

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION UNDER Section 129 Of The Securities Act, R.S.O.  
1990, c. S.5, As Amended

And Section 101 Of The Courts Of Justice Act, R.S.O. 1990, c.c43

BETWEEN

ONTARIO SECURITIES COMMISSION

Applicant

AND

@RGENTUM MANAGEMENT AND RESEARCH CORPORATION

Respondent

**FIFTH REPORT TO COURT  
BY A. JOHN PAGE & ASSOCIATES INC.  
RECEIVER OF @RGENTUM MANAGEMENT AND RESEARCH CORPORATION  
AND CERTAIN @RGENTUM MUTUAL FUNDS  
DATED JUNE 9, 2008**

**Background**

1. Upon application of the Ontario Securities Commission (“the OSC”), A. John Page & Associates Inc. (the “Receiver”) was appointed Receiver of @rgentum Management and Research Corporation (the “Corporation”) and certain mutual funds managed by the Corporation (the “Funds”) (collectively, “@rgentum”) by Order of the Honourable Mr. Justice Campbell dated November 16, 2005 (the “Initial Order”).
2. On November 29, 2005, the Receiver made its First Report to the Court (the “First Report”).
3. On December 9, 2005, the Receiver made its Second Report to the Court (the “Second Report”).

4. On December 12, 2005, on a Motion made by the Receiver, the Honourable Mr. Justice Campbell made an Order (the “Second Order”) authorizing the Receiver to assign the Corporation into Bankruptcy and to name itself as Trustee.
5. On January 3, 2006 the Receiver made a Supplementary Report to the First Report (the “Supplementary Report”).
6. On January 5, 2006, on a Motion by the Receiver, the Honourable Mr. Justice Farley made an Order (the “Third Order”) approving the appointment by the Receiver of Acker Finley Inc. (“Acker Finley”) as advisor and consultant to the Receiver with respect to the Receiver’s dealing with the securities and other assets of @rgentum and approving the recommendations of Acker Finley with respect thereto (“the Acker Finley Recommendations”).
7. On June 23, 2006 the Receiver made its Third Report to the Court (“the Third Report”).
8. On July 10, 2006, on a Motion by the Receiver, the Honourable Mr. Justice Cameron made an Order (the “Fourth Order”) ordering and directing the Receiver to undertake the course of investigative activities into the affairs of @rgentum set out in the Third Report.
9. On February 16, 2007 the Receiver made its Fourth Report to the Court (“the Fourth Report”).
10. On March 27, 2007, on a Motion made by the Receiver, the Honourable Mr. Justice Ground made an Order (the “Fifth Order”) ordering that the process for determining claims against the Funds set down in the Fourth Report (“the Claims Process”) be approved and directing the Receiver to implement and administer the Claims Process.
11. This report has been prepared to update the information provided to the Court in the First Report, the Second Report, the Supplementary Report, the Third Report and the Fourth Report and in support of the Receiver’s motion for an order approving its conduct to date, for a passing of accounts and for the approval of a Regulator Communications Protocol.

## Receiver's Statement of Receipts and Disbursements

12. Attached hereto as **Appendix "A"** is a copy of the Receiver's Interim Statement of Receipts and Disbursements for the period from November 16, 2005 to May 31, 2008. On or about December 13, 2007 the Receiver opened a new Receiver's account with Royal Bank of Canada ("Royal") and transferred the balance of the funds in its existing account at HSBC Bank Canada ("HSBC") to the new account. The HSBC account was then closed. This transfer was done in order to reduce the Receiver's monthly banking costs and to efficiently earn interest on the funds in the account. This statement reflects all transactions through the Receiver's accounts at HSBC and Royal with respect to @rgentum. This statement does not reflect the total assets held by the Receiver following the liquidation of the investments of the Funds described in paragraph 15 below. The Receiver holds the greater part of the proceeds of the liquidation separate and apart from its operating receivership accounts, all as is set out in greater detail in paragraph 16 below.
13. The fees and disbursements of Gowling Lafleur Henderson LLP, counsel to the Receiver, are included as a disbursement in the Receiver's Interim Statement of Receipts and Disbursements attached as **Appendix "A"**. They are more particularly set out in the Affidavit of Malcolm Ruby sworn June 9, 2008, separately filed.
14. The fees and disbursements of A. John Page & Associates Inc., as Receiver, for the period from January 1, 2007 to April 30, 2008 are included as a disbursement in the Receiver's Interim Statement of Receipts and Disbursements attached as **Appendix "A"**. Attached hereto as **Appendix "B"** is a Summary of the Invoices rendered by the Receiver and a Schedule of Fees and Time Spent by Staff Members covering the above-mentioned period. The Receiver's detailed invoices, totalling \$364,622.17 plus GST, are voluminous and have therefore not been included in this report. They are more particularly set out in the Affidavit of A. John Page sworn June 6, 2008, separately filed with the Court.

### **Fund Stewardship/Assets on Hand**

15. As authorized by the Third Order, the majority of the investments of the Funds were liquidated on or about January 13, 2006 and since that time the moneys available from that liquidation and through the maturation of fund investments have been invested by Acker Finley in short term money market instruments in accordance with the Acker Finley Recommendations.
16. Attached as **Appendix “C”** is a schedule summarizing the book value of the Funds as at May 31, 2008. At that date, the Receiver was managing investments with a total book value of \$1,664,000, in addition to the amount in the Receiver’s bank account.

### **Unit Holder Enquiries**

17. The Receiver has received and responded to numerous enquiries from unit holders and their advisors by mail, email and telephone. To assist unit holders and their advisors the Receiver is maintaining information on the status of the receivership on its website at [www.ajohnpage.com](http://www.ajohnpage.com). For example, copies of all court reports and court orders are posted there. Since the last court report the Receiver has also posted full details of the Claims Process together with documents entitled “FAQ – Frequently Asked Questions - updated to August 23, 2007” in both English and French, “January 10, 2008 Addendum to the August 23, 2007 FAQ – Recent Developments” also in both English and French and “Bulletin on the Receivership - April 17, 2008” in English. The Receiver intends to continue to post new information on the website when appropriate.

### **Identification of the Solvent Funds**

18. In order to not dissipate resources on Funds without assets, the Receiver had previously determined that the following Funds had no assets:
  - (a) US Master Portfolio
  - (b) Canadian Equity Portfolio;
  - (c) International Master Portfolio;

- (d) Discovery Portfolio; and
  - (e) US Market Neutral Portfolio.
- (Collectively, “the Insolvent Funds”)

The Receiver’s assessment in this regard has not changed.

19. The Receiver had previously determined that the following Funds had some assets:

- (a) Canadian Performance Portfolio;
- (b) Income Portfolio;
- (c) Short Term Assets Portfolio;
- (d) Pooled Market Neutral Portfolio; and
- (e) Canadian LS Equity Portfolio.

(Collectively, “the Solvent Funds”)

This assessment has also not changed.

