**The Ontario Securities Commission**

# OSC Bulletin

June 9, 2000

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The Ontario Securities Commission Administers the
Securities Act of Ontario (R.S.O. 1990, c.S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c.C.20)

**The Ontario Securites Commission**
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# Chapter 1

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## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**June 9, 2000**

**CURRENT PROCEEDINGS**

**BEFORE**

**ONTARIO SECURITIES COMMISSION**

- - - - - - - - - - - - - - - - - - - - - - - -

Unless otherwise indicated in the date column, all hearings will take place at the following location:

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
19th Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

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| Robert W. Korthals | — | RWK |
| Mary Theresa McLeod | — | MTM |
| R. Stephen Paddon, Q.C | — | RSP |

SCHEDULED OSC HEARINGS

| | |
|---|---|
| Date to be announced | **Amalgamated Income Limited Partnership and 479660 B.C. Ltd.**<br>s. 127 & 127.1<br>Ms. J. Superina in attendance for staff.<br>Panel: TBA |
| June 28/2000 10:00 a.m. | **Richard Thomas Slipetz**<br>s. 127<br>Ms. S. Oseni in attendance for staff.<br>Panel: HIW / MPC / RWD |
| June 30/2000 10:00 a.m. | **2950995 Canada Inc., 153114 Canada Inc., Micheline Charest and Ronald A. Weinberg**<br>s. 127<br>Ms. S. Oseni in attendance for staff.<br>Panel: HIW / MPC / RSP |
| Jul 19/2000 10:00 a.m. | **Otis-Winston Ltd. Xillix Technologies Corp., and Digital Cybernet Corporation**<br>s. 127<br>Ms. K. Daniels in attendance for staff.<br>Panel: TBA |
| Jul 31/2000- Aug18/2000 10:000 a.m. | **Paul Tindall and David Singh**<br>s. 127<br>Ms. M. Sopinka in attendance for staff.<br>Panel: TBA |

May 7, 2001
10:00 a.m.

**YBM Magnex International Inc., Harry W. Antes, Jacob G. Bogatin, Kenneth E. Davies, Igor Fisherman, Daniel E. Gatti, Frank S. Greenwald, R. Owen Mitchell, David R. Peterson, Michael D. Schmidt, Lawrence D. Wilder, Griffiths Mcburney & Partners, National Bank Financial Corp., (formerly known as First Marathon Securities Limited)**

s. 127
Mr. I. Smith in attendance for staff.

Panel: HW / DB / MPC

ADJOURNED SINE DIE

**DJL Capital Corp. and Dennis John Little**

**Dual Capital Management Limited, Warren Lawrence Wall, Shirley Joan Wall, DJL Capital Corp., Dennis John Little and Benjamin Emile Poirier**

**Irvine James Dyck**

**M.C.J.C. Holdings Inc. and Michael Cowpland**

**Robert Thomislav Adzija, Larry Allen Ayres, David Arthur Bending, Marlene Berry, Douglas Cross, Allan Joseph Dorsey, Allan Eizenga, Guy Fangeat, Richard Jules Fangeat, Michael Hersey, George Edward Holmes, Todd Michael Johnston, Michael Thomas Peter Kennelly, John Douglas Kirby, Ernest Kiss, Arthur Krick, Frank Alan Latam, Brian Lawrence, Luke John Mcgee, Ron Masschaele, John Newman, Randall Novak, Normand Riopelle, Robert Louis Rizzuto, And Michael Vaughan**

