\$52,981.56
13	2/2/2009	1/2/2009	\$4,707.35	\$529.82	\$4,177.53	\$48,804.03
14	3/2/2009	2/2/2009	\$4,707.35	\$488.04	\$4,219.31	\$44,584.72
15	4/2/2009	3/2/2009	\$4,707.35	\$445.85	\$4,261.50	\$40,323.22
16	5/2/2009	4/2/2009	\$4,707.35	\$403.23	\$4,304.12	\$36,019.10
17	6/2/2009	5/2/2009	\$4,707.35	\$360.19	\$4,347.16	\$31,671.95
18	7/2/2009	6/2/2009	\$4,707.35	\$316.72	\$4,390.63	\$27,281.32
19	8/2/2009	7/2/2009	\$4,707.35	\$272.81	\$4,434.53	\$22,846.79
20	9/2/2009	8/2/2009	\$4,707.35	\$228.47	\$4,478.88	\$18,367.91
21	10/2/2009	9/2/2009	\$4,707.35	\$183.68	\$4,523.67	\$13,844.24
22	11/2/2009	10/2/2009	\$4,707.35	\$138.44	\$4,568.90	\$9,275.33
23	12/2/2009	11/2/2009	\$4,707.35	\$92.75	\$4,614.59	\$4,660.74
Totals:			2009	\$56,488.17	\$4,031.18	\$52,456.99
24	1/2/2010	12/2/2009	\$4,707.35	\$46.61	\$4,660.74	\$0.00
Totals:			2010	\$4,707.35	\$46.61	\$4,660.74
Totals:				\$112,976.33	\$12,976.33	\$100,000.00
						\$0.00



**NELSON FINANCIAL
GROUP LTD.**

**TERM SHEET
PREFERRED SHARE INVESTMENT**

ISSUER	Nelson Financial Group Ltd.
ISSUE	Series B Preferred Shares
PAR VALUE	Each share is issued at and remains fixed at \$25.00 in lawful money of Canada.
OFFER VOLUME	\$50,000,000.00
PURPOSE	To finance the Company's business operations
SUBSCRIPTION PERIOD	July 14 th , 2008 to December 31 st , 2010
DIVIDEND	10% per annum Principal sum of ____ Thousand Dollars (\$) in lawful money of Canada - \$____ monthly dividend beginning on the ____ day of ____, 2008
PAYMENTS	The first dividend payment will become due and payable 1 month after the investment is made. Thereafter, dividends will be paid monthly.
TAXATION	Taxable, eligible for the dividend tax credit
BUSINESS DAY	In the event that a payment day occurs on a day other than a business day, such payments will be made on the business day preceding that date.
MINIMUM PURCHASE	\$150,000.00 \$10,000.00 – limited to accredited investors
PAYMENT OPTIONS	Dividend payments will be made electronically (EFT)
REPORTING REQUIREMENTS	Company issues investors annual T-3 slips
RELATED ISSUER	Nelson Investment Group Ltd.
DEPOSITS	Made to Nelson Financial Group Ltd.
CERTIFICATE	This document (<i>Preferred Share Term Sheet</i>) contains the "rights, privileges, restrictions and conditions" as pertaining to the Certificate.
OTHER TERMS	Preferred shares are non-voting (except where voting as a class is required), redeemable at the option of the Company and rank ahead of common shares. Dividends are cumulative and no dividends shall be paid on common shares if preferred share dividends are in arrears.

Investor Name(s) – Print Please

Investor Signature(s)

Date

Nelson Financial Group Ltd.
Marc Boutet

Nelson Investment Group Ltd.
Pete Knoll, Compliance

10.00%

\$100,000.00 Investment

*highest marginal tax rate - Ontario resident
eligible dividend paying preferred shares \$25.00 par value*

