This is Exhibit "R" referred to in the Affidavit of
Franz Auer, sworn before me on
the 4th day of May, 2013

Commissioner for Oaths in and for the
Province of Alberta

Trent J. Kulchar
Barrister & Solicitor

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
NO:

(Class Action)
SUPERIOR COURT

ADAM KEGEL, residing at 186 Chemin du Puits, Piedmont Québec, J0R 1K0

Petitioner

vs.

NATIONAL BANK OF CANADA, a legal person established pursuant to *Loi du Canada à caractère public*, having a principal establishment at 600, Rue de la Gauchetière Ouest, 4th Floor, Montréal, Québec, H3B 4L2

Defendant

MOTION FOR LEAVE TO PLEAD THE CAUSE OF ACTION CONTAINED IN TITLE VIII, CHAPTER II, DIVISION II OF THE QUÉBEC SECURITIES ACT ("QSA") AND TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Article 1002 C.C.P. and following and 225.4 QSA and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER STATES AS FOLLOWS:

General presentation

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

   (a) "***ABCA***" means the *Business Corporations Act* (Alberta), RSA 2000, c B-9, as amended;

   (b) "**AIF**" means Annual Information Form;

   (c) "**AR**" means accounts receivable;

(d) "**Arrangement**" means the reorganization transaction pursuant to the provisions of the ***ABCA***, which was effectuated on November 1, 2011, and pursuant to which **Poseidon Concepts** continued as the successor of **Open Range** and its shares started trading on the **TSX**;

(e) "**Bank**" means the defendant, National Bank of Canada;

(f) "**CEO**" means Chief Executive Officer;

(g) "**CFO**" means Chief Financial Officer;

(h) "**Circular**" means the Information Circular and Proxy Statement of **Open Range** issued in connection with the **Arrangement**, dated September 30, 2011, together with the documents annexed thereto, all of which constituted a single document and were filed as a single document on SEDAR on October 11, 2011;

(i) "**Class**" and "**Class Members**" mean all persons and entities, wherever they may reside or be domiciled, who purchased or otherwise acquired **Poseidon Concepts**' securities on or before February 14, 2013, other than the **Excluded Persons**;

(j) "**Dawson**" means A. Scott Dawson;

(k) "**Directors and Officers**" (each being a "**Director**" or "**Officer**") means, collectively, **Dawson**, **Jensen**, **MacKenzie**, **Michaluk** and **Winger**;

(l) "**E&P Business**" means the business involving the exploration for and development of crude oil and natural gas in Western Canada, including all the assets pertaining thereto, which was carried on by **Open Range** and was transferred to **New Open Range** pursuant to the **Arrangement**;

(m) "**Excluded Persons**" means the **Bank**, **Poseidon Concepts**, the **Directors and Officers**, the past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns of the **Bank**, **Poseidon Concepts** or a **Director** ***or*** **Officer**, and any individual who is a member of the immediate family of a **Director** or **Officer**;

(n) "**IFRS**" means International Financial Reporting Standards;

(o) "**Impugned Documents**" (each being an "**Impugned Document**") means, collectively, the **Circular** and the **Prospectus**;

(p) "**Jensen**" means Dean R. Jensen;

(q) "**MacKenzie**" means Matt MacKenzie;

(r) "**MD&A**" means Management's Discussion and Analysis;

(s) "**Michaluk**" means Lyle Michaluk;

(t) "**NBF**" means National Bank Financial Inc.;

(u) "**New Open Range**" means, Open Range Energy Corp., a successor to **Open Range**;

(v) "**Offering**" means the public distribution of **Poseidon Concepts'** shares pursuant to the **Prospectus**;

(w) "**Open Range**" means Open Range Energy Corp., the predecessor company of **Poseidon Concepts** and **New Open Range**;

(x) "***QSA***" means the *Securities Act*, chapter V-1.1, as amended;

(y) "**Petitioner**" means the petitioner, Adam Kegel;

(z) "**Poseidon Concepts**" means Poseidon Concepts Corp.;

(aa) "**Poseidon Concepts USA**" means **Poseidon Concepts'** wholly-owned, Denver, Colorado-based subsidiary, Poseidon Concepts Inc.;

(bb) "**Prospectus**" means the short-form prospectus of **Poseidon Concepts**, dated January 26, 2012, including the disclosure documents incorporated therein by reference;

(cc) "**Representation**" means the statement, express or implied, that **Poseidon Concepts'** financial statements fairly presented its financial position, financial performance and cash flows;

(dd) "**Securities Legislation**" means, collectively, the *Securities Act*, RSQ c V-1.1, as amended, the *Securities Act*, RSO 1990 c S.5, as amended; the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act, 1988*, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;

(ee) "**SEDAR**" means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;

(ff) "**Special Committee**" means the special committee of **Poseidon Concepts'** board of directors formed in or about December 2012;

(gg) "**Tank Rental Business**" means the business involving the development and lease of **Tank Systems** and related activities associated therewith, which was carried on by **Open Range** and continued to be carried on by **Poseidon Concepts** following the completion to the **Arrangement**;

(hh) "**Tank Systems**" means the modular, insulated fluid handling systems developed by **Poseidon Concepts** and used in connection with the **Tank Rental Business**;

(ii) "**TSX**" means the Toronto Stock Exchange; and

(jj) "**Winger**" means Harley L. Winger.

2. The Petitioner wishes to institute a class action on behalf of the following group, of which he is a member:

> "All persons and entities, wherever they may reside or be domiciled, who purchased or otherwise acquired Poseidon Concepts' securities on or before February 14, 2013, other than the Excluded Persons."
>
> or such other group definition as may be approved by the Court.

THE PARTIES

The Bank and NBF

3. The Bank is a Canadian chartered bank headquartered in Montreal with offices and operations throughout Canada, including in Calgary, where Poseidon Concepts is headquartered;

4. The Bank is an integrated provider of financial services to retail, commercial, corporate and institutional clients. It operates in three business segments: Personal and Commercial, Wealth Management and Financial Markets. The Bank had total assets of approximately $177 billion as at October 31, 2012;

5. One of the principal subsidiaries of the Bank is NBF. NBF is a wholly-owned indirect subsidiary of the Bank, and represents a major part of the Bank's operations. The National Bank Financial group, which includes NBF, currently manages approximately $75 billion of the Bank's $177 billion assets;

6. The Bank's management substantially overlaps and directs the management of NBF;

7. Louis Vachon, who has been the Bank's President and CEO since June 2007 and a member of the Bank's board of directors since August 2007, and who was the Bank's Chief Operating Officer from August 2006 to May 2007, was NBF's President and CEO from September 2005 to September 2006. Vachon is responsible for the strategies, orientations and development of National Bank Financial Group;

8. Lawrence Bloomberg, who has been a member of the Bank's board of directors since August 1999, has been an advisor to NBF since October 2000;

9. Further, the Bank is managed by an "Office of the President." The Office of the President is composed of the Bank's President and Chief Executive Officer and the officers responsible for the Bank's main functions and business units, and is mandated to define the Bank's culture and philosophy, approve and monitor the strategic growth initiatives of the Bank as a whole, manage risks that could have a strategic impact, assume stewardship of technology, manage the officer succession process, and ensure a balance between employee commitment and client and shareholder satisfaction. The Office of the President carries out its responsibilities as a team, with the goal of ensuring consistency as well as

information and knowledge-sharing among the Bank's business units. Since 2006, the Office of the President has included Luc Paiement, who has been an Executive Vice-President at the Bank since 2008, and has also been the Co-President and Co-CEO of NBF since September 2006. Since 2007, the Office of the President has also included Ricardo Pascoe, who is an Executive Vice-President at the Bank, and has also been the Co-President and Co-CEO of NBF since September 2006;

The Petitioner

10. The Petitioner is an individual resident of Québec, who purchased Poseidon Concepts' shares prior to February 14, 2013;

Open Range and Poseidon Concepts

11. Open Range is Poseidon Concepts' predecessor. It was incorporated pursuant to the *ABCA* on November 30, 2005. At all material times prior to the Arrangement, Open Range was a reporting issuer in Canada, and its shares traded on the TSX (ticker symbol: "ONR"). Open Range carried on the E&P Business and the Tank Rental Business prior to the Arrangement;

12. Poseidon Concepts is a company formed pursuant to the *ABCA*, and a successor of Open Range. It was established in its current form pursuant to the Arrangement on November 1, 2011;

13. As a result of the Arrangement, Poseidon Concepts became an independent entity carrying on Open Range's Tank Rental Business, providing fluid handling solutions to the oil and gas exploration and production companies. New Open Range is the successor to Open Range's E&P Business;

14. Poseidon Concepts' shares were first issued and distributed pursuant to the Arrangement to the then holders of the Open Range shares, other than the dissenting Open Range shareholders. For each Open Range share, the Open Range shareholders received one New Open Range share and 0.8839 of a Poseidon Concepts share;

15. In connection with the Arrangement, Open Range issued the Circular providing detailed information about Open Range's, Poseidon Concepts' and New Open Range's operations, businesses and finances. The Circular was signed by Dawson, who was at the time Open Range's President, CEO and director, and was also approved by Open Range's other directors, including Jensen and Winger;

16. Following the implementation of the Arrangement, on November 1, 2011, 74,719,827 Poseidon Concepts' shares were issued to investors;

17. Poseidon Concepts' shares started trading on the TSX (ticker symbol: "PSN") on November 4, 2011. At all material times, Poseidon Concepts' shares were listed for trading on the TSX and also traded on alternative trading markets in Canada. Poseidon Concepts' shares also traded in Frankfurt and over-the-counter in the United States;

18. On January 26, 2012, Poseidon Concepts issued the Prospectus. The Prospectus, which was filed with and receipted by the securities regulators of all Canadian provinces other than Quebec, authorized the issuance and public distribution of Poseidon Concepts' shares at $13.00 per share. Pursuant to the Offering, a total of 6,347,000 Poseidon Concepts shares were issued and distributed for gross proceeds of $82,511,000;

19. The Prospectus incorporated various documents by reference, including:

    (a) Open Range's Audited Financial Statements for the years ended December 31, 2010 and 2009, filed on SEDAR on March 22, 2011, which contained, among other information, a summary of accounting policies relevant to Poseidon Concepts' business, including Poseidon Concepts' revenue recognition policy;

    (b) the Circular, which is an Impugned Document;

    (c) Poseidon Concepts' Q3 2011 Interim Financial Statements, which is an Impugned Document;

    (d) Poseidon Concepts' Q3 2011 MD&A, which is an Impugned Document; and

    (e) Poseidon Concepts' Material Change Report filed on SEDAR on January 17, 2012, relating to Poseidon's Concepts' updated capital program and financial and operating forecasts for 2012, which contained misrepresentations regarding Poseidon Concepts' fiscal year 2012 EBITDA guidance.