### **Unit Holder and Creditor Claims Process**

- 20. In accordance with the Claims Process, on April 26, 2007 the Receiver issued letters to the 439 Solvent Fund unit holders enclosing a “Notice of Units” setting down the Receiver’s assessment of that unit holder’s holding of units in one of the Solvent Funds and detailing the procedure that a unit holder had to follow if they wished to dispute that assessment. Most unit holders held their units through “Nominees”. Copies of the Notice of Units and related documentation were also sent to the Nominees.
- 21. On May 10 and 11, 2007 the Receiver ran advertisements in The Globe and Mail newspaper (in English) and La Presse (in French) providing details of the Claims Process and setting a “Claims Bar Date” of 5pm on July 5, 2007.
- 22. The Receiver also wrote to persons listed as unit holders of the Insolvent Funds on April 26, 2007 advising them that no claims process was proposed for those funds at this time, but that they should keep the Receiver aware of any change of address.

23. No unit holder of any of the Solvent Funds validly challenged the Receiver's assessment of their holding of units as set down in the Notice of Units prior to the Claims Bar Date.
24. No party validly filed a creditor claim against any of the Solvent Funds prior to the Claims Bar Date.
25. Attached as **Appendix "D"** is a summary of the number of unit holders and their holdings as established through the Claims Process.
26. The lack of any valid challenges to the Receiver's assessment of unit holdings has helped affirm the success of the Claims Process. The benefits of the "passive" confirmation approach adopted in the Claims Process included the convenience to unit holders of not having to file a claim. The approach was also cheaper than one where every unit holder has to file a claim and each claim has to be reviewed by the Receiver.

### **Proposed Distribution**

27. In the Fourth Report the Receiver stated that it believed it would be prudent, subject to Court approval, to make an interim distribution to unit holders in the Solvent Funds of the majority of the cash in its possession. The Receiver continues to believe this is appropriate. However, this distribution has not yet taken place because the Receiver is having difficulty obtaining tax clearance certificates from CRA (see below).
28. The Receiver has however been preparing for the proposed distribution in anticipation of ultimately receiving the clearance certificates. The Receiver has held meetings with Acker Finley to discuss, among other things, the tax implications for unit holders and the structure and logistics of the proposed distribution.
29. On January 28, 2008 the Receiver wrote to 38 Solvent Fund Unit Holders whose units were held in a Registered Retirement Savings Plan ("RRSP") but not through a Nominee. The Receiver gave them the option of keeping their investment tax sheltered by submitting a form T2033 designating a new RRSP to which any distribution will be paid or having any distribution be taxable upon receipt.

30. The Receiver is in the process of reviewing a number of requests to change the name and/or address of the Nominee to whom any distribution will be paid on behalf of the beneficial unit holders.

### **The Bankruptcy of the Corporation**

31. As permitted by the Second Order, the Receiver assigned the Corporation into Bankruptcy on December 12, 2005 and named itself as Trustee of the Estate of the Corporation (A. John Page and Associates Inc., in its capacity as Trustee of the Corporation, “the Trustee”). The appointment as Trustee was affirmed at the First Meeting of Creditors held on January 3, 2006. At that meeting two inspectors were elected, Mr. Leonard Alksnis and Ms Patricia Ariemma, an employee of the Canada Revenue Agency (“CRA”). Mr. Alksnis sadly passed away in December 2007 and has not been replaced as Inspector so Ms Ariemma is now the sole inspector of the bankrupt estate.
32. At this time, the Trustee has undertaken no investigations or other activity in its capacity as Trustee except for the examinations of certain former officers and employees of the Corporation described later which were conducted pursuant to Paragraph 3(n) of the Initial Order and, with Inspector approval, Section 163(1) of the Bankruptcy and Insolvency Act (“BIA”).

### **Investigations**

33. The Receiver investigated the affairs of @rgentum in accordance with the Fourth Order.
34. As noted in the Third Report, the Funds had reported a total net asset value of \$5,497,000 as at August 31, 2005, whereas the book value of the underlying securities and cash held by the Funds was only \$2,591,000. The difference (excluding a few relatively small accruals) was categorized in @rgentum’s records as “deferred charges” or alternatively “cost amortization” (“the Deferred Charges”). By late September 2005, when @rgentum’s accounts were frozen through the efforts of the Quebec Autorité des Marchés Financiers (“the AMF”), the total amount of the Deferred Charges had risen to

\$3,107,000. The Deferred Charges appear to the Receiver to represent cash moved from the Funds to @rgentum's regular bank account at BMO ("the BMO Regular Account") and then disbursed. A key focus of the investigations has been the transfers categorized as Deferred Charges.

35. The Corporation's primary bank accounts were the BMO Regular Account, which was supposed to be used for the payment of operating costs, and its trust account at BMO ("the BMO In Trust Account"), which was supposed to be used as a conduit for redemption payments to unit holders.
36. The Receiver had previously recreated accounting records in order to determine, among other things, what happened to the Deferred Charges and other moneys transferred to the BMO Regular Account from January 1, 2004 onwards.
37. The Receiver had also previously obtained from CIBC Mellon well in excess of 1,000 documents evidencing who authorized them to transfer moneys from any of the @rgentum Fund accounts to the BMO Regular Account and the BMO In Trust Account after January 1, 2004, as @rgentum's copies of these documents could not be located.
38. In order to further its investigations, the Receiver conducted a series of examinations under oath of former employees and officers of @rgentum. The most extensive, on July 31, August 1, December 17 and December 18 2007, was of Scott Sinclair, the Chief Executive Officer of @rgentum.
39. Attached as **Appendix "E"** is a memorandum that the Receiver has prepared summarizing the findings of the Receiver emanating from the investigations undertaken into the affairs of @rgentum in accordance with the Fourth Order and otherwise.
40. The primary findings from the investigations conducted by the Receiver into the affairs of @rgentum were as follows:
  - (a) to locate unrealized assets - No unrealized assets were located



- (b) to identify transactions which may be challenged by the Receiver or the Trustee resulting in a recovery for @rgentum - The Receiver has identified two payments to Range Corp totalling \$150,000 which it plans to challenge in its capacity as Trustee
- (c) to identify, calculate and prosecute any claims @rgentum may have against third parties - The Receiver has not identified any potential claims against third parties which the Receiver believes it is cost effective to pursue
- (d) to obtain information and explanations concerning monies transferred from the Funds in circumstances where the business purpose of such transfers (in relation to the Funds) is not immediately evident - Further information in this regard is provided in **Appendix "E"**
- (e) to assist the Receiver in allocating assets and expenses between individual Funds and @rgentum for tax and ultimate distribution purposes - The information obtained from the Receiver's investigations has assisted it in filing all outstanding trust tax returns and in its ongoing dealings with CRA regarding its request for clearance certificates
- (f) to ascertain the accuracy of the unit holder register to assist in formulating the most appropriate unit holder claims process - The information obtained from the Receiver's investigations allowed it to propose the "passive" claims process that was approved by the Court in March 2007 and was successfully carried out in the spring and early summer of 2007. This has allowed the Receiver to efficiently create a unit holder register for distribution purposes
- (g) to provide information in response to questions by unit holders as to the facts surrounding their investments - The information obtained from the Receiver's investigations as disclosed through this report and through earlier court reports and documents posted on its website and as summarized in **Appendix "E"** should

help unit holders better understand what happened to their investment in the Funds

41. The information the Receiver has gathered to date does not clearly identify parties from whom it feels it has a strong chance of recovering funds on a cost effective basis. The Receiver believes it is better to move to distribute the funds it has to unit holders rather than deplete them by further investigation and/or action to validate or refute the “facts” as the Receiver currently understands them or as they have been presented to the Receiver and to attempt to effect a recovery for the estate.

