

## Summary of Receivership Proceeding

1. On June 28, 2005, the Ontario Securities Commission (“**OSC**”) sought and obtained from the Court an Order appointing RSM Richter Inc. (now Richter Advisory Group Inc.) (“**Richter**”) as the receiver (the “**Receiver**”) of the following:
  - (a) Norshield Asset Management (Canada) Ltd. / Gestion de Placements Norshield (Canada) Ltée (“**NAM**”);
  - (b) Norshield Investment Partners Holdings Ltd. / Gestion des Partenaires d’Investissement Norshield Ltée;
  - (c) Olympus United Funds Holdings Corporation;
  - (d) Olympus United Funds Corporation / Corporation de Fonds Unis Olympus (“**Olympus Funds**”);
  - (e) Olympus United Bank and Trust SCC (“**Olympus Bank**”); and
  - (f) Olympus United Group Inc. / Groupe Olympus United Inc. (“**Olympus Group**”),  
(collectively, the “**Original Respondents**”).
2. The Receiver’s appointment was continued by Order of the Court dated July 14, 2005 and, by Orders dated September 9, 2005 and October 14, 2005, Richters was also appointed as receiver of the following:
  - (a) Norshield Capital Management Corporation / Corporation Gestion de l’Actif Norshield (“**Norshield Capital Management**”); and
  - (b) Honeybee Software Technologies Inc. / Technologies de Logiciels Honeybee Inc. (formerly Norshield Investment Corporation/Corporation d’Investissement Norshield) (“**Honeybee Software**”).
3. The Original Respondents, Norshield Capital Management and Honeybee Software are referred to herein as the “**Norshield Companies**”.
4. Prior to the Receiver’s appointment, NAM carried on business as the manager and advisor of a variety of hedge funds and alternative investment products offered across Canada by Olympus Group. Those products were sold primarily as classes of preferred shares in Olympus Funds. NAM was registered as an investment advisor under both Ontario and Quebec securities laws. Olympus Group was registered under Ontario securities law as a limited market dealer and mutual fund dealer.
5. John Xanthoudakis and Dale Smith were the principals of the Norshield Companies and certain other entities operating within the Norshield investment structure. As described

below, both Mr. Xanthoudakis and Mr. Smith have been sanctioned by the Ontario Securities Commission (the “**OSC**”) for their role in the collapse of Olympus Funds.

6. On May 2, 2005, Olympus Funds announced the deferral of redemptions in a number of the funds that comprised part of its share structure. Thereafter, the OSC issued a series of orders suspending the registrations of NAM and Olympus Group. The OSC also ordered that all client accounts of Olympus Group be frozen and no withdrawals from such accounts be permitted. Finally, following a review of NAM’s operations by Richter as monitor, the OSC sought the appointment of the Receiver in June 2005.
7. The Receiver has determined that, as at June 2005, approximately 1900 Canadian retail investors (“**Retail Investors**”), a significant number of whom reside in Ontario, held investments in Olympus Funds in the amount of approximately \$159 million. The investment structure employed by Olympus Funds and the other Norshield Companies was complex, costly to maintain and spanned Canada, Barbados and the Commonwealth of The Bahamas (the “**Bahamas**”). As described below, this complex, multi-jurisdictional investment structure has made the Receiver’s task of identifying and realizing upon assets extremely time consuming and costly.
8. Olympus Funds made significant investments in its wholly-owned subsidiary, Olympus Bank in Barbados. Olympus Bank held investments in Olympus Univest Ltd. (“**Olympus Univest**”) in the Bahamas. These investments were then co-mingled in Olympus Univest with investments received from Canadian pension funds and financial institutions and individuals and entities whose investments were in cash/cash equivalents and/or alleged contributions “in kind”.
9. Olympus Univest held substantial investments in Mosaic Composite Limited (U.S.), Inc. (“**Mosaic**”). Mosaic, in turn, held investments in both hedged and non-hedged assets. The hedged assets were predominantly comprised of two cash settled equity barrier call options with Royal Bank of Canada, which were consolidated into a single option on March 31, 2004 (referred to in the reports of the Receiver as the “**RBC SOHO Option**”) while the non-hedged assets consisted mainly of investments in a number of private entities, namely:
  - (a) Channel Fixed Income Fund Ltd.;
  - (b) Channel F.S. Fund Ltd.;
  - (c) Channel Technology Fund Ltd.; and
  - (d) Channel Diversified Private Equity Fund Ltd.(collectively, the “**Channel Funds**”).
10. Given the structure and flow of investments within the Norshield investment structure, the Receiver determined that it would be necessary to take steps to safeguard the assets of Olympus Bank in Barbados and Olympus Univest and Mosaic in the Bahamas.