**S. B. McLaughlin**

**2950995 Canada Inc., 153114 Canada Inc., Robert Armstrong, Jack Austin, Suzanne Ayscough, Mary Bradley, Gustavo Candiani, Patricia Carson, Stephen Carson, Lucy Caterina, Micheline Charest, Mark Chernin, Alison Clarke, Susannah Cobbold, Marie-Josée Corbeil, Janet Dellosa, François Deschamps, Marie-Louise Donald, Kelly Elwood, David Ferguson, Louis Fournier, Jean Gauvin, Jeffrey Gerstein, Benny Golan, Menachem Hafsari, Amir Halevy, Jerry Hargadon, Karen Hilderbrand, Jorn Jessen, Bruce J. Kaufman, Mohamed Hafiz Khan, Kathy Kelley, Phillip Kelley, Lori Evans Lama, Patricia Lavoie, Michael Légaré, Pierre H. Lessard, Carol Lobissier, Raymond McManus, Michael Mayberry, Sharon Mayberry, Peter Moss, Mark Neiss, Gideon Nimoy, Hasanain Panju, Andrew Porporino, Stephen F. Reitman, John Reynolds, Mario Ricci, Louise Sansregret, Cassandra Schafhausen, Andrew Tait, Lesley Taylor, Kim M. Thompson, Daniel Tierney, Barrie Usher, Ronald A. Weinberg, Lawrence P. Yelin and Kath Yelland**

PROVINCIAL DIVISION PROCEEDINGS

Date to be announced

**Michael Cowpland and M.C.J.C. Holdings Inc.**

s. 122
Ms. M. Sopinka in attendance for staff.

Courtroom 122, Provincial Offences Court
Old City Hall, Toronto

June 6/2000
2:00 p.m.
Pre-trial conference

Oct 10/2000 - Nov 3/2000
Trial

**Dual Capital Management Limited, Warren Lawrence Wall, Shirley Joan Wall**

s. 122
Ms. J. Superina in attendance for staff.

Court Room No. 9
114 Worsley Street
Barrie, Ontario

June 20/2000
July 21/2000
10:00 a.m.

**Glen Harvey Harper**

s.122(1)(c)
Mr. J. Naster in attendance for staff.

Courtroom 121, Provincial Offences Court
Old City Hall, Toronto

June 26/200
9:00 a.m.

**Einar Bellfield**

s. 122
Ms. K. Manarin in attendance for staff.

Courtroom C, Provincial Offences Court
Old City Hall, Toronto

July 11/2000
July 18/2000
9:00 a.m.

**Arnold Guettler, Neo-Form North America Corp. and Neo-Form Corporation**

s. 122(1)(c)
Mr. D. Ferris in attendance for staff.

Court Room No. 124, Provincial Offences Court
Old City Hall, Toronto

Oct 16/2000 - Dec 22/2000
10:00 a.m.

**John Bernard Felderhof**

Mssrs. J. Naster and I. Smith for staff.

Courtroom TBA, Provincial Offences Court

Old City Hall, Toronto

Dec 4/2000
Dec 5/2000
Dec 6/2000
Dec 7/2000
9:00 a.m.
Courtroom N

**1173219 Ontario Limited c.o.b. as TAC (The Alternate Choice), TAC International Limited, Douglas R. Walker, David C. Drennan, Steven Peck, Don Gutoski, Ray Ricks, Al Johnson and Gerald McLeod**

s. 122
Mr. D. Ferris in attendance for staff.
Provincial Offences Court
Old City Hall, Toronto

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Reference: John Stevenson
Secretary to the
Ontario Securities Commission
(416) 593-8145

## 1.1.2 More Recent Developments in the Regulation of Take-Over/Issuer Bids, Going Private and Related Party Transactions - Remarks of Stan Magidson

### MORE RECENT DEVELOPMENTS IN THE REGULATION OF TAKE-OVER/ISSUER BIDS, GOING PRIVATE AND RELATED PARTY TRANSACTIONS

*Stan Magidson*
*Director, Take-over/Issuer Bids,*
*Mergers & Acquisitions*
*Ontario Securities Commission*

The writer would like to thank Janet Holmes of the Ontario Securities Commission for her input and comments on this paper. This paper reflects the author's views and does not necessarily reflect the views of the Ontario or any other securities commission.



**Introduction**

As we enter the new millennium, Canada is experiencing unprecedented levels of merger and acquisition activity. This phenomenon is not unique to Canada, but rather is part of a consolidation trend sweeping the global village.