**Activities with respect to claims against the @rgentum Québec Balanced Portfolio (the “Quebec Balanced Fund”)**

42. The Initial Order appointed the Receiver as receiver of all the funds managed by the Corporation except one, the Quebec Balanced Fund, which was being wound up by Raymond Chabot Inc. (“Raymond Chabot”) pursuant to an order of the Honourable Justice Pierre J. J. J. of the Quebec Superior Court (“the Quebec Court”) dated October 18, 2004.
43. The Receiver had reason to believe that @rgentum might have a claim against the Quebec Balanced Fund.
44. The difficulties that the Receiver encountered in dealing with Raymond Chabot regarding this potential claim were set out in some detail in the Fourth Report.
45. In light of the matters described in that report and the positions being asserted by Raymond Chabot it was decided that the cost of pursuing a claim against the Quebec Balanced Fund was out of proportion to the likely gain regardless of the merits of the claim. The Receiver therefore withdrew its claim on a no cost basis.

**The Preparation of the Fund Tax Returns**

46. No trust returns had been filed by @rgentum since the year 2000 for any of the Solvent Funds.

47. Prior to any interim distribution to unit holders the Receiver needs to obtain, on a fund by fund basis, a clearance certificate or other satisfactory confirmation that no tax is due to CRA.
48. The Receiver had previously prepared preliminary statements of profit and loss for each of the Solvent Funds for 2005 and 2006. The Receiver worked with Acker Finley to finalize these statements and then filed trust tax returns for 2005 and 2006 in March 2007.
49. In January 2008, after concluding the examination of the Chief Executive Officer, the Receiver prepared and filed a total of 23 "Nil" trust tax returns representing the unfiled returns up to 2004 for each of the Solvent Funds. The Receiver still does not have complete books and records covering the period ended December 2004. However the Receiver was able to make the assertion that no tax was payable in any year up to 2004 based on, among other things, the testimony of Scott Sinclair. These returns have recently been assessed as filed by CRA.
50. The Receiver prepared statements of profit and loss for each of the Solvent Funds for 2007 and, with the assistance of Acker Finley, filed trust tax returns for 2007 in March 2008.
51. The Receiver applied to CRA for clearance certificates for each of the Solvent Funds in March 2007 at the same time the 2005 and 2006 returns were filed. These returns were assessed as filed in July or August 2007. The Receiver followed up with CRA regarding the requests for clearance certificates on a regular basis after that. After receiving a series of less than satisfactory responses it was concluded that CRA had mislaid the applications and they were resubmitted in the fall of 2007.
52. The Receiver was contacted by CRA in January 2008. CRA indicated that they wished to audit all the 2005 and 2006 Solvent Fund trust tax returns.
53. CRA commenced its audit in January 2008 and in February 2008 wrote to the Receiver indicating that, among other things, they were contemplating disallowing any deduction

from income on account of any of the \$3,107,000 of Deferred Charge moneys transferred to @rgentum (the “Proposed Disallowance”). A cursory review by the Receiver suggested that, if not challenged, the impact of all of the adjustments being contemplated by CRA might cause the Solvent Funds to have to pay approximately \$750,000 of income tax. This was not a palatable option.

54. The Receiver therefore engaged the services of a mutual fund tax specialist from PricewaterhouseCoopers LLP (“PWC”) to assist it in its discussions with CRA.
55. With the aid of Acker Finley and PWC, the Receiver then prepared a response to CRA’s Proposed Disallowance.
56. A number of meetings were then held between the Receiver, Acker Finley and PWC and CRA to discuss and develop the Receiver’s position concerning the Proposed Disallowance.
57. With the aid, in part, of the testimony of Scott Sinclair, the Receiver then compiled and provided CRA with detailed support for the deductibility of a portion of the Deferred Charge “write-off” sufficient to ensure none of the Solvent Funds would have any taxable income.
58. The Receiver is currently cautiously optimistic that, as a result of the additional information supplied to CRA and the positions advanced by the Receiver, CRA will issue clearance certificates in the near future, thereby enabling the Receiver to proceed expeditiously towards an interim distribution to unit holders of the Solvent Funds, without tax liability.

### **Contact with the Regulators**

59. The Receiver has met with and held telephone discussions with representatives of the AMF and the OSC to keep them apprised of the progress of the Receivership, in accordance with the Initial Order.

60. The AMF, the OSC and other provincial securities commissions and industry regulatory bodies (the “Regulators”) have or may commence investigations into the activities of certain persons involved in the affairs of @rgentum. These Regulators each have mandates which include protecting the interests of the investors in @rgentum.
61. The Receiver is of the view that, if so requested by a Regulator, the Receiver should have authority to provide the requesting Regulator with confidential information (including personal information), documents and/or materials (collectively, the “Confidential Information”), including without limitation Confidential Information relating to (a) the business, operations, financial condition and/or affairs of @rgentum; and (b) former officers, directors, employees, clients, investors and/or shareholders of @rgentum and related parties to assist the Regulators in discharging their public duties.
62. The Receiver is therefore proposing that the Court authorise a Regulator Communication Protocol governing the disclosure of Confidential Information by the Receiver to a Regulator. Attached hereto as **Appendix “F”** is a copy of the proposed Regulator Communications Protocol.

### **Interim Report of Receiver**

63. In accordance with the requirements of the BIA, the Receiver continues to issue an Interim Report of Receiver to the Superintendent of Bankruptcy and others every six months.

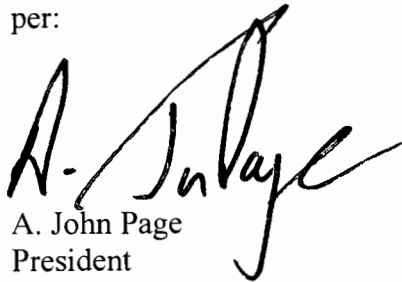
### **Goods and Services Tax**

64. The Receiver has been filing GST returns in order to recover the GST paid on its fees and disbursements. At the present time there are significant delays in the processing of GST refund claims in insolvencies because of a change in April 2007 in the way CRA issues GST refunds. The Receiver currently has unpaid and still to be filed GST refund claims totalling almost \$16,000.
65. The Receiver has yet to formally allocate its costs to each of the Solvent Funds. It is the Receiver’s understanding that GST at 5% will have to be charged to each of the Solvent

Funds on the amounts ultimately allocated to that fund by the Receiver. At the present time \$921,000 has been advanced from the Funds on account of expenses of the Receiver. Assuming that the full amount is ultimately allocated to the Solvent Funds, this will result in a tax liability of approximately \$46,000 which will have to be paid by the Solvent Funds. The Funds are not able to recover any of the GST they pay.

All of which is respectfully submitted to the court.