Dividend income (\$100,000.00 x 10%)	\$10,000.00
Dividend gross-up (\$10,000.00 x 45%)	\$4,500.00
Taxable income	\$14,500.00
Federal Tax (\$14,500.00 x 29%)	\$4,205.00
Federal dividend tax credit (\$14,500.00 x 18.975%)	\$2,751.38
Federal Tax	\$1,453.63
Provincial Tax (\$14,500.00 x 17.41%)	\$2,524.45
Provincial dividend tax credit (\$14,500.00 x 7.00%)	\$1,015.00
Provincial tax	\$1,509.45
Total tax	\$2,963.08
After-tax income (\$10,000.00 - \$2,963.08)	<u>\$7,036.93</u>
After-tax yield (\$7,036.93 / (\$25.00 x 4000))	7.04%

\$100,000.00 Investment

highest marginal tax rate - Ontario resident

Interest income (\$100,000.00 x 12%)	\$12,000.00
Federal tax (\$12,000.00 x 29%)	(\$3,480.00)
Provincial tax (\$12,000.00 x 17.41%)	(\$2,089.20)
	<u>(\$5,569.20)</u>
After-tax income (\$12,000.00 - \$5,569.20)	<u>\$6,430.80</u>
After-tax yield (\$6,430.80 / \$100,000.00)	6.43%

Preferred dividend income:	7.04%
Interest income:	6.43%
Net benefit:	<u>0.61%</u>

due
west
due
East

APPROVED

OR

APPROVED WITH INDICATED CHANGES

Paul Tan

Ads must be signed off or changes approved by
deadline or your ad will appear as per above

Accredited Investors
Nelson Financial Group Ltd. is a related issuer of NIGL
1-877-509-8108
www.nelsoninvestment.ca




**NELSON
INVESTMENT
GROUP LTD.**

- 1 to 5 yr term
- Fixed rate
- Paid monthly
- Min. \$10,000

12% per annum

Sophisticated and Accredited investors only
www.nelsongroup.ca is a related issuer of NIGL

1-877-509-8108



**NELSON
INVESTMENT
GROUP LTD.**

DIVIDEND INCOME

- Fixed rate
- Paid monthly
- No management fee

10% per annum

Sophisticated and Accredited investors only
www.nelsongroup.ca is a related issuer of NIGL

1-877-509-8108



NELSON
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GROUP LTD.

- 1 to 5 yr term
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- Min. \$10,000

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per annum

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• Min \$10,000

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Accredited Investors

1-877-509-8108

Nelson Financial Group Ltd. is a related issue of NFGL
A0093994



NELSON
MORTGAGE
GROUP LTD.

September 1, 2006



Dear Mr.

We are currently offering our investments through Nelson Mortgage Group Ltd. which in turn, loans the funds to our sister company Nelson Financial Group Ltd. Nelson Financial then uses these proceeds to carry out its auto leasing and personal loans business (business as usual).

Investors are issued a signed Promissory Note from Nelson Mortgage Group Ltd., with an initiation date of either the 2nd or the 16th of August or September.

We accept a minimum amount of \$10,000.00. During this time the investor will earn a rate of 12% paid monthly via electronic funds transfer (either interest only or principal and interest) for a term of 1-5 years.

Please let me know if this timeframe works for you and what amounts you are contemplating.


Sincerely

Paul Torres, AMP
Investor Services, x228



NELSON INVESTMENT
GROUP LTD.

December 11, 2007



Dear Mr. and/or Ms.

With current newspapers proclaiming doom and gloom in the world of finance by running headlines such as "*sub prime*", "*defaults*", and "*recession*", we felt it necessary to communicate to our valued investors, the tremendous success the Nelson Group is enjoying and the effect current market conditions are having upon us.

In a nutshell, business is great! We are not in the sub prime lending finance business and what is happening in this arena in the United States has no affect upon us. We are not affected by the Canadian or American dollar fluctuations nor do bank prime rates have influence on our business model.

The relationship with our investors is mutually beneficial. As a result of our investors' faith and trust in our abilities, Nelson Financial (est. 1990) has been able to capture a larger segment of a growing market. The Nelson Group continues to execute its business plan in a controlled and measured pace and has recently become National in scope. We are financing consumer and corporate opportunities and are delighted with our territorial and product diversification.