In this dynamic merger and acquisition environment, Canadian securities regulation has been far from static. This paper discusses several recent developments in the securities regulation of take-over/issuer bids, going-private transactions and related party transactions. In particular this paper:

- discusses the most recent decision of the British Columbia, Alberta and Ontario securities commissions on the subject of shareholder rights plans or poison pills;
- describes the amendments to be made to Canadian securities legislation to implement the Zimmerman committee's recommendations respecting the manner in which take-over bids and issuer bids are commenced and their timing;
- highlights certain changes in the regulation of insider bids, issuer bids, going private transactions and related party transactions arising from the replacement of Ontario Securities Commission Policy Statement 9.1 with Rule 61-501 and Companion Policy 61-501CP;
- summarizes a recent decision of the Alberta and Ontario securities commissions on the subject of disclosure in an unsolicited share-exchange take-over bid circular; and
- summarizes the approach which staff of the Canadian securities administrators have taken in response to mini-tenders.

In addition, this paper provides staff guidance on certain matters which the Take-over Bid Team at the Ontario Securities Commission ("OSC") has had to consider on a recurring basis, namely:

- selected collateral benefit issues under Rule 61-501;
- applications for exemptive relief in connection with hostile take-over bids; and
- shareholder activism.

**Shareholder Rights Plan Update**

**Background**

On November 24, 1999 the British Columbia, Alberta and Ontario Securities Commissions (the "Commissions") issued their reasons for their decision (the "CHIP Decision") in *Re Royal Host Real Estate Investment Trust and Canadian Income Properties Real Estate Investment Trust* (for the OSC decision, see (1999) 22 OSCB 7819).

The CHIP Decision is particularly important since it:

- is a decision of three major provincial securities commissions; and
- deals with a "tactical" poison pill, which is a pill adopted by a target board of directors in the face of a take-over bid without shareholder approval.

For purposes of this discussion, the facts may be briefly described as follows:

- Two days after Royal Host REIT ("Royal Host") announced its intention to make a securities exchange take-over bid to acquire all of the outstanding units of Canadian Hotel Income Properties REIT ("CHIP"), CHIP announced that its trustees had adopted a 60-day tactical pill.
- Approximately 10 days later, Royal Host mailed its offer (which provided for a 24-day deposit period) and, on the very next day, applied to the Commissions to cease-trade the pill immediately.

The CHIP/Royal Host proceedings, therefore, presented the Commissions with an opportunity to clarify the principles to be applied in considering whether it is in the public interest to cease-trade a pill and, in particular, a tactical pill.

**Prior Decisions**

The OSC's decision in *Re MDC Corporation and Regal Greetings & Gifts Inc.* (1994) 17 OSCB 4971 affirmed the decision in *Re Canadian Jorex Limited and Mannville Oil and Gas Limited* (1992) 15 OSCB 257 that there comes a time when every pill must go. In assessing whether or not that time had come, the *Regal* panel considered two principal questions. First, if the plan is permitted to remain in effect for a reasonable further period, is there, on the evidence, a reasonable possibility that a better offer will come along during the period? Second, if the pill is not terminated prior to the bid's expiry, is it likely that the bid will not be extended by the bidder for such reasonable further period and thus deprive shareholders of the opportunity to decide whether or not they

wish to accept the bid? The panel went on to consider one further fundamental question, *i.e.*, what were the wishes of shareholders with respect to the plan?

In *Re CW Shareholdings and WIC Western International Communications Ltd.* (for the OSC decision, see (1998) 21 OSCB 2899) and *Re Ivanhoe III Inc. and Cambridge Shopping Centres Limited* (for the OSC decision, see (1999) 22 OSCB 1327), each of the BC, Alberta, Ontario and Quebec Commissions expressed a strong preference for poison pills approved by shareholders prior to the pills' deployment in the face of a bid. In these decisions, the Commissions stated that, if a pill is put in place in the face of a bid without shareholder approval, it is, at the very least, necessary for the target company to demonstrate that it was necessary to do so because of the coercive nature of the bid or some other very substantial unfairness or impropriety.

In the Alberta Securities Commission's ("ASC") decision in *Re Samson Canada Inc. and Highridge Exploration Ltd.* (1999) 8 A.S.C.S. 1791, the panel stated that *WIC* and *Cambridge* involved unique facts. The panel did not interpret these decisions as creating a new test for determining whether a tactical pill must go, or as elevating coerciveness to the level of a decisive factor, but was of the view that the *Regal* test is the fundamental test for all rights plans. The panel interpreted *Cambridge* to mean that coerciveness is a significant factor in the consideration of whether a target has met its burden under the *Regal* test. Coerciveness may suggest a special need for increasing shareholder choice or influence the determination of what is a reasonable period of further time for the pill to stand.