A. JOHN PAGE & ASSOCIATES INC.  
COURT APPOINTED RECEIVER AND MANAGER OF @RGENTUM  
per:



A. John Page  
President

**Appendices to the Fifth Report of  
A. John Page & Associates Inc.  
Receiver of @rgentum  
to the Court dated June 9, 2008**

Interim Statement of Receipts and Disbursements	A
Summary of Receiver's Invoices and Schedule of Fees and Time Spent by Staff Member	B
Summary of the Assets held by the Receiver by Fund	C
Summary of Solvent Fund Unit Holders as established through the Claims Process	D
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Appendix "A"

**Fifth Report of  
A. John Page & Associates Inc.  
Receiver of @rgentum  
to the Court dated June 9, 2008**

**Interim Statement of Receipts and  
Disbursements**



# Statement of Receipts & Disbursements

16/11'5 Through 31/5'8

5/6'8

@RGENTM-Bank,Cash,CC Accounts

Page 1

Category Description	16/11/05- 31/5/08
<b>INCOME/EXPENSE</b>	
<b>INCOME</b>	
Funds in BMO Bank a/cs	87,682.36
Interest Income	776.28
Tax Refunds	1,295.68
Transfer from CIBC Mellon	921,118.13
<b>TOTAL INCOME</b>	<b>1,010,872.45</b>
<b>EXPENSES</b>	
Advertising	11,622.43
Bankruptcy Expenses	6,670.99
Fund Management Advisors	31,727.50
GST Control	8,500.70
GST Input	7,290.46
Legal Fees	243,656.59
Miscellaneous	18,705.31
Moving & Storage	7,210.60
OSB Fees	70.00
Receiver's Fees	674,969.14
<b>TOTAL EXPENSES</b>	<b>1,010,423.72</b>
<b>TOTAL INCOME/EXPENSE</b>	<b>448.73</b>

**Appendix "B"**

**Fifth Report of  
A. John Page & Associates Inc.  
Receiver of @rgentum  
to the Court dated June 9, 2008**

**Summary of Receiver's Invoices and Schedule  
of Fees and Time Spent by Staff Member**

**A. John Page & Associates Inc. in its capacity as Court Appointed Receiver and Manager of  
@rgentum Management and Research Corporation  
Summary of Invoices covering  
the Period from January 1, 2007 to April 30, 2008**

<u>Period</u>	<u>Date</u>	<u>Invoice #</u>	<u>Hours</u>	<u>Amount</u>
Jan-07	Feb. 1/07	5011	155.31	34,776.86
Feb-07	Mar. 1/07	5014	113.83	27,942.64
Mar-07	Apr. 2/07	5018	136.48	29,204.87
Apr-07	May 1/07	5024	179.37	36,683.81
May-07	Jun. 1/07	5027	83.08	19,087.29
June and July 2007	Aug. 1/07	5033	180.44	39,646.48
Aug-07	Sep. 6/07	5040	60.64	15,175.38
Sep-07	Oct. 1/07	5042	90.74	22,680.46
Oct-07	Nov. 5/07	5049	32.20	7,255.01
Nov-07	Dec. 3/07	5051	72.76	18,004.99
Dec-07	Jan. 2/08	5054	57.82	14,242.47
Jan-08	Feb. 1/08	5055	155.10	35,164.01
Feb-08	Mar. 3/08	5056	144.02	35,556.70
Mar-08	Apr. 1/08	5062	78.25	20,474.62
Apr-08	May 1/08	5069	33.66	8,726.58
Total Fees			<u>1,573.70</u>	<u>\$364,622.17</u>
GST				20,735.69
Total Fees plus GST				<u><u>\$385,357.86</u></u>

**A. John Page & Associates Inc. in its capacity as Court Appointed Receiver and Manager of  
 @rgentum Management and Research Corporation  
 Schedule of Fees and Time Spent by Staff Members  
 For the Period from January 1, 2007 to April 30, 2008**

Staff	Hours	Average Billing Rate per hour	Total
<b>President</b>			
A. John Page, CA•CIRP, Trustee	934.18	\$288.81	\$269,796.38
<b>Managers</b>			
Catherine Vangelisti, BBM	547.65	161.92	88,672.97
<b>Assistants</b>			
Julia Page, BA	16.78	104.94	1,760.90
Assistant	75.09	58.49	4,391.92
	<u>1,573.70</u>	\$231.70	<u>\$364,622.17</u>

Appendix "C"

**Fifth Report of  
A. John Page & Associates Inc.  
Receiver of @rgentum  
to the Court dated June 9, 2008**

**Summary of the Assets held by the Receiver  
by Fund**

**@rgentum Management and Research Corporation**  
**Summary of the Assets held by the Receiver**  
**as at May 31, 2008**

Fund \$'000	CIBC Mellon Set-Off (see note 6)	Tf. to the Receivership Account 16/11/05- 31/5/08	Current Book Value of Assets Held May 31, 2008
@ Short Term Assets Portfolio	2	123	268
@ Income Portfolio	32	80	214
@ Canadian Equity Portfolio			0
@ Canadian Performance Portfolio	7	547	1,115
@ International Master Portfolio	(23)	2	0
@ Discovery Portfolio	(4)		0
@ Canadian L/S Equity Portfolio	1	147	13
@ U.S. Market Neutral Portfolio			0
@ U.S. Master Portfolio		22	0
@ Pooled Market Neutral			54
@ Intl Master RSP Portfolio			0
	<u>15</u>	<u>921</u>	<u>1,664</u>
Receivership Account			<u>0</u>
			<u><u>1,664</u></u>

**Notes**

1. The above assets are all under the Receiver's control and are being managed by Acker Finley in accordance with the investment strategy set down in the Acker Finley Recommendation that was approved by the Court.
2. The Current Book Value shown above does not include accrued interest on the short term investments.
3. The Current Book Value represents the assets held by the Receiver at CIBC Mellon and BMO Nesbitt Burns as at May 31, 2008 after the transfers to the Receiver's Account and the CIBC Mellon set-off detailed above.
4. \$22,000 transferred from the US Master Portfolio to the Receiver's Account represents the repayment of part of a balance due by the US Master Portfolio to the

Corporation.

5. The other amounts transferred from individual funds to the Receiver's Account do not reflect the actual amount of receivership expenses that will be levied on that particular fund. The Receiver will equitably allocate costs between the Solvent Funds at a later date.
6. The CIBC Mellon set-off noted above represents the combination of approximately \$27,000 in Insolvent Fund overdrafts and \$12,000 in unpaid pre receivership custodial fees. Where possible the set-off has been allocated to the fund it related to. \$29,000 of the set-off relates to Insolvent Funds and has, on an interim basis, been allocated to the @rgentum Income Portfolio. This amount will be reallocated between the Solvent Funds on a more equitable basis at a later date.

Appendix "D"

**Fifth Report of  
A. John Page & Associates Inc.  
Receiver of @rgentum  
to the Court dated June 9, 2008**

**Summary of Solvent Fund Unit Holders as  
established through the Claims Process**



**@rgentum Management and Research Corporation**  
**Summary of Unit Holders in the Solvent Funds**  
**as established through the Claims Process**

Solvent Fund	No. of Unit Holders	No. of Units
Short Term Assets Portfolio	34	36,913.091
Income Portfolio	43	104,902.339
Canadian Performance Portfolio	336	269,195.937
Canadian L/S Equity Portfolio	22	48,266.232
Pooled Market Neutral	4	39,914.770
	<u>439</u>	<u>499,192.369</u>

**Note**

The number of Unit Holders and Units were determined by the Receiver through its investigations and were validated by the court approved Claims Process.