11. In July 2005, the Central Bank of Barbados seized management and control of Olympus Bank. Thereafter, following negotiations with the Central Bank of Barbados, Richter and Brian F. Griffiths & Company, a Barbados accounting firm, were appointed Joint Custodians of Olympus Bank (the “**Joint Custodians**”) by Order of the Barbados High Court of Justice.
12. In the Bahamas, Raymond Massi (“**Massi**”), a partner at Richter and G. Clifford Culmer (“**Culmer**”), a partner of BDO Mann Judd, an accounting firm located in Nassau, Bahamas, sought and obtained their appointment as joint official liquidators of Olympus Uninvest by Order of the Supreme Court of the Commonwealth of The Bahamas (“**Olympus Uninvest JOL’s**”) in February 2006. Culmer and Massi also sought and obtained from the Bahamas Court their appointment as joint receivers of Mosaic in January 2006, as joint provisional liquidators of Mosaic in March 2006 and ultimately as joint official liquidators of Mosaic (“**Mosaic JOL’s**”) in January 2007.
13. Taking the foregoing steps has permitted the Receiver to coordinate a cohesive recovery strategy across all jurisdictions. However, this has also resulted in significant expenditures of both time and money in each jurisdiction to ensure strict compliance with all applicable local laws. Effectively, given the multi-jurisdictional nature of the Norshield investment structure, the Receiver has been forced to carry out separate but parallel liquidation proceedings in Canada, Barbados and the Bahamas.
14. In addition to the inherent difficulties posed by the complexity of the Norshield investment structure, the task of identifying and realizing upon the assets of the Norshield Companies, Olympus Bank, Olympus Uninvest and Mosaic has been compounded by incomplete financial records, missing financial information and, in certain cases, the destruction of key books and records. The Receiver and/or the Olympus Uninvest and Mosaic JOLs have conducted examinations of key individuals involved with the Norshield investment structure. While those examinations have assisted the recovery of certain assets, the Receiver has been unable to fully and adequately determine transactions that occurred between September 30, 2003 (the date of the last audited financial statements for the Norshield Companies) and the date of the Receiver’s appointment on June 29, 2005. As noted below, this lack of reliable financial information and documentation has contributed to the significant losses suffered by Retail Investors.
15. The Receiver’s mandate has also been made more time consuming and costly as a result of multiple competing claims to the assets of the Norshield Companies, Olympus Bank, Olympus Uninvest, Mosaic and certain of the Channel Entities. Many of these claims have been advanced by parties connected to or previously involved with the principals of the Norshield investment structure. The Receiver, Olympus Uninvest, and Mosaic JOL’s have resisted these adverse claims and have actively taken steps to resolve or otherwise eliminate all such claims. Again, this process has added significant time and cost to realizing upon the assets of the Norshield Companies, Olympus Uninvest, Mosaic and the Channel Entities. The Receiver and/or Olympus Uninvest, and Mosaic JOL’s have been involved in litigation in respect of such competing claims in Canada, the United States of America, Barbados, the Bahamas and the Cayman Islands.