20. From the time of its establishment, Poseidon Concepts and Open Range were reporting issuers in all provinces of Canada. As a reporting issuer, Poseidon Concepts and Open Range were required to issue and file with SEDAR:

(a) within 45 days of the end of each quarter, quarterly financial statements prepared in accordance with IFRS that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;

(b) within 90 days of the end of the fiscal year, audited annual financial statements prepared in accordance with IFRS, including comparative financial statements relating to the period covered by the preceding financial year;

(c) contemporaneously with each of the above, an MD&A of each of the above financial statements;

(d) within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development; and

(e) contemporaneously with the solicitation by or on behalf of the management of proxies from holders of its voting shares, an information circular;

21. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future;

22. AIFs are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically;

The Directors and Officers of Poseidon Concepts

23. Michaluk was Open Range's CFO and Vice-President, Finance. Pursuant to the Arrangement, Michaluk became, and remained at all material times, CEO and a director of Poseidon Concepts. On or about December 27, 2012, Michaluk stepped down as Poseidon Concepts' CEO and director, and assumed the role of the company's Interim CFO. Michaluk is a Chartered Accountant with over 15 years of diversified financial experience including corporate accounting, treasury management, auditing and tax planning;

24. MacKenzie was a Director, Institutional Equity Sales with NBF from May 2010 through November 2011, when he joined Poseidon Concepts in the capacity of CFO, and remained in that position until on or about December 27, 2012;

25. Dawson was President, CEO and a director of Open Range. After the completion of the Arrangement, Dawson became Poseidon Concepts' director and Chairman of the board. He was also a member of the company's Audit Committee. On November 19, 2012, Dawson was appointed Poseidon Concepts' Executive Chairman and, on or about December 27, 2012, he assumed the role of the company's Interim President and CEO;

26. At all material times, Winger was a director of Poseidon Concepts. Prior to the Arrangement, Winger was a member of Open Range's board of directors. Winger is a lawyer in Alberta specializing in securities law and corporate finance;

27. Jensen is a banker who was employed by the Bank in the capacity of Senior Manager, Energy Lending until 2005. In 2005, he left the Bank, started his own private equity firm and, shortly after that, joined Open Range as a director. Jensen was Open Range's director and a member of its Audit Committee since the company's inception in November 2005. After the implementation of the Arrangement, Jensen became a director of Poseidon Concepts and a member of its Audit Committee. He continues to hold those positions.

THE FACTS

28. Since its inception in November 2011, Poseidon Concepts adopted an "exponential growth" business strategy to establish its footing in the North American market. By means of the disclosure documents and other materials they provided to the investors and other market participants, Poseidon Concepts and the Directors and Officers created the false image of a prosperous, highly profitable public company. Within less than a year, however, the illusion of Poseidon Concepts' success exploded;

29. At all material times, Poseidon Concepts and the Directors and Officers disregarded the policies, procedures and controls that are required from a reporting issuer. They reported tens of millions of dollars in phantom revenue that was not recognized in accordance with applicable accounting standards;

30. Poseidon Concepts' true performance and condition came to light in a series of corrective disclosures that were made on November 14, 2012, December 27, 2012, and February 14, 2013;

31. On February 14, 2013, Poseidon Concepts confirmed that approximately two-thirds of its purported revenue during the first 9 months of 2012 should not have been recognized, that approximately four-fifths of its purported accounts receivable as at September 30, 2012 should not have been recorded, and that the company would restate its financial statements for the first three quarters of 2012. Prior to February 14, 2013, Poseidon Concepts had already written off $9.5 million of its AR and assets as in bad debt;

32. Before the implementation of the Arrangement, Open Range carried on two business divisions: the E&P Business and the Tank Rental Business;

33. Open Range began testing the Tank Systems in Q1 2010, and launched the Tank Rental Business in June 2010. This business was subsequently carried on through an Open Range subsidiary called Poseidon Concepts Limited Partnership – a partnership established under Alberta law on November 5, 2010. On November 9, 2010, Open Range incorporated Poseidon Concepts USA pursuant to the laws of Delaware, and started to gradually enter into the United States market;

34. On September 5, 2011, Open Range's board of directors purportedly determined that the separation of the E&P Business and the Tank Rental Business into two distinct public companies was in the best interest of the enterprise and fair to its shareholders. Open Range announced the proposed reorganization of Open Range by way of a press release issued and filed on SEDAR on September 6, 2011. In a letter to Open Range's shareholders that accompanied the Circular, Dawson wrote:

> On September 5, 2011, the Board of Directors (the "Board") of Open Range, after considering various alternatives to maximize shareholder value, determined that the separation of the E&P Business and the Tank Rental Business into two distinct public companies is in the best interests of Open Range and is fair to its shareholders (the "Open Range Shareholders"). The Board believes that the separation of the businesses will enhance shareholder value by, among other things, enabling each resultant company to achieve greater success by focusing solely on its respective business and providing

> investors more transparency to more accurately value the resultant companies [...] The resultant company carrying on the Tank Rental Business, namely Poseidon Concepts Corp., will continue to use its first-mover advantage to attempt to increase its market penetration across North America [...]

35. As the company reported on November 1, 2011, the Arrangement received approval of the shareholders and the Alberta Court of Queen's Bench, and was implemented effective November 1, 2011 to separate the E&P Business from "the rapidly growing and highly profitable Poseidon Concepts" Tank Rental Business. The company's intention was to benefit from its alleged "first-mover advantage" to rapidly increase its market penetration across North America;

36. To that end, and contemporaneously with the Arrangement, Poseidon Concepts established a regional management centre in Denver, Colorado in October 2011, which became Poseidon Concepts United States headquarters;

37. The United States provided a more favourable environment for Poseidon Concepts' contemplated "rapid growth," in part due to the regulatory hurdles and environmental protections that applied to the use of Poseidon Concepts' Tank Systems in Canada. Poseidon Concepts develops and rents the product known as Aboveground, Synthetically-lined Wall Storage Systems ("AWSSs"), which are also referred to as "C-Rings." In April 2011, Alberta's Energy Resources Conservation Board (the "ERCB") issued Bulletin 2011-10, advising that:

> The ERCB has become aware that certain operators have been using c-rings to store large volumes of fluids associated with hydraulic fracturing operations [...]
>
> Section 8.030 of the *Oil and Gas Conservation Regulations* requires materials that are used, produced, or generated at a well site or facility, other than fresh water or inert solids, to be stored in accordance with ERCB Directive 055: Storage Requirements for the Upstream Petroleum Industry. Currently, c-rings are not classified as tanks and are not an approved storage system under Directive 055. Hence, operators that propose to use c-rings to store fluids other than fresh water or inert solids must first

obtain ERCB approval to do so.

The ERCB invited industry's cooperation and assistance in "its assessment and analysis of the use of c-rings as a fluid storage alternative";

38. On October 11, 2011, the ERCB released Directive 055 -Addendum 2011-10-11 (the "Addendum"), setting out the interim requirements for use of C-Rings as a fluid storage alternative, which to date remains in effect. The ERCB determined that C-Rings are appropriate for certain uses specified in the Addendum, provided that the ERCB's requirements are followed, but

> Upstream petroleum licensees or approval holders wanting to use AWSSs for other storage purposes must submit an application which details sufficient information to substantiate the applicability and appropriateness of the use with respect to integrity containment (i.e., engineering design and construction details related to the wall and liner system), environmental protection, and safety. AWSSs are not [Aboveground Storage Tanks] and are not considered appropriate for permanent storage.

39. Poseidon Concepts' Tank Systems did not face the same regulatory hurdles in the United States, where the Tank Systems represented an alternative to the conventional industry practice of storing waste water in lined pits. In December 2011, Brad Wanchulak, a senior Poseidon Concepts Vice-President, was quoted in an article in Alberta Oil Magazine titled "New Spin-Off, Poseidon Concepts Eyes U.S. Expansion," stating that while they hoped to see positive treatment from the ERCB, because the ERCB is "very in tune to what producers want to do, and they also have to consider what's best for everybody outside of the industry," Poseidon Concepts' current plans called for expansion into the United States market;

40. Poseidon Concepts soon became a billion-dollar-market-cap company reporting in excess of $50 million quarterly revenues, the majority of which purportedly originated from its United States operations. The chart below summarizes Poseidon Concepts' quarterly revenues from Q4 2011 through the end of Q3 2012 by geographic breakdown:

Period (as at the end of)	Canadian Revenue	U.S. Revenue	Total Revenue
Q4 2011	$10.5 million (30.5% of total revenue)	$24 million (69.5% of total revenue)	$34.5 million
Q1 2012	$10.3 million (20% of total revenue)	$41.8 million (80% of total revenue)	$52.1 million
Q2 2012	$3.5 million (6% of total revenue)	$51.5 million (94% of total revenue)	$55 million
Q3 2012	$6.5 million (16% of total revenue)	$34.5 million (84% of total revenue)	$41 million
TOTAL	$30.8 million (17% of total revenue)	$151.8 million (83% of total revenue)	$182.6 million