In order to expand our business we invite you to participate with us as we continue to build on our momentum, expand our presence in the marketplace and grow your investments – with maximum return. We are currently asking investors to add to their holdings at Nelson either via our time-tested 12% interest bearing offering or our tax-advantaged 10% dividend bearing preferred share offering.

We would also like to bring to our investors' attention our current efforts to offer an exclusive mutual fund which will accept registered funds. We anticipate a launch date in the first quarter of 2008. Stay tuned for rates and particulars.

Finally we are requesting email addresses from our investors. As we continue to grow we wish to keep you informed and maintain control of our expenses. Please forward your email to sheri@nelsoninvestment.ca or contact us via telephone 905-509-8100 or 1-877-509-8108.

As always we thank you for your trust.

Nelson Investment Group

10.00%

\$100,000.00 Investment

highest marginal tax rate - Ontario resident

eligible dividend paying preferred shares \$25.00 par value

Dividend income ($\$100,000.00 \times 10\%$) \$10,000.00

Dividend gross-up ($\$10,000.00 \times 45\%$) \$4,500.00

Available income \$14,500.00

Federal Tax ($\$14,500.00 \times 29\%$) \$4,205.00

Federal dividend tax credit ($\$14,500.00 \times 18.97\%$) (\$2,750.65)

Federal tax \$1,454.35

Provincial Tax ($\$14,500.00 \times 17.41\%$) \$2,524.45

Provincial dividend tax credit ($\$14,500.00 \times 6.60\%$) (\$942.50)

Provincial tax \$1,581.95

Total tax \$3,036.30

After-tax income ($\$10,000.00 - \$3,036.30$) \$6,963.70

After-tax yield ($\$6,963.70 / (\$25.00 \times 1000)$) 6.96%

\$100,000.00 Investment

highest marginal tax rate - Ontario resident

Interest income ($\$100,000.00 \times 12\%$) \$12,000.00

Federal tax ($\$12,000.00 \times 29\%$) (\$3,480.00)

Provincial tax ($\$12,000.00 \times 17.41\%$) (\$2,089.20)

(\$5,569.20) (\$5,569.20)

After-tax income ($\$12,000.00 - \$5,569.20$) \$6,430.80

After-tax yield ($\$6,430.80 / \$12,000.00$) 5.36%

Preferred dividend income:

6.96%

Interest income:

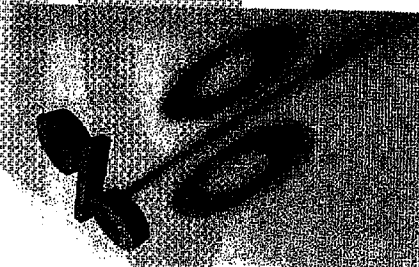
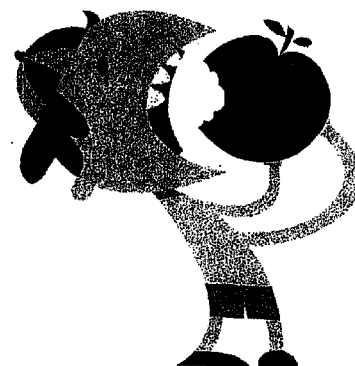
5.36%

Net benefit:

1.60%

\$100,000.00 Investment
Highest tax bracket

	<u>ELIGIBLE DIVIDEND</u>	<u>vs.</u>	<u>INTEREST</u>
<u>Gross Income</u>	\$10,000.00		\$12,000.00
<u>Tax Owning</u>	(\$3,036.30)		(\$5,569.20)
<u>After-Tax Income</u>	\$6,963.70		\$6,430.80
<u>Investor Yield</u>	6.96%		5.36%
<u>Value After 1 Year</u>	<u>\$106,963.70</u>		<u>\$106,430.80</u>





**NELSON INVESTMENT
GROUP LTD.**

April 16, 2008

Dear .

As discussed at our office and on the telephone, Nelson Financial Group Ltd. deploys investor dollars in several ways. Through vendor financing, Nelson underwrites new conditional sales contracts with such companies as: Chambers Foods, Shopease, Shopco, Lendcare and RCI (vacation property ownership). Additionally, Nelson also works with home owners looking to add value to their homes with the purchase of air and water purification systems.