16. Now that the Receiver and the Olympus Uninvest and Mosaic JOL's have resolved substantially all of the competing claims to the assets within their possession, the final step in administration of the various estates is completion of a claims process. Again, given the multiple jurisdictions involved, a claims process must be conducted in each of Canada, Barbados and the Bahamas. The Canadian claims process has been conducted in the context of the *Companies' Creditors Arrangement Act* (Canada) proceeding involving Olympus Funds. Claims processes remain underway in Barbados and the Bahamas for each of Olympus Bank, Olympus Uninvest and Mosaic. However, further distributions to the Retail Investors will be delayed until such time as those claims processes are completed, and distributions are approved by the supervising courts in each of Barbados and the Bahamas.
17. Extensive forensic investigative work into the activities of the Norshield Companies, Olympus Uninvest, Mosaic and the Channel Funds has led the Receiver to conclude that the above-mentioned Canadian, Barbadian and Bahamian entities, as well as their directors and officers, all operated in concert and with common interest despite attempts to give the appearance that many of the entities and individuals were unconnected and acting independently.
18. The Receiver has determined that as funds originating from Retail Investors and other investors flowed from one entity/jurisdiction to the next within the Norshield investment structure, significant dissipation of investor funds occurred at each level as a result of "in-kind" (as opposed to cash) subscription for shares in Olympus Uninvest, unexplained third-party payments, redemptions at inflated Net Asset Values ("NAVs") and the costs of maintaining the investment structure itself.
19. The Receiver was advised by the former principals of the Norshield Companies that Olympus Uninvest entered into a series of transactions whereby it issued shares to third parties, the subscription price of which was paid by way of "in-kind" asset transfers to Olympus Uninvest, rather than cash. The Receiver was advised that between \$40 and \$100 million of investments received by Olympus Uninvest were assets "in-kind".
20. It appears that certain investors, whose subscriptions were made with "in-kind" assets of unknown value, may have redeemed their investments in Olympus Uninvest for cash consideration greater than the value of their "in-kind" contributions, resulting in dissipation of cash from the Norshield investment structure.
21. The unexplained third-party payments identified by the Receiver are in excess of \$215MM, summarized as follows:
  - (a) Disbursed by Mosaic: \$156.6MM
  - (b) Disbursed by Olympus Bank: \$60.7MM

The Receiver has not found satisfactory explanations for any of these third-party payments. However, the Receiver has determined that the beneficiaries of these payments appear to have or had i) close connections to John Xanthoudakis and/or to the Norshield Companies, Olympus Uninvest and Mosaic and/or ii) connections to entities over which

John Xanthoudakis had influence with respect to investment decisions. The Receiver has not identified evidence that any of these third party payments have benefited either John Xanthoudakis or Dale Smith personally.

22. Although the Receiver has identified certain of the parties which received payments from Mosaic and Olympus Bank, the Receiver has not yet ascertained if such third parties received the funds for their own account or were mere conduits for such funds to other parties. In addition, certain payments have been made by each of Mosaic and Olympus Bank to third parties about which the Receiver has no information. The Receiver's ability to determine with certainty the ultimate recipient of the foregoing payments has been impeded by: (i) the incomplete records of the Norshield Companies, Olympus Uninvest and Mosaic, (ii) the Receiver's inability to gain access to records in the possession of certain third parties, and (iii) the significant costs of investigating transactions in multiple jurisdictions with uncooperative counterparties.
23. The Receiver has concluded that the principals of the Norshield Companies, Olympus Uninvest and Mosaic attempted to camouflage the dissipation of investor funds by artificially inflating not only the underlying value of the assets purportedly held by each entity within the Norshield investment structure, but also by artificially inflating the NAVs presented to the investors in each entity within the investment structure.
24. The NAVs presented by Mosaic were based entirely upon the reported value of Mosaic's hedged assets (primarily the RBC SOHO Option), notwithstanding that a large part of the reported value of the RBC SOHO Option was in fact secured by a margin loan and that Mosaic, in desperate need of cash, later transferred substantially all of its interest in the RBC SOHO Option to a third party. Based on the audited financial statements of Mosaic, as at September 30, 2003, its hedged assets totalled approximately \$465 million. The leverage owing to Royal Bank of Canada under the RBC SOHO Option and secured by the basket of securities within the RBC SOHO Option totalled approximately \$360 million.
25. As reported by the Receiver, in order for Mosaic to calculate its NAVs based upon its hedged assets only, Mosaic's non-hedged assets would have to have had, at a minimum, a realizable value equal to or greater than the outstanding amount of the margin loans which were secured by Mosaic's hedged assets. However, as described below, the value of Mosaic's hedged assets was also grossly overstated.
26. The Receiver has also concluded that the asset values carried on the audited financial statements of the Channel Entities were overstated by at least USD\$200 million for fiscal 2002, increasing to at least USD\$300 million for fiscal 2003. As a result, the value of the Channel Entities' assets was overstated by approximately 88% on their fiscal 2003 financial statements. The artificial inflation of the value of the Channel Entities' assets was carried out using, among other things, option transactions as well as back-to-back sales of the same asset between entities within the Norshield investment structure.
27. Not only was the underlying value of the assets held by the entities within the Norshield investment structure inflated, but a significant portion of those assets were also illiquid.