41. As is discussed below, numerous measures, precautions, controls and policies that are required from a reporting issuer were simply disregarded by Poseidon Concepts' Board and management. As a result, Poseidon Concepts' disclosure documents at all material times were materially defective, false and misleading in regard to the company's financial results, especially Poseidon Concepts' financial position, financial performance and cash flows;

42. Poseidon Concepts disclosed on February 14, 2013 that its accounting improprieties stemmed from the company's improper revenue recognition practices principally relating to its so called long-term, "take-or-pay," minimum-commitment arrangements;

43. Poseidon Concepts manufactures and rents out the Tank Systems, generating revenue from providing fluid handling services to clients. At all material times, establishing long-term, minimum commitment arrangements with clients represented significant part of Poseidon Concepts' business strategy. At all material times, the greater portion of Poseidon Concepts' Tank Systems was rented out to clients under the purported minimum commitment arrangements;

44. As at Q3 2011, 50% of Poseidon Concepts' 170 tank units were under minimum commitment arrangements. As at year-end 2011, Poseidon Concepts had 240 Tank Systems, 60% of which were under minimum commitment arrangements. Poseidon Concepts' tank fleet increased to

approximately 440 units by the end of Q3 2012, the greater part of which was under minimum commitment arrangements;

45. Under the minimum commitment arrangements, Poseidon Concepts delivered the Tank Systems to clients on an understanding that, if the client used the Tank Systems, Poseidon Concepts charged a certain amount but, if the client did not actually or fully use the Tank Systems, Poseidon Concepts charged a discounted amount that represented the client's "minimum commitment";

46. At all material times, Poseidon Concepts booked revenue from the provision of services to the minimum commitment clients while the Tank Systems were on the client's property but before any money for such services had been deposited or collected from the client, before the price payable by the client was determined and fixed, and/or before revenue was properly evidenced;

47. Poseidon Concepts was required to book revenue only when revenue recognition requirements had been met, including when revenue was fixed, determined and evidenced;

48. Among other requirements for revenue recognition, two documents are relevant: 1) the document known in the industry as a "field ticket"; and 2) the invoice;

49. In the normal course of operation, and before it records any revenue, Poseidon Concepts should provide the client with a "field ticket" after the services have been rendered. When and if other documents are applicable to fix and determine the price and to evidence revenue, Poseidon Concepts was required to ensure that those procedures were followed;

50. The field ticket is a document that sets out in detail the various services provided to the client and the amount that the client should pay for those services. For example, the field ticket sets out the number of, and the duration for which, the Tank Systems were rented to the client; the number of workers engaged in the set-up and tear-down of the Tank Systems; the number of trucks used to move the Tank Systems to and from the client's property; and the distance driven by such trucks. The client's consultant in the field reviews, approves and signs the field ticket, and returns it to Poseidon Concepts' accounting department. By doing so, the client acknowledges that it has been provided with those services, and commits to pay. Poseidon Concepts then generates an invoice and sends

it back to the client. From the issuance of the invoice, the client is required to pay Poseidon Concepts as per its terms, generally 45 days;

51. The field ticket fixes and determines the price that is owed by the client, and the document that evidences that services have been provided and that the client has committed to pay. The invoice evidences that revenue for, among other things, accounting purposes;

52. When and to the extent that revenue was fixed end evidenced by any document other than a field ticket, Poseidon Concepts was required to make sure that all requirements for revenue recognition were met, including that valid evidence existed to fix the price, and to substantiate the revenue that had purportedly been generated;

53. Poseidon Concepts was required at all times to follow these procedures, but it did not;

54. Poseidon Concepts recorded revenue from minimum commitment clients before it had received a signed field ticket and/or before there was valid and persuasive evidence of the arrangement and/or that revenue had been generated. Poseidon Concepts recorded revenue from minimum commitment clients while one or more of the requirements for revenue recognition had not been achieved;

55. Additionally, Poseidon Concepts recorded revenue from minimum commitment clients despite the fact that some or all of such clients would refuse to pay some or all of the amounts claimed and, as such, collectability from minimum commitment clients was not reasonably assured;

56. Moreover, Poseidon Concepts also recorded revenue before it had received a signed field ticket from, issued an invoice to, and/or there was valid and persuasive evidence of revenue relating to other, non-minimum commitment clients;

57. Poseidon Concepts relied on "manual" field ticketing and invoicing systems and procedures that were ineffective and slow. As Michaluk wrote in an email to a shareholder in May 2012, those manual processes proved "cumbersome" in Poseidon Concepts' purported "exponential growth mode." As a result, Poseidon Concepts' field tickets were significantly delayed at all times;

58. In the Q2 2012 MD&A, dated August 8, 2012, Poseidon Concepts indicated the need to implement new field ticketing and invoicing

procedures, which it hoped to result in improvements in the second half of 2012:

> the Corporation is currently implementing several new processes and software systems to improve the speed in which field tickets and invoices are processed and issued.

59. Poseidon Concepts' field ticketing and invoicing problems crippled its revenue recognition practice and, in part, caused it to book revenue when revenue recognition requirements had not been met;

60. Poseidon Concepts' revenue recognition practices violated both its own accounting policies and IFRS. As is discussed below, this wrongful practice caused Poseidon Concepts to book revenue for which there was no evidence, when the price payable by the client was not fixed and determinable, and when collectability was not reasonably assured;

61. As stated more particularly below, on February 14, 2013, Poseidon Concepts itself admitted that its revenue recognition practices violated both the company's accounting policies and IFRS;

THE LONG-STANDING AND CLOSE RELATIONSHIP BETWEEN THE BANK, OPEN RANGE AND POSEIDON CONCEPTS

Overview

62. From the time of the inception of each of Open Range and Poseidon Concepts, the Bank played a central role in promoting both of them;

63. First, at all material times, the Bank has been the key source of bank financing for both Open Range and Poseidon Concepts. Second, the Bank also entered into numerous material commodity derivative agreements with Open Range in order to enable Open Range to manage various key risks to which its business was subject. Third, the Bank's principal indirect subsidiary, NBF, was the lead underwriter in key securities offerings conducted by both Open Range and Poseidon Concepts. Fourth, NBF also acted as the exclusive financial adviser to Open Range in the review of strategic alternatives that led to the creation of Poseidon Concepts as a free-standing public company. Fifth, from the inception of both Open Range and Poseidon, a former lending manager of the Bank sat on the Board of Directors of each of them, and after the creation of Poseidon Concepts, a former Director of NBF became its CFO;

64. Finally, promptly following the establishment of Poseidon Concepts, NBF analyst Greg Colman aggressively promoted the stock of the company, and continued to do so even as the company's AR balance grew rapidly;

65. The Bank profited handsomely from this extensive web of transactions and relationships with Open Range and Poseidon Concepts, and from its promotion of their businesses and the sale of their securities to investors;

The Creation and Expansion of Open Range

66. Open Range was incorporated on November 30, 2005. On that same day, Open Range issued and filed with SEDAR a press release stating, among other things, that "Open Range has concluded negotiations for an initial $8 million revolving line of credit to be instituted with the National Bank." Thus, from its very inception, the Bank provided key financing to Open Range in order to enable Open Range to conduct business;

67. This financing was facilitated by Jensen, who previously was a Senior Manager, Energy Lending at the Bank. Jensen left the Bank in 2005 and joined the board of directors of Open Range shortly thereafter. Although Jensen did not have an accounting background, he also sat on the Audit Committees of the Boards of Open Range and Poseidon Concepts at all material times;

68. In addition, prior to joining Poseidon Concepts as its CFO, MacKenzie was a Director, Institutional Equity Sales with NBF;

69. From the time of the creation of Open Range, its credit facilities with the Bank expanded rapidly. By year-end 2010, those credit facilities totalled $80 million, or ten times the amount of Open Range's initial credit facility with the Bank. The chart below shows the growth in Open Range's bank lines with the Bank from the time of its inception to the time of the inception of Poseidon Concepts in the fourth quarter of 2011:

DATE	TOTAL CREDIT FACILITIES	TOTAL DRAW-DOWN
November 30, 2005	$8 million	Nil
December 31, 2005	$10.4 million	Nil
December 31, 2006	$18.2 million	$3.8 million
December 31, 2007	$40.0 million	$12.9 million
December 31, 2008	$54.0 million	$31.4 million
December 31, 2009	$75.0 million	$40.1 million
December 31, 2010	$80.0 million	$51.1 million (1)
September 30, 2011	$90.0 million	$59.9 million (1)

(1) Prior to the second quarter of 2010, Open Range reported that its credit facilities were held solely with the Bank. Commencing in the second quarter of 2010, Open Range reported that its credit facilities were held with a syndicate of Canadian banks led by the Bank.