Another rapidly growing arm of Nelson's business is the offering of personal/consumer credit. Through our five branded retail outlets in Barrie, Belleville, London, North York, and Pickering, Nelson Financial Group Ltd. is able to extend credit to individuals who do not qualify with traditional lenders. Please bear in mind this do not mean these individuals are high-risk borrowers.

Further to our phone conversation on Tuesday, April 15, 2008 Nelson Financial Group Ltd. Preferred Shares are redeemable upon written request by the registered owner. Funds will be transferred via electronic funds transfer (EFT) directly into the bank account Nelson has on file.

Sheri has copied the Know Your Client we filled out and I have included it with this letter.

All of us at Nelson thank-you for your investment and your trust.

Regards,

Pete Kroll



NELSON INVESTMENT GROUP LTD.

January 21, 2009

Happy New Year!!

The Nelson Group wishes our investors and their families a Happy New Year! It is with great optimism and enthusiasm that we greet 2009. 2008 was an exceptional year for Nelson despite the global economic turmoil reflected so prominently in the world's newspaper headlines. We realized record sales and have more satisfied investors than ever.

For 2009 Nelson anticipates further increased sales as our marketplace continues to expand. Traditional lenders are scaling back their current lending programs as they shift their focus to more urgent matters which we have all read about recently. Consequently, under-served vendors from coast to coast continue to approach Nelson seeking financing. This is great news as it allows us further product and territorial diversification.

In order to expand our business to service this increased demand, we invite you to participate with us as we continue to build on our momentum, expand our presence in the marketplace and grow your investments – with maximum return. We are currently asking investors to add to their holdings at Nelson either via our time-tested 12% interest bearing offering or our tax-advantaged 10% dividend bearing preferred share offering. It is with extreme pride that we boast of our 18 year track record paying 12% to all our investors without exception. We ask you to further participate in this remarkable success story.

Nelson continues to progress with our exclusive mutual fund. The Ontario Securities Commission has accepted our fund and we are in the final negotiations with registered RRSP/RRIF carriers. We are very close so please bear with us. In addition, it appears we will also have available a Tax-free Savings Account at the same time. As soon as we have the final go ahead for these products, we will relay this news.

Finally we are requesting email addresses from our investors. As we continue to grow we wish to keep you informed and maintain control of our expenses. Please forward your email to sheri@nelsoninvestment.ca or contact us via telephone at 905-831-0990 or toll free at 1-877-509-8108.

As always, we thank you for your trust.

Nelson Investment Group Ltd.

June 2009

NELSON INVESTMENT GROUP LTD.

1739 Orangebrook Court Pickering ON L1W 3G8

Phone: 905-831-0990 Fax: 905-839-7002

NEWS FROM NELSON

Updated Website:
www.nelsoninvestment.ca

NELSON

GROUP.ca

RRSP/RRIF Fund

Nelson continues to progress with our exclusive mutual fund. The Ontario Securities Commission has accepted our fund and we are in the final negotiations with registered RRSP/RRIF carriers.

No additional information is available at this time however we are looking forward to launch in 2010.

Bank Leverage

Unlike the U.S. where several dozen banks went under in the past year, Canada has suffered no bank failures. Our healthy banking system compares:

Canadian Bank leveraged 18:1

American Bank leveraged 26:1

European Bank leveraged 61:1

"Canada's housing market experienced less of a blip because mortgage interest is not deductible here the way it is in the U.S. That, along with sub-prime foolishness, tempted too many Americans to gorge on houses they really couldn't afford." (Mark Milke, Calgary Herald, Feb09)

Invested Since 1990

One of our longest standing investors has been with us for 18 years! To this day, he is enjoying our fixed-rate interest investment. Nelson has been making monthly payments for 18 years -> 18 years x 12 payments per year = 216 consecutive monthly payments! This satisfied investor has tripled his investment dollars!

The Rule of 72

Double Your Money!

The Rule of 72 is a math formula indicating how long it will take to double the value of the money you invest:

- Find out your interest rate...
- Second...do the math!