Appendix "E"

**Fifth Report of  
A. John Page & Associates Inc.  
Receiver of @rgentum  
to the Court dated June 9, 2008**

**Investigations Memorandum**

# Memorandum

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**To:** File  
**From:** A. John Page  
**Date:** May 27, 2008  
**Subject:** @rgentum Management and Research Corporation ( "@rgentum") and eleven @rgentum Mutual Funds (the "Funds")

Summary of the findings of the Receiver emanating from the investigations undertaken into the affairs of @rgentum in accordance with the Order of the Honourable Mr. Justice Cameron dated July 10, 2006 ("the Fourth Order") and otherwise with particular reference to the build up of the "Deferred Charge" balance of approximately \$3.1 million as a Fund asset.

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## Purpose of Memorandum

- To summarize the findings of the Receiver emanating from the investigations undertaken into the affairs of @rgentum in accordance with the Fourth Order and otherwise

## Receiver's Investigations and Summary

The primary purpose of the investigations conducted by the Receiver into the affairs of @rgentum was as follows:

- (a) to locate unrealized assets - No unrealized assets were located
- (b) to identify transactions which may be challenged by the Receiver or the Trustee resulting in a recovery for @rgentum - The Receiver has identified two payments to Range Corp totalling \$150,000 which it plans to challenge in its capacity as Trustee
- (c) to identify, calculate and prosecute any claims @rgentum may have against third parties - The Receiver has not identified any potential claims against third parties which the Receiver believes it is cost effective to pursue.
- (d) to obtain information and explanations concerning monies transferred from the Funds in circumstances where the business purpose of such transfers (in relation to the Funds) is not

immediately evident - Further information in this regard is provided in this memorandum

(e) to assist the Receiver in allocating assets and expenses between individual Funds and @rgentum for tax and ultimate distribution purposes - The information obtained from our investigations has assisted us in filing all outstanding trust tax returns and in our ongoing dealings with CRA regarding our request for clearance certificates

(f) to ascertain the accuracy of the unit holder register to assist in formulating the most appropriate unit holder claims process - The information obtained from our investigations allowed us to propose the "passive" claims process that was approved by the Court in March 2007 and was successfully carried out in the spring and early summer of 2007. This has allowed us to efficiently create a unit holder register for distribution purposes

(g) to provide information in response to questions by unit holders as to the facts surrounding their investments - The information obtained from our investigations as disclosed through earlier court reports and documents posted on our website and as summarized in this memorandum should help unit holders better understand what happened to their investment in the Funds

The balance of this memorandum summarizes the background to the insolvency of @rgentum and the Funds primarily as set out in the examinations under oath of the Chief Executive Officer of @rgentum, Scott Sinclair ("MSS"), on July 31, August 1, December 17 and December 18, 2007. In particular, the memorandum summarizes MSS's testimony explaining the build up of the "Deferred Charge" balance of approximately \$3.1 million from January 2004 to September 2005 that was recorded by @rgentum as a Fund assets during that period. In addition, the memorandum reviews the information the Receiver has to validate (or refute) this portrayal of events and sets down the Receiver's assessment of the use of the money, primarily the Deferred Charge balance, paid from the Funds to @rgentum's regular bank account during the period from January 2004 to September 2005. The memorandum also evaluates the prospects for the recovery of any of that money and details what, if any, further action the Receiver proposes to take.

### **Qualifications**

This summary is based on a range of sources but primarily on the testimony of MSS. The information in the memorandum has not been audited by the Receiver. However, if the Receiver had information clearly contradicting the testimony of MSS, we would have highlighted it. In general we do not have contradictory information. To an extent the Receiver can neither confirm nor refute MSS's testimony because of the lack of documentary evidence. It should be noted that the Receiver does not have all of the books and records of @rgentum, has not examined all key personnel involved in this matter and has not had access to the auditors or their working papers (as result of the auditors' refusal to disclose their files). In

particular we have not been able to independently verify a number of key statements made by MSS that are incorporated into this memorandum. If any of the information reviewed by the Receiver (including the testimony of MSS) is not complete or correct it may mean that some of the statements in this memorandum are not complete or correct and any conclusions may no longer be applicable.

## **Background**

Merchant Capital Group Inc. ("MCGI") acquired control of @rgentum and, through that, management of the Funds through a series of transactions in late 2001 and early 2002. It is not clear to the Receiver to what extent new money was paid for @rgentum.

At the end of 2001 @rgentum was not in good financial health. The assets under administration were small (approximately \$25 million) and getting smaller. This was because, at that time, the Funds had not been authorized to issue new units for perhaps the prior 18 months to two years. There were significant old unpaid Fund liabilities. In MSS's opinion, at that time the Funds were not large enough to be sustainable. By that he meant that, given the fixed costs involved in running a mutual fund, the management expense ratios ("MERs") were "too high".

MCGI was a venture capital/ turnaround company. They acquired @rgentum in order to turn it around and have it form part of a merchant bank MSS said they were building.

MSS had been actively involved in MCGI for some time but it was only in late 2003 or early 2004 that he took over as CEO of @rgentum.

It was MSS's view that a family of mutual funds had to have funds under management of at least \$50 million in order to be sustainable. By the end of 2003 @rgentum had less than \$11 million under management and, as such, was still not sustainable.

According to MSS, MCGI's strategy was firstly to get the Funds relisted and settle the old liabilities. Thereafter it was intended that further units would be sold until the funds under management had increased to the point that the MERs were more reasonable. They also planned to sell or consolidate many of the other Funds. The jewel in the crown was the @rgentum Canadian Long Short Fund which was the only mutual fund in Canada that was allowed to short securities. This allowed it to behave like a hedge fund and have higher overall returns with lower volatility but be accessible to smaller investors.

MCGI got the Funds relisted fairly quickly. These listings had to be renewed and updated prospectuses had to be submitted to the regulator each year.

Through 2004 MSS worked on settling the old claims.

According to MSS @rgentum didn't really sell any units after MCGI took over, apart from to a few people who invested in the Short Term Asset Fund.

In the spring of 2005 @rgentum encountered problems getting the Fund listings renewed for the forthcoming year. In May 2005 it was apparent that they would not be able to get the listings renewed. In addition, in early 2005 the Portus hedge fund was placed into receivership and the market's perception of hedge funds and, therefore, a long/short mutual fund, was prejudiced. In August 2005 @rgentum wrote to the AMF indicating that they thought the Funds should be wound up. On or about September 19, 2005, upon application by the AMF, the Funds were frozen and on November 16, 2005 A. John Page & Associates Inc. was appointed as Receiver of @rgentum and the Funds by Order of the Honourable Mr. Justice Campbell of the Ontario Superior Court ("the Initial Order").

### **The Deferred Charge/Cost Amortization Issue**

Commencing in January 2004, @rgentum started to transfer money from the Funds held by CIBC Mellon (as custodian) to @rgentum's regular corporate bank account at Bank of Montreal ("the BMO Regular Account"). @rgentum then recorded the amount transferred as a Fund asset entitled Deferred Charge or Cost Amortization. From that point on, each day, when @rgentum reported the Net Asset Value Per Share ("NAVPS") for each of the Funds, they included the Deferred Charge balance as an asset. At the time the Funds were frozen on or about September 19, 2005, the Deferred Charge balance comprised approximately \$3.1 million out of a reported Net Asset Value of all the Funds of only about \$5.4 million. @rgentum wrote this Deferred Charge balance off on September 20, 2005.