70. From the time of its inception, Open Range's capital program, and hence its expansion was financed in large part by its credit facilities with the Bank;

71. From the time of its inception, Open Range also managed certain key risks to which its business was subject by entering into numerous commodity derivative contracts with the Bank. In particular, an underwriting agreement between Open Range and certain underwriters, dated March 19, 2008, set forth a complete list of material contracts to which Open Range was then a party, and that list included 9 commodity derivative agreements with the Bank, and did not identify any other material commodity derivative agreements to which Open Range was then a party;

72. In light of Open Range's dependence on the Bank for financing and hedging arrangements, Open Range repeatedly identified the Bank in its disclosure documents as the company's "Banker";

The Creation and Financing of Poseidon Concepts

73. At the time of the creation of Poseidon Concepts in November 2011, Poseidon Concepts was also critically dependent upon the Bank for financing;

74. Contemporaneously with the Arrangement, Poseidon Concepts secured new credit facilities with a syndicate of banks, including the Bank, in the amount of $50 million (the "New Credit Facility"). The New Credit Facility superseded the $90 million credit facilities that were available to the company as of September 2011;

75. On January 10, 2012, and just before the Offering, the Bank extended another credit facility, with the maturity date of March 30, 2012, to Poseidon Concepts in the amount of $15 million (the "Additional Credit Facility"). The Additional Credit Facility was extended for Poseidon Concepts' use for "working capital requirements." Poseidon Concepts immediately drew $5.0 million on the Additional Credit Facility. This amount was primarily used to cover the working capital required to facilitate the Offering;

76. Further, under the terms of the Additional Credit Facility, Poseidon Concepts was "required to use the net proceeds from equity issuances

initially to repay outstanding indebtedness under the Additional Facility." Given that the Additional Credit Facility matured on March 30, 2012, that requirement specifically referred to the Offering. In simple terms, the Bank extended the limited Additional Credit Facility to Poseidon Concepts two weeks before the Offering, but only to facilitate the Offering so that the Bank would be paid the amounts it had lent to Poseidon Concepts;

77. The Offering took place in January 2012. At that point in time, Poseidon Concepts was indebted to the Bank in the amount of $13.5 million under both the New Credit Facility and the Additional Credit Facility. Part of the proceeds of the Offering was used to repay the entire amount that Poseidon Concepts then owed the Bank;

78. Subsequently, on June 30, 2012, a syndicate of four banks, including the Bank, extended a two-year extendable $100 million credit facility to Poseidon Concepts, which appears to remain in place to date;

79. The relationship between the Bank and Poseidon Concepts went far beyond the provision of key credit facilities to Poseidon Concepts;

80. First, a principal subsidiary of the Bank, NBF, was an underwriter in three equity offerings undertaken by Poseidon Concepts and its predecessor, Open Range, and was the lead underwriter in two such offerings. As lead underwriter, NBF was responsible for negotiating the terms of the offerings. Further, the proceeds of both of those offerings were used, entirely or partially, to repay the company's indebtedness to the Bank. More particularly:

    (a) NBF was the lead underwriter in the equity offering of Open Range pursuant to a short-form prospectus dated March 14, 2011. The price for that offering was determined by negotiation between Open Range and NBF on behalf of the underwriters of that offering. The entire proceeds of that offering, after deducting the underwriters' and administration fees, was used to repay part of Open Range's indebtedness to the Bank; and

    (b) NBF was the lead underwriter in the Offering. The Offering price was determined by negotiation between Poseidon Concepts and NBF on behalf of the underwriters in the Offering. Part of the proceeds of the Offering was used to repay Poseidon Concepts' $13.5 million indebtedness to the Bank.

81. Further, each of the prospectuses that related to the three Open Range and Poseidon Concepts offerings in which NBF acted as an underwriter stated that:

> The Corporation may be considered to be a connected issuer of NBF, as NBF is an indirect wholly-owned subsidiary of a Canadian chartered bank, being the lead lender to the Corporation under its credit facility.

82. The concept of "connected issuer" derives from National Instrument 33-105, Underwriting Conflicts, which defines a "connected issuer" at section 1.1 as follows:

> "**connected issuer**" means, for a specified firm registrant,
> (a) an issuer distributing securities, if the issuer or a related issuer of the issuer has a relationship with any of the following persons or companies that may lead a reasonable prospective purchaser of the securities to question if the specified firm registrant and the issuer are independent of each other for the distribution:
> (i) the specified firm registrant,
> (ii) a related issuer of the specified firm registrant,
> (iii) a director, officer or partner of the specified firm registrant,
> (iv) a director, officer or partner of a related issuer of the specified firm registrant, or
> [...]

83. National Instrument 33-105 further defines a "specified firm registrant" at section 1.1 as follows:

> "**specified firm registrant**" means a person or company registered, or required to be registered, under securities legislation as a registered dealer, registered adviser or registered investment fund manager.

84. In the three Open Range/Poseidon Concepts offerings underwritten by NBF, the underwriters, including NBF, were each a "specified firm registrant" for the purposes of National Instrument 33-105;

85. By making the statement that Open Range/Poseidon Concepts may be considered a "connected issuer" of NBF, Open Range and Poseidon Concepts acknowledged in all of the offerings in which NBF acted as an underwriter that there were reasonable grounds to believe that neither Open Range nor Poseidon Concepts was independent from NBF;

86. Moreover, and specifically in connection with the Offering, the Bank advanced the limited Additional Credit Facility to Poseidon Concepts on January 10, 2012, one day before Poseidon Concepts announced the 'exciting' accelerated development plans and updated 2012 EBITDA guidance on January 11, 2012 and three days before Poseidon Concepts publicly announced the Offering on January 13, 2012;

87. A dominant purpose of the Additional Credit Facility was to facilitate the Offering. The Bank specifically included a term on the Additional Credit Facility requiring Poseidon Concepts to pay directly out of the proceeds of the Offering the amounts it owed to the Bank under the Additional Credit Facility. $13.5 million of the proceeds of the Offering was used to repay Poseidon Concepts' indebtedness to the Bank;

88. Moreover, NBF acted as the exclusive financial advisor to Open Range in connection with the Arrangement, and provided a fairness opinion in connection therewith, which was furnished to Open Range's shareholders and filed on SEDAR on October 11, 2011;

89. Open Range engaged NBF on August 11, 2011 to act as the exclusive financial advisor to Open Range in connection with its review of strategic alternatives to maximize shareholder value;

90. On August 26, 2011, NBF met with the Open Range Board to discuss certain potential strategic transactions, including a separation of the E&P Business and the Tank Rental Business into separate public companies;

91. On August 26, 2011, the Open Range Board established a special committee, with a mandate that included the following: (i) to review and assess potential strategic transactions; (ii) if deemed appropriate, to supervise the preparation of a fairness opinion or valuation by an independent advisor; and (iii) to consider and advise the Board regarding the treatment of incentive securities and employee severance and performance bonus payments;

92. On August 30, 2011, NBF again met with the Board to review the status of potential strategic transactions being considered;

93. On September 5, 2011, the Board, including all members of the special committee, after receiving the verbal opinion of NBF and considering the most viable strategic alternatives then available to Open Range including maintaining the status quo, concluded that a separation of the two businesses would be the most effective way to enhance shareholder value and unanimously approved to proceed with the proposed Arrangement;

94. Finally, after the creation of Poseidon Concepts and in connection with its acting as lead underwriters in Poseidon Concepts' maiden public offering, NBF signed the Prospectus, and falsely certified therein that the Prospectus, together with the documents incorporated therein]by reference, constituted full, true and plain disclosure of all material facts relating to Poseidon Concepts' shares;

The Promotion of Poseidon Concepts' Stock by NBF Analyst Greg Colman

95. Within days of the establishment of Poseidon Concepts, NBF analyst Greg Colman initiated coverage on Poseidon Concepts and began to promote its stock aggressively to investors. Colman's inaugural report on Poseidon Concepts stated in part:

> Investment Summary
>
> Poseidon Concepts Corp.'s (Poseidon; PSN-T) patented fluid handling system is driving down per-well costs for producers while earning an ~80% EBITDA margin and estimated four month payback period for PSN shareholders. The company's tanks provide customers with cost savings as much as 70% below traditional 400 bbl tank farms' costs. PSN's fleet has grown from four in June 2010 to a current level north of 170 and we expect 240 by June 2012. This growth is a result of the systems' low capital requirements and the high demand from customers. Approximately two-thirds of the current fleet is in the United States, with the remainder in Canada. We estimate 2012E EBITDA of $177 million would represent only ~7% of the available market, suggesting running room for both PSN and (inevitable) competitors who will likely appear. In the meantime, first-mover advantage coupled with a production neatly sandwiched between patent protection on one side and strict regulatory requirements on the other, suggest PSN may surprise margin sustainability naysayers. PSN was spun-out of Open Range Energy Corp. (ONR-T) in November of 2011 as a pure-play energy

services company. We are initiating coverage on PSN with a $15.00 target and Outperform rating; our target price is driven by a 6.3x 2012E EV/EBITDA multiple. If the company is able to capitalize on its first-mover advantage and quickly acquire a meaningful market share while also diversifying into additional complementary lines of business, we believe the company could be worth north of $20/share within two to three years.

[...]

Large Market to Service

We believe the North American market potential for PSN's tanks as storage vessels for frac jobs is currently over 3,000 and part of the high-growth frac stimulation segment of oilfield services. These estimates, shown in Exhibit 2, put PSN's year-end North American market share at approximately 4%. This leaves significant opportunity for the company to continue to grow, and with a track record of 0% of the market to 4% in 18 months, further expansion seems likely. Furthermore, the size of the total market will likely continue to grow. Horizontal drilling and hydraulic fracturing services have been two extremely high growth sectors over the past two years and continued expansion would mean an even greater demand for PSN's fluid systems. We suspect PSN has ample manufacturing capacity to satisfy ramping this demand: a fluid handling system's construction time is currently seven days and up to nine tanks can be constructed per week.

First-Mover Advantage

PSN is the first to market with this modular tank design system; as a result, ***E&Ps have been clamouring to lock-up PSN with service contracts.*** PSN has $90 million in revenue contracted through September 2012 and 100% repeat business from all prior clients. Additionally, no single client accounts for more than 10% of the company's business. ***These factors provide both revenue clarity for the vast majority of the company's 2012 dividend and low customer risk should a client fail to pursue repeat business.***

[...]

Please note, our 2012 EBITDA estimate of $176.8 million is well above management's guidance of $130 million. We believe management is being overly conservative regarding the near-term demand for their product and build-out timeline. Initiating Coverage with an Outperform rating and $15.00 target We are initiating coverage on PSN with an Outperform rating and $15.00 target, which is driven by 6.3x EV/EBITDA on our $176 million 2012 EBITDA estimate. We view PSN's system as one of the more attractive innovations in the service space in recent memory, targeting one of the most attractive sub-sectors; specifically, reducing producer's costs on high-volume frac jobs. Although competition is likely to emerge, PSN's first mover advantage coupled with the balance of regulations and patents, suggests to us that PSN has likely between six and 18 months of outsized returns prior to competitors eroding the market to the point where pricing is materially impacted. We watch for PSN to diversify service offerings beyond its current tank systems into complementary fluid handling business lines in order to broaden the product offering and hence, barriers to emerging competition. Due to only two days of trading history, we rely on proxy measures when determining an appropriate valuation multiple. Our 6.3x multiple is a premium to Total Energy Services Inc.'s (TOT-T) average EV to forward consensus EBITDA multiple of 5.1x since early 2009 (pre-2009 average multiple range of 6.4x-6.8x likely not relevant in the near term due to overall macroeconomic instability). We believe this premium is justified by (1) an accompanying dividend yield and (2) an extremely high growth profile. Ultimately, should PSN be able to capture market share and vertically integrate into higher value-add businesses, we suspect a value of ~$20/share could be realized in two to three years. Overall, we believe PSN's novel tank product will flourish as producers continue to scramble for methods to reduce overall drilling costs, and meaningful competition is unlikely to materially erode margins in the near term. We rate Poseidon an Outperform. [Emphasis added.]