$72 / \text{interest rate} = \text{years}$

Example: \$10,000 invested at 12% interest rate

$72 / 12 = 6 \text{ years} \rightarrow$ In 6 years \$10,000 will double at 12%

In order to double your money within a certain amount of years, flip flop the Rule of 72. This indicates the percent rate at which you need to invest:

- Decide the number of years you want to invest...
- Second... do the math!

$72 / \text{years} = \text{interest rate}$

Example: \$10,000 invested for 8 years

$72 / 8 = 9 \text{ (\% interest rate)} \rightarrow$ In 8 years \$10,000 will double at 9%!

In our next issue:

- Nelson offers mortgage services
- 2008—our best year to date
- Notary services currently available to investors at no charge



We realized record sales and have more satisfied investors than ever!

NELSON INVESTMENT GROUP LTD.

Marc Boutet, President x232

Pete Knoll, Sales and Compliance x265

Paul Torres, Sales x228

Sheri Sampedro, Sales and Admin x242



NELSON INVESTMENT GROUP LTD.

Nelson Investment Group Ltd. (NIGL) is pleased to announce that effective July 30, 2009 our office will be relocating to **900 Dillingham Road** in Pickering, Ontario. We will share new office space with Nelson Financial Group Ltd., Nelson Mortgage Group Ltd. and Nelson Capital Group Ltd.

We wish to assure you that there has been no change in ownership, management or corporate strategy. Nelson continues to enjoy tremendous success through the execution of our business plan at a controlled and measured pace. Financing of consumer and corporate opportunities enables Nelson to continue to offer our premium 12% interest bearing investment along with our 10% tax-advantaged dividend bearing offering.

We recognize that the growth and success of our company is largely dependent upon loyal investors such as yourself and we applaud your contribution in helping us maintain the position we enjoy in the industry. We wish to offer our thanks for your confidence in our ability to service your investment needs.

Yours truly,

Nelson Investment Group Ltd.

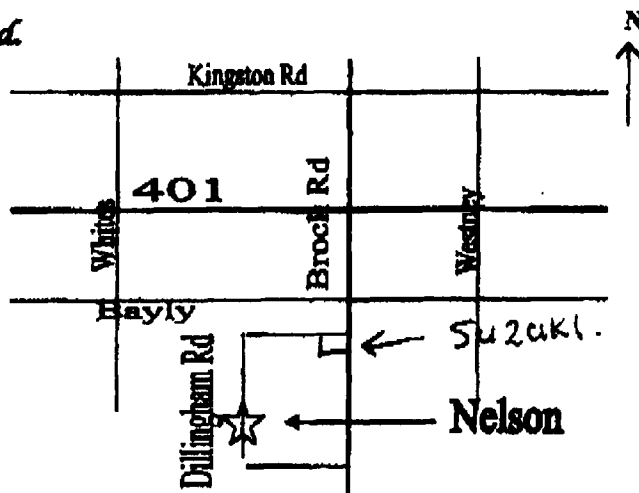
Our new address:

900 Dillingham Road
Pickering ON L1W 1Z6

Tel: 905-831-0990

Fax: 905-839-7002

sherl@nelsoninvestment.ca
www.nelsoninvestment.ca



June 2009


NELSON INVESTMENT GROUP LTD.

1789 Orangebrook Court Pickering ON L1W 3G8

Phone: 905-881-0990 Fax: 905-889-7002
1-877-509-8108

NEWS FROM NELSON

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NELSON  GROUP

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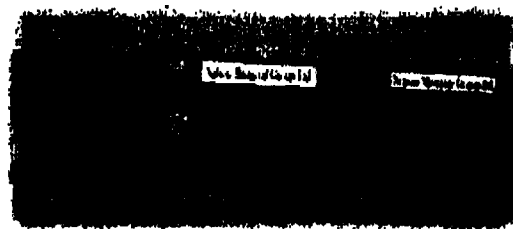
Marc Boutet, President x232

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Sheri Sampedro, Sales and Admin x242

Nelson Group.ca



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>> [Investors Investment D](#)
>> [Customers Apply Today!](#)