Right up to September 19, 2005 unit holders were redeeming their units using a NAVPS that was greater than actual assets held (e.g. securities and cash) because of the inclusion of the Deferred Charges as an asset.

MSS was asked to explain these transactions. He indicated that @rgentum had never properly billed the Funds for the cost of back office work properly chargeable to the Funds in accordance with the Fund prospectuses. He also indicated that there were significant old unpaid Fund obligations and that, in 2003 and 2004, litigation was underway in regard to some of these obligations. He indicated that these obligations were legal liabilities of the Funds which had also not been adequately provided for.

He indicated that in 2004 he had discussed how to deal with these old unrecorded liabilities with the Quebec regulator (the AMF), the auditors of the Funds (Samson Belair) and @rgentum's legal counsel (Desjardins Ducharme). He indicated that it was decided not to expense these liabilities at one time but instead to amortize them out over either five or seven years (he could not recall the exact time period). He said that this was to be done in a way that would not affect existing or future unit holders because @rgentum had agreed it would

provide ongoing back office services at a discount and the discount would equal the amount of the Deferred Charge amortization.

In effect, MSS said that all amounts transferred from the Funds to be used for corporate purposes were a prepayment of the Funds future obligations to pay @rgentum for back office services. Therefore the \$3.1 million (or whatever amount it should be) of Deferred Charges was the accumulated build up of these back office prepayments. According to MSS this balance was then to be amortized as an expense over the next 5 or 7 years. No amortization had been booked through any Fund ledger as at the date of the freeze, September 19, 2005.

MSS said @rgentum wrote off the Deferred Charge balances on September 20, 2005 (the day after the freeze order) as at that point it was clear to @rgentum that the prepayment had no value as @rgentum and the Funds would not be continuing.

MSS indicated that this amortization plan was documented in a Services Agreement between @rgentum and the Funds. MSS did not have a copy of the Services Agreement and the Receiver has been unable to locate one.

The auditors, Samson Belair, are located in Quebec. They have refused to provide information on @rgentum or the Funds to us either as Receiver or as Trustee of @rgentum, citing Quebec professional secrecy rules. MSS has indicated that he is not prepared to sign a waiver permitting Samson Belair to release information to us. We are therefore, among other things, unable to verify MSS's statements regarding discussions he had with Samson Belair on the accounting treatment of the Deferred Charges. As discussed later Samson Belair were paid over \$375,000 in 2004 and 2005. Part of this payment was to cover the audit of the 2004 year end Fund financial statements. These statements were never issued and, since Samson Belair will not release a copy of any drafts they prepared to us, we are unable to see how they proposed to treat the Deferred Charge balance at December 31, 2004 when, according to the information we have, it was approximately \$1,817,000.

### **The Quantum of the Deferred Charge Balance**

In response to an undertaking given at his examination, MSS produced a one page calculation suggesting that, as at December 31, 2004, the Funds owed @rgentum approximately \$1.9 million for unbilled back office charges and that the annual ongoing charge should be \$615,000. He did not produce any working papers or files to support these calculations.

He did not provide a specific list of the "significant" old unresolved Fund liabilities. A rough analysis by the Receiver suggests that approximately \$530,000 of pre 31/12/2003 third party Fund liabilities were paid in 2004 and 2005 and approximately \$175,000 remain unpaid. Some of the payments represent settlements of substantially larger claims against @rgentum and the Funds. It appears that only about \$250,000 had been accrued by the Funds at

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December 31, 2003 although disclosure had been made of some disputed claims and ongoing litigation.

MSS also said that he thought the Deferred Charge balance should have been about \$1.9 million rather than \$3.1 million. He wondered if the Funds had been under charged for ongoing expenses during 2005 and perhaps also 2004. He wondered if the @rgentum employees administering these matters had been properly accruing current third party expenses. By this we conclude that he meant that perhaps they had been under accruing current expenses such as that charged by CGI for data management services. He felt that the total annual fixed cost for running the Funds should be about \$1.2 million. He did not provide documentary support for any of these statements.

### **Missing Records/Incomplete Records**

We have been unable to locate a number of the records of @rgentum and the Funds. In particular we have not been able to locate a copy of the Quickbooks accounting data relating to @rgentum. It is our understanding that all corporate accounting transactions relating to @rgentum were recorded electronically using Quickbooks.

In order to conduct this investigation we have had to do an extensive recreation of accounting records. In particular we have had to create accounting records for the period from January 1, 2004 to September 20, 2005 from source documents such as bank statements and cancelled cheques.

We have had to obtain from CIBC Mellon over a thousand documents evidencing who authorized them to transfer money from any of the @rgentum accounts to the BMO Regular Account and the BMO In Trust Account as @rgentum's copies of these documents could not be located.

We do not have, among other things, files documenting dealings with the auditors, the regulators or any of the law firms used by @rgentum.

We do not have a copy of the Services Agreement mentioned by MSS or any documentary evidence that such a document ever existed.

Prior to our appointment @rgentum and the Funds had not filed tax returns since about 2000. The last audited Fund financial statements are for the period to December 31, 2003 ie just prior to the commencement of the Deferred Charge transfers in January 2004. We do not have copies of working papers supporting these or any other financial statements. The last financial statement for @rgentum is to December 31, 2001. This lack of recent fixed reference points detailing reliable independently verified financial information has been an impediment to determining and proving anything.



Among other things, the Initial Order ordered MSS and others to forthwith advise us of the existence of any books and records of @rgentum and the Funds in their possession or control. It also ordered them to not alter, erase or destroy any electronic records without our written consent. On November 16, 2005 MSS appeared to us to be controlling the premises rented and used by @rgentum at 220 Bay Street ("the Premises").

MSS has indicated to us that he does not know what became of any of the books, records, computer records etc. that we cannot locate.

### **What happened to the \$3.1 million transferred to the BMO Regular Bank Account?**

In order to determine this the Receiver has, as noted earlier, had to recreate (from available source documents) accounting records tracking the transactions flowing through the BMO Regular Bank Account from January 2004 (when the Deferred Charge transfers commenced) to September 2005 (when the account was frozen). We have also had to write to a number of the larger recipients of funds in order to get a better understanding of the reason they were paid money by the Corporation. A summary of our work is attached as Exhibit "A".

Approximately \$4.2 million was transferred into the BMO Regular Bank Account of which \$3.1 million was characterized as Deferred Charges by @rgentum. The balance appears to represent transfers to pay current fund expenses that were recorded as such in the Funds.

It appears that money transferred into the BMO Regular Account was primarily used to pay:

- Ongoing operating expenses including payroll and rent
- Karl Hertel, a secured creditor of @rgentum
- Old fund liabilities (primarily as a result of settlements)
- Legal costs relating to old fund litigation

It was also used to make payments to or for the benefit of companies owned or apparently controlled by MSS namely Merchant Capital and Range (see later).