96. Approximately nine months later, even after Poseidon Concepts' AR had grown rapidly, NBF analyst Greg Colman continued to promote Poseidon

Concepts' stock aggressively to investors. In an August 9, 2012 research report, Colman stated:

> ***Despite market commentary surrounding new competition, we continue to see little (or no) evidence of cracks in PSN's business model, which has been reinforced with our independent third-party research. Our view of PSN possessing above-average growth owing to very low market penetration coupled with further regulatory tailwinds suggests continued EBITDA momentum in our forecast period. Outperform.***
>
> [...]
>
> Where Could We Be Wrong? PSN's Accounts Receivable Remains Stubbornly High.
>
> PSN's accounts receivable balance continues to increase on an absolute basis as well as in days; ***while this is moderately concerning, it is not unheard of for services with large U.S. growth. Furthermore, we expect days receivables should begin to fall in Q4. PSN's days in accounts receivable increased to 197.3 days from 145.3 days in Q1 and now stands at $118.6 mln. While this is high, we are not overly concerned.*** Firstly, PSN has clear capacity in its $100 mln two-year revolving credit facility (currently drawn to $35 mln) to finance working capital requirements. Secondly, AR tends to be high for companies in high growth phases. Thirdly, U.S. clients have a tendency to gravitate towards longer receivables cycles – upwards of 120 days. Out of our U.S.-weighted services peers, we see an average days receivable of 92 (versus pure-play Canadian operations average of 47 days). Furthermore, this value has historically reached as high as 168 days for some of these firms (our Canadian operators peak at 109 days). ***While PSN's 197 days is the largest value, it is not an outlier. Coupled with PSN's unprecedented growth rate, we take some comfort.*** Management has indicated many steps have been taken to streamline ticketing and field billing, which should partially come into effect in Q3, and more fully impact Q4 receivables.
> [Emphasis added.]

THE MISREPRESENTATIONS

97. The Circular and the Prospectus contained the following misrepresentations:

(a) Misrepresentations relating to revenue recognition;

(b) Misrepresentations relating to Poseidon Concepts' EBITDA forecast;

(c) Misrepresentations relating to Poseidon Concepts' internal controls over financial reporting;

(d) Misrepresentations relating to AR; and

(e) Misrepresentations about Poseidon Concepts' compliance with IFRS and its own accounting policies, including the Representation; and

(f) The misrepresentation that Poseidon Concepts' Management Team was Ethical and that its Board would establish High Standards and Proper Corporate Governance Practices.

Poseidon Concepts Recognized Revenue Improperly at all Times

98. Poseidon Concepts' own revenue recognition policy, as disclosed in its financial statements, requires that revenue can only be recognized when "there is persuasive evidence of an arrangement, tank rentals and related services are provided, the rate is fixed and determinable and collectability is reasonably assured";

99. Poseidon Concepts purportedly prepared financial statements in accordance with IFRS. Pursuant to IFRS, revenue can only be recognized when the amount of revenue can be measured reliably and it is probable that the economic benefits associated with the transaction will flow into the entity;

100. Poseidon Concepts recognized revenue in violation of its accounting policies and IFRS, when: 1) there was no persuasive evidence of an arrangement between Poseidon Concepts and the client; 2) the price was not fixed and determinable; and/or 3) collectability was not reasonably assured;

101. *First*, as explained above, among other means and documents that may be applicable, the field ticket fixes and determines the price payable by the client and the invoice evidences revenue. Poseidon Concepts booked

revenue that was not fixed and determinable, nor evidenced. Poseidon Concepts recognized revenue when one or more of the requirements for revenue recognition had not been achieved and/or the arrangement between Poseidon Concepts and the client was not legally and persuasively evidenced;

102. *Second*, in order to recognize revenue, Poseidon Concepts was required to be reasonably assured that the amount is collectible. IFRS requires that revenue be recognized only when it is probable that the economic benefits of the transaction will flow into the enterprise. In practice, Poseidon Concepts violated both these standards, and recognized revenue when collectability was not reasonably assured;

103. In addition to serving as evidence of revenue and fixing the price payable by the client, the field ticket is important for collection purposes. Without a timely field ticket, collection was in jeopardy, because client did not commit to pay the amounts it purportedly owed to Poseidon Concepts;

104. As noted, Poseidon Concepts recorded revenue from clients under the minimum commitment arrangements before the revenue recognition requirements had been met. As it turns out, when Poseidon Concepts demanded payment, they refused to pay;

105. Moreover, as explained, Poseidon Concepts' field ticketing and invoicing processes were delayed at all times. Inasmuch as these processes were delayed, collection was further uncertain because, as Poseidon Concepts itself admits, its clients operate in the volatile oil and gas exploration and production sector and their ability to meet their financial obligations would be negatively impacted by various industry-related and customer-specific factors;

106. In other words, the more the field ticketing and invoicing processes were delayed the more it was likely that the client would become unable to pay. This risk was exacerbated by the fact that the majority of Poseidon Concepts' customers were other than investment grade parties. Indeed, Poseidon Concepts disclosed for Q2 and Q3 2012 that, respectively, only 41% and 38% of Poseidon Concepts' AR was due from investment grade parties;

107. Moreover, Poseidon Concepts did not have an established client base and, as such, it engaged with a rapidly growing number of new customers whose creditworthiness had not been previously tested;

108. Additionally, Poseidon Concepts was aware that many, if not all, of the minimum commitment clients were refusing to pay the amounts they purportedly owed to Poseidon Concepts. Nonetheless, Poseidon Concepts continued to purportedly provide services to, and to record revenue from, them without securing the necessary assurances about collection;

109. In such circumstances, Poseidon Concepts was required to have effective internal controls in place to ensure that its counterparties were creditworthy and able to pay, but it did not;

110. At all material times, Poseidon Concepts did not have effective credit-check policies to verify the clients' creditworthiness so as to give reasonable assurance that the amounts purportedly owed to Poseidon Concepts were collectible. Such policies were purportedly established in or about November 2012, as Poseidon Concepts disclosed in the Q3 2012 MD&A:

> The Corporation has established a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions. Credit limits are established for each customer, which represents the maximum exposure. The Corporation's credit limit review includes customer cash flow analysis, external debt ratings, and credit references when appropriate. Customers that fail to meet the Corporation's benchmark creditworthiness may transact with the Corporation only after providing a cash deposit to offset a portion of the credit amount; these customers will be subject to an added level of monitoring by the Corporation until sufficient payment history is established.

111. Prior to November 2012, Poseidon Concepts did not have effective policies in place to evaluate the creditworthiness of its customers, the majority of whom were other than investment grade parties and had not established a credit history with Poseidon Concepts;

112. Before the implementation of this policy, Poseidon Concepts had no reasonable assurance that the amounts purportedly due from clients were collectible. Nor was it probable that the economic benefits of the transaction would flow into the company. As such, Poseidon Concepts' revenue recognition practices violated both IFRS and the company's own accounting policies;

Poseidon Concepts' EBITDA Forecast was False at all Times

113. In the Circular and the Prospectus, Poseidon Concepts provided EBITDA guidance for fiscal year 2012 based on revenue to be generated from its long-term, minimum commitment arrangements;

114. For example, the Circular stated:

> Poseidon is forecasting EBITDA of $130 million and capital expenditures of $25 million for the year ending December 31, 2012. As of the date of this Information Circular, Poseidon has secured an aggregate of $87 million in long-term minimum commitments from customers through to September 2012.

115. Similarly, Poseidon Concepts' Material Change Report filed on SEDAR on January 17, 2012, which was incorporated by reference into the Prospectus, stated:

> Based on increased customer demand, as well as the newly approved capital program and accelerated tank system fleet expansion discussed above, Poseidon has increased its EBITDA guidance for 2012 to $170 million, which is approximately 31% higher than its previous EBITDA guidance for 2012. Part of the increased guidance can be attributed to customer commitments for nearly 60% of the current tank system fleet, representing rental revenue of approximately $150 million.

116. All such EBITDA forecasts were wholly unreasonable and were materially false and misleading, because they were based on improper revenue recognition practices;

117. Indeed, Poseidon Concepts cautioned on February 14, 2013 that: "all previous guidance with respect to the Company's business should no longer be relied upon";

Poseidon Concepts' Disclosures about Its Internal Controls over Financial Reporting were False and Misleading

118. At all times, Poseidon Concepts was required to assess the effectiveness and propriety of its internal controls over financial reporting on an ongoing basis;

119. For the quarterly periods relevant to this action, Poseidon Concepts reported that it had "identified weaknesses due to the limited number of finance and accounting personnel at the Corporation dealing with complex and non-routine accounting transactions that may arise." Notwithstanding these weaknesses, however, Poseidon Concepts at all times "concluded that the internal controls over financial reporting were designed properly." In the Q3 2011 MD&A, which was incorporated by reference into the Prospectus, Poseidon Concepts stated:

> Notwithstanding the weaknesses identified with regards to complex and non-routine accounting matters, the Corporation concluded that all other of its internal controls over financial reporting have been designed properly at September 30, 2011.