[Investor Home Page](#)

[Security Package Info](#)

[Home Page](#)

Nelson Group offers investors an opportunity to enjoy:

- A passive fully secured investment.
- A fixed ROI at 12% per annum.
- 1 to 4 year fixed term options. (Minimum Investment \$10,000)
- 1st priority chattel mortgage security on vehicles and lease contracts

3 repayment options to choose from:

(based on \$10,000 invested over 4 year term)

Repayment Options	Monthly Payment	Total Return
a) Principal and Interest	\$ 263.34	\$12,640.32
b) Interest Only	\$ 100.00	\$14,800.00
c) Annual Compound	N/A	\$16,122.27

Investor Profile:

Our investors come from all walks of life. They include retirees, tradesman, homemakers, self-employed and recipients of inheritance. Some require a monthly income stream of principal and interest, while others are looking to maintain their capital and live off the interest. Due to the marginal returns offered by the traditional banking sector, and the fees and commissions for investment management services charged by investment firms, Nelson is a logical alternative.

The formula:

Nelson operates in the sub prime automobile marketplace and extends credit to those who cannot obtain credit from traditional lenders. The investor and Nelson Financial share in the proceeds of the cash flow generated.

Managing the aggregate lease portfolio is the essential element in our ongoing success and key to ensuring investor obligations are satisfied. Our management model includes accredited auto dealership/partners who participate financially in every car sold, GPS technology to monitor, track and maintain control of our

Investor Testimon

"I consider my investment Nelson Financial solid, safe well managed. My capital is and I have been living off monthly interest for 3 1/2 yrs
.....R.M..

"Nelson has delivered on counts. The fixed 12% yield far the best investment decision have made. It is significant outperforming my other 'investments.'D.B.

"I'm impressed with the po management structure and fully confident in their ability deliver."R.C.

"Nelson encouraged extensive due diligence, were frank direct and explained the mechanics of the investment my complete satisfaction."..

"I have received 77 months interest payments from Nelson. They have consistently delivered on all fronts."R.W.

"I was so impressed with opportunity, I leveraged my borrowed at 4% and am enjoying the 8% interest rate spread reducing my tax exposure writing off the cost of borrowing " I T

Products

Services

by JENNIFER AITKENS

Investing in Sub-Prime Loans

If you've been reading *The Toronto Star* over the past three years, you may have seen a little ad offering guaranteed 12% returns. Wary but curious, I recently decided to find out more, and called the 800 number listed.

Since 1990, Nelson Financial Group has been arranging car loans for individuals who are unable to qualify for bank loans. These "sub-prime" loans, as they are called in the industry, enable higher-risk individuals to finance a decent, reliable car, and get on with the business of making a living.

Nelson provides credit financing in partnership with 260 car dealers across Ontario, and currently has 2300 vehicles on the road under their loan program.

The capital for these loans

comes from people like you and me with a minimum of \$10,000 to invest. The money is loaned out at 29.9%, 12% is paid to the investor and 17.9% is kept by Nelson Financial. In response to my concern about the high cost to the borrower, investor representative Paul Torres pointed out that it was comparable to department store credit cards: Sears at 28.8%, Canadian Tire Options MasterCard at up to 25% for individuals with no credit history. He also reminded me that the ability to obtain credit is a transitory issue for many individuals, including young people, individuals with no credit history, those with less than two years at a job or residence, those whose debt service ratio exceeds 40%, and the self-employed. According to Torres, "What matters most to people when they arrange

financing is the monthly payment, and our loans tend to average out at about \$400 per month."

Clearly, lending money to someone deemed by the banks to be a high risk should be approached with caution. In this case, company founder Mark Bourget, a former Royal Bank executive, has built in a number of safeguards, including GPS locators and disabling mechanisms installed in all cars, a security pool supported by participating dealers, and an 80% loan-to-value ratio. No loans are made until references have been checked and the applicant's ability to repay the loan has been confirmed through a budget review.

Investors can receive income as a regular repayment of principal plus interest, as a monthly interest-only payment, or as a lump sum at the end of the term. Typical returns on a four-year investment are shown in the table below.