MSS said that it did not matter who was paid out of any transfer that was labelled "Deferred Charge" as the transfer was a prepayment of future back office expenses and/or a repayment of amounts due to @rgentum for old unbilled back office expenses and other liabilities.

### **Payments to or for the benefit of one of the Merchant Capital companies**

MCGI owned @rgentum. It also had two financial services subsidiaries, Merchant Capital Securities Corporation ("Securities Corp") and Merchant Capital Wealth Management Corp. ("Wealth Management"). Collectively we will describe the three companies MCGI, Securities Corp and Wealth Management as the "Merchant Capital companies" or "Merchant Capital". MCGI also had a long standing interest in the graphite mining industry in Canada and the

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US. Securities Corp and MCGI seem to have been generally inactive during 2004 and 2005. Wealth Management was an active mutual fund dealer. There were a series of payments to and from @rgentum and Merchant Capital in 2004 and 2005. From January 1, 2004 to September 19, 2005 our initial analysis suggests that @rgentum paid the Merchant Capital companies a net amount of \$268,000. However, given the lack of adequate records it is difficult to ascertain which of the Merchant Capital companies a payment labelled as Merchant Capital was to or from.

Wealth Management ran its operations from the Premises. Wealth Management's employees were on the @rgentum payroll. We have not identified any payment from Wealth Management to @rgentum to compensate it for the use of the Premises or for the payments made by @rgentum to the employees who worked for Wealth Management. In addition we have identified a number of other payments made by @rgentum that were for the benefit of Merchant Capital and for which @rgentum was not reimbursed. The largest single block is a series of payments to a Mr. Paul Morford of Vancouver, British Columbia and his company, Heritage Wealth Management Inc., totalling over \$140,000. These payments were, according to MSS, to enable Mr. Morford to set up a trust company in Vancouver.

According to MSS, MCGI was a major creditor of @rgentum on account of debt acquired when MCGI acquired @rgentum in 2001 and 2002.

The current status of each of the Merchant Capital companies appears to be as follows:

MCGI - Insolvent. Was a publicly listed company. Has a large number of creditors (approximately \$16.5 million per MSS). Range has registered security over it. No security agreement or other documentary support for the registration has been produced. No books and records available. Only asset with potential value is its interest in iCarbon, a successor entity from an old investment in a US graphite mining operation. According to MSS, MCGI cannot liquidate its interest in iCarbon for many years and he is unsure if the interest will have any value by then.

Securities Corp - Wound up or moribund. No books and records.

Wealth Management - Wound up. No financial statements available. MSS had all the client accounts transferred out in 2006. Not known if it had any assets and, if so, what became of those assets. No financial/corporate books and records available.

### **Transfers to or for the benefit of one of the Range companies**

There are two Range companies: Range Capital Corporation ("Range Capital") and Range Corporation ("Range Corp"). Range Capital had been owned by MSS for many years. It was dissolved for failure to file tax returns in the spring of 2004 and MSS incorporated Range

Corp. almost immediately after (in June 2004). In this memorandum Range could refer to either Range Capital or Range Corp depending on the time period and context.

During 2004 and 2005 Range received approximately \$315,000 from the BMO Regular Bank Account including two cheques totalling \$150,000 in September 2005 just prior to the freeze order.

MSS indicated that he could not locate any of the books and records of Range. He has undertaken to obtain copy bank statements and to attempt to recreate Range's records. We have yet however to receive any documentation in this regard. Without the books and records, he has not been able to provide the Receiver with answers to many questions relating to the relationship between Range and @rgentum.

### **Uncertainties regarding the testimony of MSS**

In analyzing the demise of @rgentum a key question is whether the testimony of MSS is complete and correct or not. In this case we have been unable to independently verify many of the statements made by MSS since we are missing many of the key books and records and do not have access to the auditors or @rgentum's legal counsel. The AMF have provided us with copies of all the "public documents" contained in their issuer files for @rgentum Group of Funds for the years 2004 and 2005 but these are of little help. Unfortunately they are constrained by the non disclosure provisions of Quebec securities legislation.

Despite the explanations given by MSS the Receiver cannot say that it has been given a completely satisfactory account of the administration of the Funds at all the relevant times or of the uses to which fund assets were put from time to time.

By order of the Honourable Mr. Justice Cameron we were authorized to conduct certain examinations into the affairs of @rgentum. The Receiver has arguably now completed those examinations. The only resources the Receiver has to draw on to finance any continued investigation or to try and effect a recovery for the estate are unit holder funds. It seems inappropriate to expend significantly more dollars on "investigating" unless there is a strong chance that such activity will a recovery of funds.

### **Can any of the \$3.1 million be recovered?**

Our comments in this regard are based on our investigations to date and, in particular, on the presumption that the testimony of MSS is materially correct. If we were to undertake further investigation and determine otherwise then some of the conclusions might be different.

The flow of \$3.1 million from January 1, 2004 to September 19, 2005 from the Funds to @rgentum that was characterized as Deferred Charges would presumably be subject to a

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set-off claim by @rgentum on account of the unpaid back office and other fund liabilities. In any event, @rgentum is bankrupt and has no, or virtually no assets with which to repay any such amount.

During the period from January 1, 2004 to September 19, 2005 approximately \$4.2 million was paid out from the BMO Regular Bank Account. The major recipients of funds were:

Ceridian \$1,030,000

Ceridian act as a payroll distribution service. Funds paid to them were then almost immediately paid out to employees and the related source deductions were remitted to the appropriate authority. We do not think that we could recover any of this balance from Ceridian or from any of the parties to whom Ceridian made payment. Some of the payroll was however for the benefit of people working for Wealth Management and will be addressed later as part of our consideration of whether we can effect a recovery from Merchant Capital.

Karl Hertel \$465,000

Karl Hertel received a series of monthly payments in accordance with an August 2004 agreement with @rgentum. We have had his security reviewed by our legal counsel and it appears to be valid and enforceable. Karl Hertel had been suing MCGI in 2003 and, in fact had attempted to have a receiver appointed over MCGI and have MCGI placed into bankruptcy. We do not think we have grounds for recovering any of the money paid to Mr. Hertel.

Dynamic Mutual Funds \$448,000

Represents rent on the Premises. No basis for attempting to recover any of this from the landlord. The Premises were used by Merchant Capital without payment and this will also be addressed later.

Samson Belair \$375,000

It appears that \$65,000 related to the 2002 audit, \$226,000 to the 2003 audit and \$149,000 to the 2004 audit and preparation of Fund prospectuses. Since Samson Belair are refusing to release any information to us we cannot tell what work was done for the 2004 audit and, given that no audit report was issued, whether any amount should be refunded to @rgentum. However, based on the advice that we have received it seems that it will be difficult, if not impossible, to force Samson Belair to provide us with enough information to enable us to assess whether we might attempt to recover some of the moneys paid to them. Our assessment is that it is not cost effective to pursue this matter further.

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Range \$315,000

We understand that Range Corp is still in business. It seems that MSS is its sole "employee" or "officer". There were two payments to Range in September 2005. One, for \$50,000, was made on September 13, 2005 and the other, for \$100,000, was the last payment to clear the BMO Regular Bank Account on September 20, 2005 just before the account was frozen. Both of these payments were made within three months of the date of bankruptcy of @rgentum and would appear to be preferences or otherwise challengeable. In our opinion it is worth attempting to recover these payments from Range.