In *Re BGC Acquisition Inc. and Argentina Gold* [1999] 25 B.C.S.C.W.S. 44, the British Columbia Securities Commission ("BCSC") stated that there are a number of relevant factors that should be considered in determining whether a pill should be cease-traded, including whether there was shareholder approval of the pill and whether the bid is coercive, unfair or improper. Other factors include whether broad shareholder support is evident, when the poison pill was adopted, the size and complexity of the target company and the number of potential, viable offerors, the likelihood of the existing bid or bids falling away if the pill is not removed and the likelihood that, if given further time, the target company can find a better offer.[1]

**CHIP Decision**

The CHIP Decision presented an important opportunity for the Commissions to speak with one voice to reconcile the decisions of *Regal, WIC, Cambridge, Samson and Argentina Gold*, particularly as they apply to tactical pills.

The Commissions opted for a flexible approach to be taken in connection with poison pill cases. The approach to be taken is succinctly stated in the following passages from the CHIP Decision:

> We now turn to the issue raised by Royal Host's application. That issue was whether it was in the public interest for us to make orders that would terminate the operation of the CHIP rights plan against the Royal Host bid and thus allow the bid to proceed for consideration by the unitholders of CHIP. In other words, was it time for the CHIP pill to go?
>
> The general principles we applied in making that determination are set out in National Policy 62-202 and have been interpreted in the series of decisions reviewed above. In the policy, we emphasize that the primary objective of the regulatory scheme governing take-over bids is the protection of the bona fide interests of the shareholders of the target company. We recognize that the board of a target company facing a hostile bid may adopt defensive tactics in a genuine attempt to increase shareholder value. However, we also confirm that we will step in if their tactics appear likely to deny or severely limit the opportunity of the shareholders to respond to the bid.
>
> In applying these principles to the determination of the public interest in a particular case, the challenge we face is finding the appropriate balance between permitting the directors to fulfill their duty to maximize shareholder value in the manner they see fit and protecting the right of the shareholders to decide whether to tender their shares to the bid. We can make this determination only after considering all of the relevant factors in that particular case. While it would be impossible to set out a list of all of the factors that might be relevant in cases of this kind, they frequently include:
>
> - whether shareholder approval of the rights plan was obtained;
> - when the plan was adopted;
> - whether there is broad shareholder support for the continued operation of the plan;
> - the size and complexity of the target company;
> - the other defensive tactics, if any, implemented by the target company;
> - the number of potential, viable offerors;
> - the steps taken by the target company to find an alternative bid or transaction that would be better for the shareholders;
> - the likelihood that, if given further time, the target company will be able to find a better bid or transaction;
> - the nature of the bid, including whether it is coercive or unfair to the shareholders of the target company;
> - the length of time since the bid was announced and made;

[1] *Cambridge* was decided in mid-January 1999 and *Argentina Gold* was decided later in the same month. The reasons in *Cambridge*, however, were not released until March 1999 and the case was not argued before the *Argentina Gold* panel. (The reasons in *WIC* were, however, considered by the *Argentina Gold* panel.) *Samson* was decided the day before Royal Host applied to the Commissions to cease-trade the pill, but the reasons in *Samson* and *Argentina Gold* were not released until shortly before the CHIP/Royal Host hearing later in June 1999.

- the likelihood that the bid will not be extended if the rights plan is not terminated.

This is the approach that was taken in *Jorex* and that served as the starting point for the analysis in the subsequent decisions. However, a number of those decisions - *Regal, WIC* and *Cambridge* - have attempted to refine this approach by focusing on certain of these factors and using them as the basis for specific tests to be applied in determining whether it is time for the pill to go.

After reviewing these decisions and the fact patterns on which they were based, we have come to the conclusion that it is fruitless to search for the "holy grail" of a specific test, or series of tests, that can be applied in all circumstances. Take-over bids are fact specific; the relevant factors, and the relative importance to be attached to each, will vary from case to case. As a result, a test that focuses on certain factors to the exclusion of others will almost certainly be inappropriate in some of the cases to which we attempt to apply it.