Note that if the flow of investment money coming into the company exceeds loan demand, investors will receive

5% while waiting for their funds to be assigned.

If you are interested in learning more about Nelson Financial's sub-prime loans, and will be in the Greater Toronto Area, Torres—a self-professed "I need to see things for myself" individual—invites you to visit the company's offices in Pickering. If a personal visit isn't possible, check out the website at www.nelsonfinance.ca or contact Paul Torres at 1-866-340-5559, ext. 228.

Government Surplus

After WW II, my great-uncle built a cottage-renting empire at Wasaga Beach on the southern shore of Lake Huron. These were ticky-tacky little white cabins with garish pink and blue accents, all built with lumber salvaged from military barracks sold as government surplus.

In Canada, federal government surplus is managed by Public Works and Government Services Canada. The Crown Assets Distribution Centre (CADC) operates auctions and cash-and-carry sales of

Repayment Options	Monthly Payment	Total Return
a) Principal and Interest	\$ 263.34	\$12,840.32
b) Interest Only	\$ 100.00	\$14,800.00
c) Annual Compound	n/a	\$16,122.27



NELSON INVESTMENT
GROUP LTD.

October 2, 2009

Dear _____

As discussed at our office Nelson Financial Group Ltd. deploys investor dollars in several ways. Through vendor financing, Nelson underwrites new conditional sales contracts with such companies as: Chambers Foods, Shopease, Shopco, Lendcare, RCI (vacation property ownership) and Ontario Energy Solutions. Additionally, Nelson also works with home owners looking to add value to their homes with the purchase of air and water purification systems.

Our customers are bankable clients as well as individuals who are under-serviced by traditional banks and financial services companies. Nelson Financial Group Ltd. has recognized this marketplace opportunity and extends consumer loans to individuals under specific terms and conditions. We factor vendor receivables such as computers, air and water purification systems, time share vacations, dry goods & frozen meats food vendors, tank-less hot water heaters and health products and procedures.

Nelson Financial Group Ltd. Preferred Shares are redeemable upon written request by the registered owner. Funds will be transferred via electronic funds transfer (EFT) directly into the bank account Nelson has on file.

All of us at Nelson thank you for your investment and your trust.

Regards,

Paul Torres

TAB F

**NELSON FINANCIAL
GROUP LTD.**

**TERM SHEET
PREFERRED SHARE INVESTMENT**

ISSUER	Nelson Financial Group Ltd.
ISSUE	Series B Preferred Shares
PAR VALUE	Each share is issued at and remains fixed at \$25.00 in lawful money of Canada.
OFFER VOLUME	\$50,000,000.00
PURPOSE	To finance the Company's business operations
SUBSCRIPTION PERIOD	July 14 th , 2008 to December 31 st , 2010
DIVIDEND	10% per annum Principal sum of Fifty Thousand Dollars (\$50,000.00) in lawful money of Canada - \$416.67 monthly dividend beginning on the 25 th day of July, 2008
PAYMENTS	The first dividend payment will become due and payable 1 month after the investment is made. Thereafter, dividends will be paid monthly.
TAXATION	Taxable, eligible for the dividend tax credit
BUSINESS DAY	In the event that a payment day occurs on a day other than a business day, such payments will be made on the business day preceding that date.
MINIMUM PURCHASE	\$150,000.00 \$10,000.00 - limited to accredited investors
PAYMENT OPTIONS	Dividend payments will be made electronically (EFT)
REPORTING REQUIREMENTS	Company issues investors annual T-3 slips
RELATED ISSUER	Nelson Investment Group Ltd.
DEPOSITS	Made to Nelson Financial Group Ltd.
CERTIFICATE	This document (<i>Preferred Share Term Sheet</i>) contains the "rights, privileges, restrictions and conditions" as pertaining to the Certificate.
OTHER TERMS	Preferred shares are non-voting (except where voting as a class is required), redeemable at the option of the Company and rank ahead of common shares. Dividends are cumulative and no dividends shall be paid on common shares if preferred share dividends are in arrears. <u>There is the option to redeem the full amount with 30-days notice.</u>