120. Accounting tasks related to revenue recognition and AR are *not* complex and non-routine accounting transactions, but are straightforward and routine accounting transactions. At all material times, Poseidon Concepts stated or implied that there were no weaknesses in the accounting of revenue and AR;

121. In the Q3 2012 MD&A, Poseidon Concepts reported for the first time that "its internal controls over financial reporting were not completely effective";

122. In fact, Poseidon Concepts' internal controls over financial reporting were defective and completely ineffective at all material times, including at the times at which the Circular and the Prospectus were issued, and they were not designed properly to provide reasonable assurance that Poseidon Concepts' financial statements were reliable;

123. In the alternative, and to the extent that the internal controls were 'designed properly' but 'were not adhered to or implemented properly,' the statement that they were 'designed properly' was misleading, because Poseidon Concepts did not disclose that it failed to adhere to, or to properly implement, such internal controls;

Poseidon Concepts' Disclosures about, and Accounting Treatment of, AR were Improper, False and Misleading

124. Due to Poseidon Concepts' improper revenue recognition practices, it reported a significantly inflated AR position at all material times;

125. Contemporaneously with the Arrangement, and annexed to the Circular, Open Range provided a "Pro Forma Consolidated Statement of Financial Position," which disclosed, as at June 30, 2011, $15 million accounts receivable attributable to Poseidon Concepts' Tank Rental Business. Poseidon Concepts' AR position grew exponentially in the subsequent periods, as summarized below:

Period (as at the end of)	Total AR Position	Not Past Due AR (age below 120 days)	Past Due AR (age over 120 days)
2011 Annual	$53.6 million	$47.6 million (89% of total AR)	$6 million (11% of total AR)
Q1 2012	$83 million	undisclosed	undisclosed
Q2 2012	$118.6 million	$99.5 million (84% of total AR)	$19.1 million (16% of total AR)
Q3 2012	$125.5 million	$89.4 million (71% of total AR)	$36.1 million (30% of total AR)

126. As seen in the chart above, Poseidon Concepts rapidly added to its AR position and, as at the end of Q3 2012, it reported $125.5 million AR despite having written off $9.5 million of its AR;

127. Thirty percent of Poseidon Concepts' AR as at September 30, 2012 was considered "past-due," or aged more than 120 days. A portion of Poseidon Concepts' purported AR was aged more than 190 days;

128. By virtue of IFRS and its own accounting policies, Poseidon Concepts was required at all times to monitor its AR on an ongoing basis, to evaluate the quality of its AR position, and to record allowances for *doubtful receivables* in order to not report inflated AR. Indeed, Poseidon Concepts' 2011 MD&A states:

> Allowance for Doubtful Trade Receivables
>
> Poseidon evaluates its trade receivables through a continuous process of assessing its portfolio on an individual customer and overall basis. This process

> consists of a thorough review of collection experience, current aging status of the customer accounts, financial condition of the Corporation's customers, and other factors. Based on its review of these factors, it establishes or adjusts allowances for specific customers as well as general provisions if industry conditions warrant. This process involves a high degree of judgment and estimation and frequently involves significant dollar amounts. Accordingly, the Corporation's results of operations could be affected by adjustments to the allowance due to actual write-offs that differ from estimated amounts.

129. In addition, by virtue of IFRS and its own accounting policies, Poseidon Concepts was required to closely review its AR quality on an ongoing basis to determine if any debt had become uncollectible. Poseidon Concepts admitted this obligation, and stated for the first time in the Q3 2012 MD&A, when it wrote off $9.5 million AR due to bad debt:

> The Corporation reviews its accounts receivable amounts quarterly in determining bad debt expense and individual amounts are written down to their expected realizable value when they are determined not to be fully collectable. In determining bad debt expense, the Corporation considers a variety of circumstances for each specific customer, which include but are not limited to, when the customer has indicated an unwillingness to pay, the Corporation is unable to communicate with the customer over an extended period of time, the customer has entered creditor protection or other economic circumstances indicate the inability to pay, and other methods to obtain payment have been utilized and have not been successful.

130. All of the above statements were false or misleading;

131. *First*, pursuant to IFRS and its own accounting policies, Poseidon Concepts was required to record allowances, but failed to do so;

132. Poseidon Concepts' own predecessor, Open Range, had a policy to record allowances for doubtful accounts, and had done so in the past, as seen in the chart below:

Period (as at the end of)	AR (net of allowance)	Allowance Recorded	Uncollectible Amounts Written Off
Q3 2008	$9.38 million	$523,000	Nil
Q4 2008	$18.46 million	$785,000	Nil
Q1 2009	$4.45 million	$785,000	Nil
Q2 2009	$1.76 million	$1.05 million	Nil
Q3 2009	$2.99 million	$1.05 million	Nil
Q4 2009	$10.50 million	$949,000	$94,000

133. Michaluk, Dawson, Jensen and Winger were intimately familiar with Open Range's and Poseidon Concepts' allowance policy and practices. Michaluk is a Chartered Accountant, and was Open Range's CFO and Vice-President, Finance, from September 2006 onwards. Dawson was President, CEO and a director of Open Range from the company's inception. Winger was a director of Open Range from its inception who purported to specialize in securities law. Jensen was a director of Open Range from its inception and a member of its Audit Committee;

134. Poseidon Concepts was required at all times to record allowances for doubtful receivables, due to:

(a) the age of its AR;

(b) the size of its AR;

(c) the rate by which its AR increased;

(d) the amount of its AR that was past due;

(e) the rate by which its past due AR increased;

(f) the fact that only 38-41% of its AR portfolio was due from investment grade parties;

(g) the ongoing "receivables problem"; and

(h) the fact that Poseidon Concepts was a successor to Open Range, that Dawson, Michaluk, Jensen and Winger were involved in Open Range's allowance policy and the implementation of the same, and that *Open Range took AR allowances.*

135. Poseidon Concepts did not take an allowance, which in and of itself, caused the reporting of inflated AR position at all material times;

136. *Second*, at all times, Poseidon Concepts did not have effective policies in place to address the AR issues. As such, contrary to their obligations to do so, and what Poseidon Concepts stated in its Q3 2011 MD&A, Poseidon Concepts' officers did *not* effectively "oversee all material transactions of the Corporation" to mitigate the risk of material misstatements in Poseidon Concepts' financial statements;

137. As Michelle-Louise Rye, a senior Executive Assistant at Poseidon Concepts, speaking on behalf of her employer, wrote to a Poseidon Concepts shareholder on or about November 16, 2012, it was only in or about November 2012 that Poseidon Concepts purportedly took steps to completely revise its internal controls to address the issues arising out of its AR:

> As far as the receivables problem goes we have already taken steps to completely revise our internal controls to address this issue, since this was brought to our attention in late Q3 just prior to releasing our results we have been diligently trying to resolve outstanding accounts of customers. Regardless, we are focused on a long term strategy, not short term results.

138. On November 16, 2012, Michelle-Louise Rye also wrote to another shareholder advising him that: "More importantly and in addition, we have totally revised our internal controls to address customer accounts in arrears." Michelle-Louise Rye also corresponded with other Poseidon Concepts shareholders, informing them of these changes;

139. Poseidon Concepts authorized Michelle-Louise Rye to speak on its behalf. Michelle-Louise Rye regularly communicated to the market and investors on behalf of Poseidon Concepts. Her statements with regard to Poseidon Concepts are statements of Poseidon Concepts;

140. At all material times, Poseidon Concepts improperly accounted for AR and failed effectively to evaluate the AR quality on an ongoing basis as it was required to do pursuant to IFRS and its own accounting policies;

141. On February 14, 2013, Poseidon Concepts admitted that it had reported grossly inflated AR, and disclosed that it would restate financial statements for Q1 through Q3 2012 to write-off "approximately $94 million to $102 million," representing approximately 80% of its purported $125.5 million AR.

Poseidon Concepts' Financial Statements did not Comply with IFRS, nor with Its Own Accounting Policies, and Did Not Fairly Present Its Financial Position, Financial Performance and Cash Flows

142. The Impugned Documents and/or certain of the documents incorporated therein by reference included, whether explicitly or implicitly, a statement similar to the below, which is derived from Open Range's Q3 2011 Interim Financial Statements:

> The interim consolidated financial statements and comparative information have been prepared in accordance with International Financial Reporting Standards (IFRS). Open Range adopted IFRS on January 1, 2011 with a transition date of January 1, 2010. Previously, the Corporation prepared its interim consolidated financial statements in accordance with Canadian generally accepted accounting principles (GAAP). Open Range has provided IFRS accounting policies and prepared reconciliations between GAAP and IFRS in note 3 and note 17, respectively, to its March 31, 2011, June 30, 2011, and September 30, 2011 interim consolidated financial statements.

143. All such statements were false. As particularized above, Poseidon Concepts' financial statements did not comply with IFRS, nor with the company's own accounting policies;

144. On February 14, 2013, Poseidon Concepts admitted that at least its Q1, Q2 and Q3 2012 Interim Financial Statements and MD&A did not comply with IFRS, nor with its accounting principles, and stated:

> The Board of Directors, the Audit Committee and the Special Committee are working with their advisors, the Company's auditors and management to more specifically quantify the extent and scope of the restatements required in the Financial Statements to ensure that revenue is recognized in accordance with the Company's accounting policies and International Financial Reporting Standards.

145. Additionally, IFRS requires that financial statements must present fairly the financial position, financial performance and cash flows of the company. Because of the misrepresentations particularized above,

Poseidon Concepts' financial statements did not fairly present its financial position, financial performance and cash flows;

The Prospectus Misrepresented that Posedion Concepts' Management Team was Ethical and that its Board would establish High Standards and Proper Corporate Governance Practices

146. According to the Circular, which was incorporated by reference into the Prospectus:

> A diverse and experienced management team has been assembled to lead Poseidon and will continue to assess Poseidon's longer-term strategy and organizational needs. All executive officers of Poseidon will meet the high standards to be set by the Poseidon Board which are expected to include, but not be limited to, strong business ethics, adherence to proper corporate governance principles and knowledge of public company compliance requirements.