The other payments to Range may be more difficult to address. MSS claims that Range was due money from @rgentum but has yet to provide any documentary evidence to support this. He claims, for example, that Range was due a round sum \$10,000 expense allowance each month. It is also not clear what assets Range has. It may be judgement proof. At this moment it does not seem cost effective to try and recover any of the other payments made to Range.

Merchant Capital \$268,000 (net) plus non cash benefits, eg use of Premises and payment of payroll

According to MSS, in late 2001 or early 2002 MCGI purchased, among other things, debt of @rgentum totalling approximately \$1.8 million. According to him any payment by @rgentum to or for benefit of MCGI would have reduced that intercompany balance. Unfortunately the state of the records make any precise accounting almost impossible. We do not know how a payment for the benefit of Wealth Management might, for example, have impacted any intercompany balance between @rgentum and MCGI. Pursuing Merchant Capital is only worth considering if firstly there is a reasonable prospect we can locate some assets and secondly we are reasonably sure either the debt due by @rgentum to MCGI had been extinguished or any payment on account of that debt was a preference. There may be value somewhere in Merchant Capital. However, our initial impression is that, in part because of the paucity of records and the resulting difficulty in proving anything, and to a lesser extent because of the passage of time, it is unlikely to be cost effective to pursue recovering assets from this source.

CGI \$167,000

Fund expense for maintaining unit holder database. No obvious basis for attempting to recover this amount.

Paul Morford \$131,000

Payments were on account of an investment made by Merchant Capital to enable Mr. Morford to execute a business plan which included establishing a trust company in British

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Columbia. Mr. Morford has not been responding to our letters asking for more information on this matter. MSS indicated he did not have any of the files relating to this investment. The Receiver has not been able to locate any files relating to this investment. Given, among other things, the lack of documentary evidence on this relationship, the lack of cooperation of Mr. Morford, his residence in British Columbia and the fact that the payments were apparently for the benefit of Merchant Capital it seems, on a cost-benefit basis, that an action against Mr. Morford does not make sense. These payments seem to represent another benefit received by Merchant Capital from @rgentum.

Desjardins Ducharme Stein Monast \$130,000

Legal fees relating to Fund matters. No obvious basis for attempting to recover this amount.

Harvey & Associates \$109,000

2004 settlement of old fund expense (\$75,000 to Lavery de Billy) and Quebec legal fees related to that and other litigation. No obvious basis for attempting to recover any of this amount.

Other Third Party Payees

All less than \$100,000 per payee. No obvious cost effective basis for attempting to recover any of this amount.

**Should we make a claim against MSS or any other person working at @rgentum?**

It is our assessment that we have insufficient evidence upon which to base a claim for the recovery of assets or otherwise against MSS or any other person working at @rgentum.

## **Conclusions**

The above summary provides unit holders and other interested parties with information on the demise of the Funds.

The Receiver proposes, in our capacity as Trustee of the Estate of @rgentum, taking action to try and recover the \$150,000 paid to Range Corp. in the three months prior to the bankruptcy of @rgentum.

Apart from the above, the information we have gathered to date does not clearly identify parties from whom we have a strong chance of recovering funds on a cost effective basis. The Receiver believes it is better to move to distribute the funds it has to unit holders rather than deplete them by further investigation and/or action to:

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- validate (or refute) the "facts" as we currently understand them or as they have been presented to us and
- to attempt to effect a recovery for the estate

Appendix "F"

**Fifth Report of  
A. John Page & Associates Inc.  
Receiver of @rgentum  
to the Court dated June 9, 2008**

**Regulator Communications Protocol**



## REGULATOR COMMUNICATIONS PROTOCOL

### WHEREAS:

- (a) Upon application of the Ontario Securities Commission (the “OSC”), A. John Page & Associates Inc. (the “Receiver”) was appointed Receiver of @rgentum Management and Research Corporation (the “Corporation”) and certain mutual funds managed by the Corporation (the “Funds”) (collectively, “@rgentum”) by Order of the Honourable Mr. Justice Campbell dated November 16, 2005 (the “Order”);
- (b) The Autorité des marchés financiers (the “AMF”), the OSC and other provincial securities commissions and industry regulatory bodies (the “Regulators”) have or may commence investigations into the activities of certain persons involved in the affairs of @rgentum. These Regulators each have mandates which include protecting the interests of the investors in @rgentum;
- (c) In the course of the Receiver’s appointment it receives, reviews and is otherwise advised of confidential information (including personal information), documents and/or materials (collectively, the “Confidential Information”), including without limitation Confidential Information relating to (a) the business, operations, financial condition and/or affairs of @rgentum; and (b) former officers, directors, employees, clients, investors and/or shareholders of @rgentum;
- (d) The Receiver is of the view that if so requested by a Regulator, the Receiver should have authority to provide the requesting Regulator with Confidential Information in accordance with this Protocol to assist the Regulators in discharging their public duties;  
and

- (e) This Protocol is intended to govern, and has been approved by the Court for use in respect of, the disclosure of Confidential Information by the Receiver to a Regulator.

**NOW THEREFORE:**

1. The Receiver requires that the Confidential Information be kept confidential because the Confidential Information is highly sensitive and its disclosure could be highly prejudicial. Where the Receiver provides Confidential Information to the Regulator, the Regulator will keep the Confidential Information confidential, by using the same standard of care to safeguard the Confidential Information as the Regulator employs in protecting its own confidential information, and will not (except as required by applicable law, regulation or legal process, and only after compliance with paragraph (2) below), without the prior written consent of the Receiver, disclose any Confidential Information in any manner whatsoever except as expressly authorized herein.
2. The Regulator may disclose Confidential Information if such disclosure is (i) compelled by any court order or subpoena or other legal or administrative order or process (a "Disclosure Order"); or (ii) consistent with any law to which the Regulator is subject, including, without limitation, the *Securities Act*, R.S.O. 1990, chapter S.5, the *Securities Act*, R.S.Q. chapter V-1.1, and *An Act Respecting the Autorité des marchés financiers*, R.S.Q. chapter A-33.2. The Regulator shall notify the Receiver of the receipt of a Disclosure Order or motion or other materials to obtain a Disclosure Order such that the Receiver can seek an appropriate protective order with respect thereto.
3. The Regulator shall not be precluded from disclosing or using any information (i) which is not Confidential Information; (ii) of which it was aware or which was in its possession

prior to any disclosure by the Receiver; (iii) which is publicly available; or (iv) which becomes available to the Regulator from sources not known by the Regulator to be subject to disclosure restrictions with respect to such information.

4. The Receiver is in no way responsible for any incorrect and/or incomplete Confidential Information.
5. The determination as to whether or not to disclose Confidential Information to the Regulator shall be in the sole discretion of the Receiver.
6. The Receiver shall have no liability arising from (i) the disclosure of Confidential Information to the Regulator; (ii) the content of the Confidential Information; (iii) the use of the Confidential Information by the Regulator; or (iv) any disclosure of the Confidential Information by the Regulator.
7. The Receiver may provide the Regulator with Confidential Information subject to common interest privilege. The Receiver and the Regulator will protect the common interest privilege.