Therefore, in determining whether it was time for the CHIP pill to go, we simply considered all of the relevant factors rather than attempting to establish and apply a comprehensive and conclusive test.

Applying the relevant factors, the Commissions decided that CHIP should be provided with additional time to pursue value-enhancing alternatives with the benefit of the shareholder rights plan in place. By virtue of the decision, the rights plan could continue for an additional 13 days from the date of the hearing (*i.e.*, 47 days from the date of announcement of the Royal Host bid, 45 days from adoption of the rights plan and 35 days from the date the Royal Host circular was mailed).

After termination of the rights plan, Royal Host sweetened and extended its offer. CHIP's trustees continued to recommend rejection of the revised offer.

CHIP's trustees then negotiated an alternative transaction with the Belkin Group. The alternative transaction involved a partial cash bid and a unitholder-approved treasury issuance of securities to the Belkin Group. Royal Host continued to extend its offer, pending a unitholder vote on the proposed treasury issuance. The proposed issuance was approved by unitholders and the Belkin offer was successful. Royal Host then announced the withdrawal of its bid.

**Comment**

The CHIP Decision sets forth a flexible, relevant factor approach to answering the question of whether or not it is time for the "pill to go" in poison pill cases.

The CHIP Decision clarifies that, at least from the perspective of the Ontario, Alberta and B.C. Securities Commissions, it is not essential that there be a finding that a bid is coercive or very substantially unfair or improper in order for a tactical pill to continue.

In determining whether it was time for the CHIP pill to go, the Commissions reaffirmed that prior shareholder approval and shareholder support for the continued operation of the plan were relevant but not determinative factors for a pill to continue. Having said this, the Commissions regarded negatively the lack of prior shareholder approval of the plan and the unconvincing evidence of shareholder support for the continued operation of the plan.

In sum, the CHIP Decision indicates that a flexible, relevant factor analysis will be applied to both shareholder pre-approved rights plans and tactical pills with prior shareholder approval and evidence of shareholder support, among other things, being relevant factors.

**Zimmerman Amendments**

The Canadian Securities Administrators ("CSA") currently are working towards uniform implementation of the recommendations that were made in the Report of the Committee of the Investment Dealers Association of Canada to Review Take-over Bid Time Limits (the "Zimmerman Committee Report") (1996) 19 OSCB 4469).

The recommendations contained in the Zimmerman Committee Report (the "Zimmerman Amendments"), when implemented, would among other things:

- extend the minimum time that a take-over bid or issuer bid (each, a "bid") must be open for acceptance, from 21 days to 35 days;
- change the deadline for payment for securities taken up under a bid from three days to three business days after the take up;
- extend the time in which an initial directors' circular must be delivered, from 10 days to 15 days after the date of the take-over bid; and
- permit a take-over bid to be commenced by advertisement provided that:
  - (a) on or before the date of the ad, the bidder files the bid and delivers it to the target;
  - (b) on or before the date of the ad, the bidder requests a shareholders' list from the target; and
  - (c) the bid is delivered to the target's shareholders within two business days of receipt by the bidder of the shareholders' list.

Subject to several jurisdictions passing the requisite legislative amendments, rules and regulations, staff of the CSA are currently targeting Fall 2000 as the date for uniform implementation of the Zimmerman Amendments.

**Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions**

Effective May 1, 2000 OSC Policy Statement 9.1 ("Policy 9.1") was replaced by OSC Rule 61-501 and the Companion Policy 61-501CP (the "New Rule and Policy") (see (2000) 23 OSCB 965).

Like Policy 9.1, the New Rule and Policy continue to regulate insider bids, issuer bids, going private transactions and related party transactions by requiring enhanced disclosure, valuations and majority of minority shareholder approval in connection with such transactions unless an exemption is otherwise available.