147. These statements were a misrepresentation. In fact, the executive officers of Poseidon Concepts did not meet "high standards," Poseidon Concepts' Board did not establish such standards, and the standards established by the Board (if any) did not include strong business ethics, adherence to proper corporate governance or knowledge of public company compliance requirements. The absence of such standards was a material fact which the Prospectus failed to disclose;

THE MISREPRESENTATIONS IN THE IMPUGNED DOCUMENTS PARTICULARIZED

The Circular

148. Attached to the Circular were certain documents relating to each of Open Range's, New Open Range's and Poseidon Concepts' businesses, operations and financials, including: 1) the document titled "Information Concerning Poseidon Post-Arrangement"; and 2) the document titled "Pro Forma Financial Statements of Poseidon." In addition, the Circular effectively incorporated by reference Open Range's Audited Financial Statements for the years ended December 31, 2010 and 2009, filed on SEDAR on March 22, 2011;

149. The Circular, including the documents annexed thereto and the information incorporated therein, was false and misleading because it contained, as particularized above:

(a) misrepresentations relating to revenue recognition;

(b) misrepresentations relating to Poseidon Concepts' 2012 EBITDA forecast;

(c) misrepresentations relating to Poseidon Concepts' internal controls over financial reporting;

(d) misrepresentations relating to AR; and

(e) misrepresentations about compliance with IFRS.

150. The Circular included financial statements that were purportedly prepared in accordance with IFRS, and had to present fairly Poseidon Concepts' financial position, financial performance and cash flows. However, as a result of the above misrepresentations, the Circular did not fairly present Poseidon Concepts' financial position, financial performance and cash flows;

151. In addition, the Circular contained the Representation, which was false;

The Q3 2011 Interim Financial Statements

152. The Q3 2011 Interim Financial Statements were false and misleading because they contained, as particularized above:

(a) misrepresentations relating to revenue recognition;

(b) misrepresentations relating to AR; and

(c) misrepresentations about compliance with IFRS.

153. The Q3 2011 Interim Financial Statements were purportedly prepared in accordance with IFRS, and had to present fairly Poseidon Concepts' financial position, financial performance and cash flows. However, as a result of the above misrepresentations, the Q3 2011 Interim Financial Statements did not fairly present Poseidon Concepts' financial position, financial performance and cash flows;

154. In addition, the Q3 2011 Interim Financial Statements contained the Representation, which was false;

The Q3 2011 MD&A

155. The Q3 2011 MD&A incorporated information from Open Range's Audited Financial Statements for the years ended December 31, 2010 and 2009, filed on SEDAR on March 22, 2011;

156. The Q3 2011 MD&A, including the information incorporated by reference therein, was false and misleading because it contained, as particularized above:

(a) misrepresentations relating to revenue recognition;

(b) misrepresentations relating to Poseidon Concepts' internal controls over financial reporting;

(c) misrepresentations relating to AR; and

(d) misrepresentations about compliance with IFRS.

157. In addition, the Q3 2011 MD&A contained the Representation, which was false;

The Prospectus

158. The Prospectus incorporated by reference, among other documents: 1) Open Range's Annual Information Form dated March 22, 2011; 2) Open Range's Audited Financial Statements for the years ended December 31, 2010 and 2009, filed on SEDAR on March 22, 2011; 3) the Q3 2011 Interim Financial Statements, which is an Impugned Document; 4) the Q3 2011 MD&A, which is an Impugned Document; 5) the Circular, which is an Impugned Document; and 6) Poseidon Concepts' Material Change Report filed on SEDAR on January 17, 2012 relating to the company's updated capital program and financial and operating forecasts for 2012, which contained the misrepresentations about the EBITDA forecast and was, in itself, false and misleading;

159. The Prospectus, including the documents incorporated by reference therein, was false and misleading because it contained, as particularized above:

(a) misrepresentations relating to revenue recognition;

(b) misrepresentations relating to Poseidon Concepts' 2012 EBITDA forecast;

(c) misrepresentations relating to Poseidon Concepts' internal controls over financial reporting;

(d) misrepresentations relating to AR; and

(e) misrepresentations about compliance with IFRS.

160. The Prospectus incorporated by reference financial statements that were purportedly prepared in accordance with IFRS, and had to present fairly Poseidon Concepts' financial position, financial performance and cash flows. However, as a result of the above misrepresentations, the Prospectus did not fairly present Poseidon Concepts' financial position, financial performance and cash flows;

161. In addition, the Prospectus contained the Representation, which was false;

THE TRUTH IS GRADUALLY REVEALED OVER THREE CORRECTIVE DISCLOSURES

162. On November 14, 2012, Poseidon Concepts shocked the market by releasing the results from its Q3 2012 operations, announcing, among other things, that it was:

(a) taking a charge of $9.5 million for uncollectible debt, reducing its AR position and taking a charge to its net income and reported assets;

(b) significantly increasing in the size of its AR portfolio to $125.5 million (net of the $9.5 million write-off), including $36 million past due (outstanding for more than 120 days);

(c) disclosing for the first time that its internal controls over financial reporting "were not completely effective";

(d) introducing a new credit policy to mitigate the problems with doubtful receivables: "The Corporation has established a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions. Credit

limits are established for each customer, which represents the maximum exposure. The Corporation's credit limit review includes customer cash flow analysis, external debt ratings, and credit references when appropriate. Customers that fail to meet the Corporation's benchmark creditworthiness may transact with the Corporation only after providing a cash deposit to offset a portion of the credit amount; these customers will be subject to an added level of monitoring by the Corporation until sufficient payment history is established"; and

(e) disclosing that only 38% of its AR portfolio was due from investment grade parties.

163. This disclosure caused Poseidon Concepts' share price to decline from $13.22 as at the close of trading on November 14, 2012, to $5.00 as at the close of trading on November 15, 2012, representing a 62% decline in the stock's market value. On November 15, approximately 32.6 million Poseidon Concepts' shares changed hands, representing 40% of Poseidon Concepts' 81.1 million outstanding shares;

164. Although the November 14, 2012 disclosure partially revealed the true state of Poseidon Concepts' business and financial affairs, the Q3 2012 MD&A and Interim Financial Statements were false and misleading, and did not disclose the entire truth. They contained various misrepresentations, including the reporting of materially inflated revenue, AR, income and gross margins, and did not fairly present Poseidon Concepts' financial position, financial performance and cash flows;

165. In the morning of December 27, 2012, Poseidon Concepts, once again, surprised the market by issuing a press release, disclosing that, among other things:

(a) the Special Committee had formed to investigate the concerns surrounding its AR, and to recommend "managerial changes that will strengthen the operations and finance functions of the Company";

(b) "the Company has been diligently addressing its accounts receivable in recent weeks and is actively pursuing collections, including commencing formal collection processes in appropriate circumstances"; and

(c) Poseidon Concepts "may need to make additional write downs of accounts receivable in future periods and such write downs may be significant."

166. As a result of this disclosure, Poseidon Concepts' share price plummeted from $3.31 as at the close of trading on December 24, 2012 to $1.48 as at the close of trading on December 27, 2012, representing a further 55% decline in Poseidon Concepts' share price;

167. On January 11, 2013, Poseidon Concepts provided an update on the progress of the Special Committee's investigation. To that date, Poseidon Concepts had undergone significant managerial changes, including:

(a) the appointment of Dawson as Poseidon Concepts' Interim President and CEO;

(b) the resignation of Michaluk as Poseidon Concepts' CEO and director, and his appointment as the company's Interim CFO;

(c) the resignation of MacKenzie as Poseidon Concepts' CFO;

(d) the resignation of Cliff Wiebe as Poseidon Concepts' President, Chief Operating Officer and director; and

(e) the resignation of Joe Kostelecky as Poseidon Concepts' Senior Vice-President, United States division.

168. On February 14, 2013, Poseidon Concepts provided a further update regarding the status of the Special Committee's investigation, disclosing among other things that:

(a) based on the recommendations of the Special Committee with the assistance of its independent legal and accounting advisors, Poseidon Concepts' board of directors had determined that $95 to $106 million of the company's purported $148 million revenue during the first nine months of 2012 should not have been recognized;

(b) as a result, $94 million to $102 million of Poseidon Concepts' $125.5 million AR should not have been recorded;

(c) Poseidon Concepts' Q1, Q2 and Q3 2012 Interim Financial Statements and MD&As would be restated;

(d) Poseidon Concepts' Q1, Q2 and Q3 2012 Interim Financial Statements did not comply with IFRS, nor with Poseidon Concepts' own accounting policies;