Consequently, in the months leading up to the Receiver's appointment, subscriptions to Olympus Funds and Olympus Uninvest were entirely used to fund redemptions. The Receiver has concluded that in view of the enormous disparity between the value of the underlying assets within the Norshield investment structure and the NAVs reported to Olympus Uninvest and ultimately to the Retail Investors, as well as the illiquid nature of those assets, the collapse of the Norshield investment structure was inevitable once redemptions exceeded subscriptions.

## **Realizations**

28. As noted above, the Receiver's efforts to realize upon assets of the Norshield Companies have been hampered by the multi jurisdictional nature of the Norshield investment structure, missing and destroyed books and records and by competing claims to assets throughout the investment structure. If the Receiver had not taken steps to coordinate liquidation proceedings in Canada, Barbados, the Bahamas, Cayman Islands and the United States or failed to aggressively oppose the many competing claims to the remaining assets in the Norshield investment structure, there may have been no recoveries at all for the Retail Investors. As the Receiver noted in November 2005, shortly after the receivership commenced, based on assets it had identified to date and the anticipated costs of realization, recoveries for the Retail Investors were expected to be minimal.
29. The Receiver's decision to implement a strategy to realize on assets and vigorously oppose competing claims in Canada, Barbados, the Bahamas, Cayman Islands and the United States has significantly improved the estimated recovery for the Retail Investors. To date, the Retail Investors have received nearly 5 cents on the dollar of their investments within the CCAA proceeding for Olympus Funds. Further distributions are anticipated once the claims processes in the Bahamas and Barbados have been concluded.
30. The Norshield receivership is part of a larger story that has resulted in the loss of hundreds of millions of dollars by numerous investors. Although not understood by all at the time, those losses had almost entirely occurred by the time of the Receiver's appointment in June 2005. Artificially inflated NAVs merely delayed the inevitable collapse of the Norshield investment structure.
31. The principals of the Norshield Companies, John Xanthoudakis and Dale Smith, have been sanctioned by the OSC for their role in the collapse of Olympus Funds. In March 2010, the OSC found that Mr. Xanthoudakis and Mr. Smith failed to deal fairly, honestly and in good faith with investors and engaged in a course of conduct that was abusive to and compromised the integrity of Ontario's capital markets and was contrary to the public interest. Among other sanctions, the OSC has ordered that Mr. Xanthoudakis and Mr. Smith are prohibited permanently from becoming or acting as a director or officer of any issuer, that Mr. Xanthoudakis and Mr. Smith be permanently prohibited from trading in securities, other than in respect of their personal retirement savings plans and that they

shall each pay three separate fines, two in the amount of \$1 million and a third for \$125,000 for breaches of the Ontario *Securities Act*.