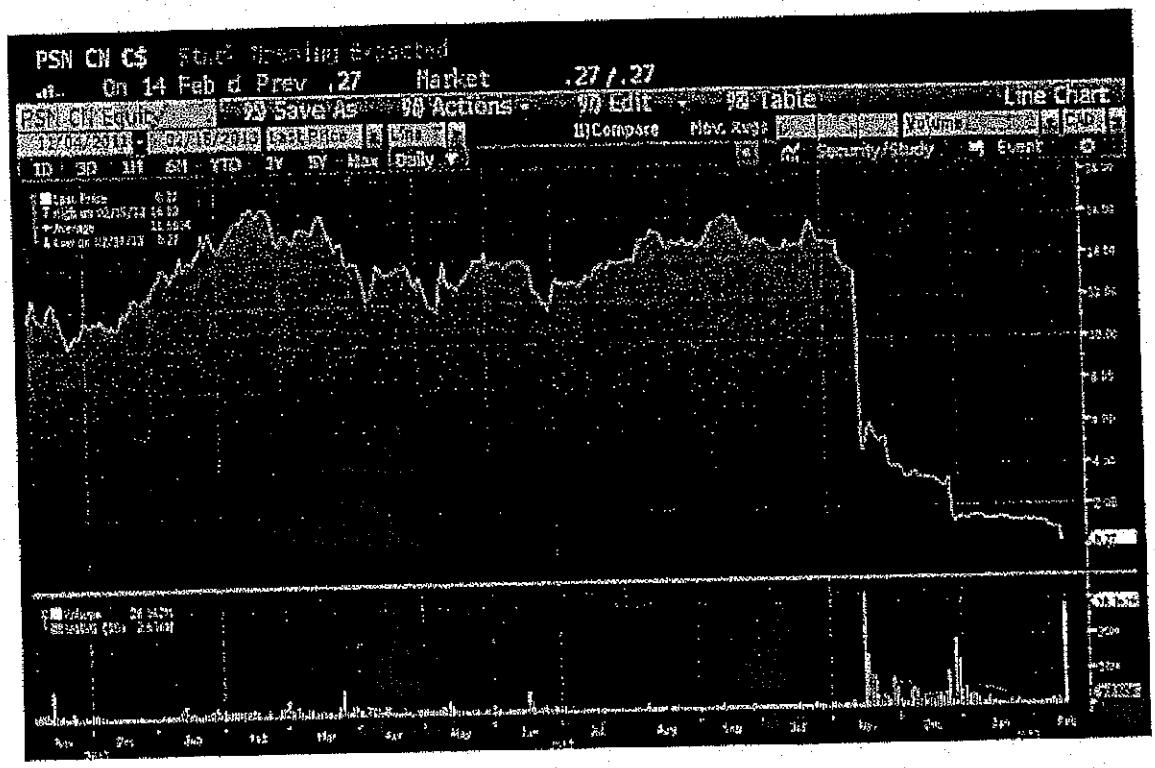
(e) investors should no longer rely on Poseidon Concepts' previous 2012 EBITDA forecast; and

(f) all of these events were "primarily related to [Poseidon Concepts'] long term take-or-pay arrangements."

169. As a result of this disclosure, Poseidon Concepts' shares, once again, plummeted from $0.89 as at February 13, 2013, to $0.27 on February 14, 2013, representing a further 70% decline on the stock price;

170. Within a few hours from Poseidon Concepts' February 14, 2013 disclosure, the Alberta Securities Commission issued an order prohibiting all trading or purchasing in Poseidon Concepts' securities until such time that the order is revoked or varied;

171. As such, within only three months, Poseidon Concepts' market capitalization was almost entirely eviscerated. As shown in the chart below, Poseidon Concepts' shares are now virtually worthless:



THE STATUTORY RIGHT OF ACTION FOR SECONDARY MARKET MISREPRESENTATION AND THE DEFENDANT'S FAULT

Statutory Liability for Misrepresentations in the Secondary Market Pursuant to Title VIII, Chapter II, Division II of the QSA

172. The Petitioner pleads the claim found in Title VIII, Chapter II, Division II of the *QSA*, and, if required, the equivalent sections of the Securities Legislation other than the *QSA*, against the Defendant;

173. The Petitioner incorporates herein the allegations set forth at paragraphs 3-9, 24, 27 and 59-93 above;

174. At all material times, each of Open Range and Poseidon Concepts was an issuer and a responsible issuer within the meaning of the Securities Legislation;

175. In conjunction with others, the Bank took the initiative, directly or indirectly, in founding, organizing and/or substantially reorganizing the businesses of Open Range and Poseidon Concepts;

176. At all material times, the Bank was an influential person of each of Open Range and Poseidon Concepts within the meaning of the Securities Legislation;

177. As particularized above, both the Circular and the Prospectus, each of which is a core document within the meaning of the Securities Legislation, contained misrepresentations;

178. The Bank knowingly influenced Open Range or a person or company acting on behalf of Open Range to issue the Circular, or a director or officer of Open Range to authorize, permit or acquiesce in the release of the Circular;

179. The Bank knowingly influenced Poseidon Concepts or a person or company acting on behalf of Poseidon Concepts to issue the Prospectus, or a director or officer of Poseidon Concepts to authorize, permit or acquiesce in the release of the Prospectus;

The Defendant violated the Duties owed to the Members of the Class

180. The Defendant had a duty to not influence Open Range and/or Poseidon Concepts and/or their directors and officers, including, but not limited to, the Directors and Officers, to release, or to cause to be released, or to authorize, permit or acquiesce in the release of the Impugned Documents;

181. Had the Defendant exercised its duty under the *Civil Code of Québec*, it would not have influenced Poseidon Concepts and/or its directors and officers to release, or to cause to be released, or to authorize, permit or acquiesce in the release of the Impugned Documents;

182. The reasonable standard of care expected in the circumstances required the Defendant to act fairly, reasonably, honestly and candidly. The Defendant' conduct failed to meet the requirements imposed by the duty not to harm others by reason of wrongful conduct under the *Civil Code of Québec*;

183. The fault of the Defendant has caused a damage to the Petitioner and the Class Members;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

184. The composition of the Class makes the application of article 59 or 67 C.C.P. impracticable for the following reasons:

a) The number of persons included in the class is estimated to be several thousand;

b) The names and addresses of persons included in the class are not known to the Petitioner;

c) All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible.

185. The claims of the Class Members raise identical, similar or related questions of fact or law, namely:

a) Did the Impugned Documents contain a misrepresentation within the meaning of Title VIII, Chapter II, Division II of the *QSA*?

b) Was the Defendant an influential person of Open Range and/or Poseidon Concepts within the meaning of the *QSA* and the other Securities Legislation?

c) Did the Defendant knowingly influence Open Range and/or Poseidon Concepts and/or their officers and directors, including, but not limited to, the Directors and Officers, to release, or to cause to be released, or to authorize, permit or acquiesce in the release of the Impugned Documents?

d) Did the Defendant violate the duties owed to the Petitioner and the Class Members under the provisions of Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?

e) Did the Defendant therefore commit a fault in regards respectively to Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec* towards the Petitioner and the Class Members, thereby engaging its liability?

f) What damages were sustained by the Petitioner and the Class Members as a result of the Defendant's faults in regards respectively to Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?

186. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

187. The action that the Petitioner wishes to institute for the benefit of the Class Members is an action in damages;

188. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the Petitioner's action against the Defendant, under the cause of action contained in Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation and under article 1457 of the *Civil Code of Québec*;

CONDEMN the Defendant to pay to the Class Members compensatory damages for all monetary losses;

GRANT the class action of the Petitioner on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses, including

expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action.

189. The Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- The Class Members reside everywhere;
- The Defendant's head office is located in Montréal;
- The Petitioner's lawyers have an office in the District of Montréal.

190. The Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Class Members for the following reasons:

- He understands the nature of the action;
- He is available to dedicate the time necessary for an action to collaborate with Class Members; and
- His interests are not antagonistic to those of other Class Members.

191. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE leave under the cause of action contained Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation, and under article 1457 of the *Civil Code of Québec*, and the bringing of a class action in the form of a Motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the Class herein described as:

> "All persons and entities, wherever they may reside or be domiciled, who purchased or otherwise acquired Poseidon Concepts' securities on or before February 14, 2013, other than the Excluded Persons."

or such other group definition as may be approved by the Court.

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

a) Did the Impugned Documents contain a misrepresentation within the meaning of Title VIII, Chapter II, Division II of the *QSA*?

b) Was the Defendant an influential person of Open Range and/or Poseidon Concepts within the meaning of the *QSA* and the other Securities Legislation?

c) Did the Defendant knowingly influence Open Range and/or Poseidon Concepts and/or their officers and directors, including, but not limited to, the Directors and Officers, to release, or to cause to be released, or to authorize, permit or acquiesce in the release of the Impugned Documents?

d) Did the Defendant violate the duties owed to the Petitioner and the Class Members under the provisions of Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?

e) Did the Defendant therefore commit a fault in regards respectively to Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec* towards the Petitioner and the Class Members, thereby engaging its liability?

f) What damages were sustained by the Petitioner and the Class Members as a result of the Defendant's faults in regards respectively to Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the Petitioner's action against the Defendant, under the cause of action contained in Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation and under article 1457 of the *Civil Code of Québec*;

CONDEMN the Defendant to pay to the Class Members compensatory damages for all monetary losses;

GRANT the class action of the Petitioner on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

DECLARE that all Class Members that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgement to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Class Members;

ORDER the publication of a notice to the Class Members in accordance with article 1006 C.C.P.;

REFER the record to the Chief Justice so that he may determine the district wherein the class action is to be brought and the judge before whom it will be heard;

THE WHOLE with costs, including the costs of all publications of notices.

Montréal, February 22, 2013

Siskinds Desmeules, avocats

SISKINDS, DESMEULES, AVOCATS
(Me Samy Elnemr)
Lawyer for the Petitioner

SCHEDULE 1

NOTICE TO DEFENDANT

Take notice that the Petitioner has filed this action or application in the office of the Superior Court of the judicial district of Montréal.

To file an answer to this action or application, you must first file an appearance, personally or by advocate, at the courthouse of Montreal located at 1, Notre-Dame East, Montréal, Québec, H2Y 1B6 within 10 days of service of this motion.

If you fail to file an appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10 day period.

If you file an appearance, the action or application will be presented before the court on April 16th, 2013 at 9h00 a.m. On that date, the court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the court may hear the case, unless you have made a written agreement with the Petitioner or the Petitioner's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the court.

These exhibits are available on request.

Montréal, February 22, 2013

Siskinds, Desmeules, avocats

SISKINDS, DESMEULES, AVOCATS
(Me Samy Elnemr)
Lawyers for the Petitioner

500-06-000642-138

No:

SUPERIOR COURT (Class Action)
DISTRICT OF MONTREAL

32580

ADAM KEGEL
Petitioner

vs.

NATIONAL BANK OF CANADA
Defendant

MOTION FOR LEAVE TO PLEAD THE CAUSE OF ACTION CONTAINED IN TITLE VIII, CHAPTER II, DIVISION II OF THE QUÉBEC SECURITIES ACT ("QSA") AND TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Article 1002 C.C.P. and following and 225.4 QSA and following)

Me Samy Elnemr **BS2497**
N/dossier: 67-126

ORIGINAL

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