A number of changes have been made in the New Rule and Policy as compared to Policy 9.1. The more salient features of the New Rule and Policy are set out below:

(1) The wording and application of the New Rule and Policy are more precise than Policy 9.1. This is to be expected given that most of the policy has been reformulated as a rule. Furthermore, the New Rule and Policy codify a number of exemptions that previously were granted by the Director under Policy 9.1 on a discretionary basis. For example, the New Rule and Policy set out 15 specific exemptions from the valuation requirement in connection with related party transactions in addition to maintaining the ability to apply for a discretionary waiver.

(2) The definition of "going private transaction" has been amended to make it applicable only in potential conflict of interest situations, *i.e.*, where the transaction is with or involves a related party of the issuer and the related party: (a) is not treated identically to all other beneficial holders in Canada of affected securities; (b) receives consideration of greater value than that paid to all other beneficial owners of affected securities; or (c) upon completion of the transaction, beneficially owns or exercises control or direction over participating securities of a class other than the class subject to the going private transaction.

(3) Unlike Policy 9.1, the New Rule and Policy would permit the locked-up shares of major shareholders to be counted as part of the minority in a going private transaction, provided that the locked-up shareholder is receiving consideration identical to the consideration received by the other shareholders.

(4) Unlike Policy 9.1, the New Rule and Policy does not tie the required level of minority approval either to the type of consideration offered or the relationship between the consideration offered and the range of values disclosed in a formal valuation, in a going private or related party transaction. In all cases the required level of minority approval is a simple majority of the minority under the New Rule and Policy.

(5) Unlike Policy 9.1, which provides for a liquid market exemption from certain formal valuation requirements only where a dealer opinion confirmed by the stock exchange is obtained, the New Rule and Policy eliminates the need for such an opinion if certain criteria can be satisfied.

(6) The New Rule and Policy provide for a new valuation exemption for a going private transaction that follows a formal bid, where, among other things: (a) the going private transaction takes place no more than 120 days after the formal bid's expiry; (b) the intent to effect the going private transaction was disclosed in the bid circular; (c) the consideration is at least equal in value and in the same form as what was paid in the formal bid; and (d) if the tax consequences would be different and were reasonably foreseeable, they were appropriately described in the bid circular.

(7) The New Rule and Policy define more clearly the circumstances in which an exemption is available from the valuation requirement in connection with an insider bid or going private transaction on the basis of a previous arm's length negotiation. Among other things, the New Rule and Policy restrict the availability of the arm's length negotiation exemption to situations where one of the selling securityholders beneficially owns or exercises control or direction over at least 10% of the outstanding securities (5% in limited circumstances) and one or more selling securityholders beneficially own or exercise control or direction over 20% of the outstanding securities excluding those held by or on behalf of the offeror.

(8) Unlike Policy 9.1, the New Rule and Policy provide for an "auction exemption" from the valuation requirement in going private transactions as well as insider bids.

(9) The New Rule and Policy provide an exemption from the valuation and minority approval requirement in connection with a related party transaction on the basis of financial hardship. The exemption is available, however, only if a number of criteria are satisfied. Among other things, the board of directors of the issuer and not less than two-thirds of the independent directors of the issuer, acting in good faith, must determine that: (i) the issuer is insolvent or in serious financial difficulty; (ii) the transaction is designed to improve the financial position of the issuer; and (iii) the terms of the transaction are reasonable in the circumstances of the issuer. Having sufficient resources available to prepare a formal valuation, but the desire to set aside such resources for other valid corporate purposes will not, in and of itself, allow issuers to avail themselves of the exemption.

(10) Deleted from the New Rule and Policy is the provision in Policy 9.1 that permitted an offeror to choose the valuator and supervise the valuation if an insider bid either was being made without the prior knowledge of the offeree's independent directors or if the offeror had a reasonable basis for concluding that the insider bid was being regarded as a hostile bid by a majority of the independent directors. The New Rule requires the offeree's independent directors to perform these tasks. The New Companion Policy includes commentary to the effect that, if the independent committee of the offeree is not acting in a timely manner in having a formal valuation prepared, the offeror can seek relief from the requirement to include the valuation in its take-over bid circular. The New Companion Policy also contains commentary to the effect that where the independent committee is of the view that the insider bid will not actually be made or is not being made in good faith, relief can be sought from the Director in respect of the independent committee's valuation obligations.

(11) The New Rule and Policy provide further guidance as to what does and does not constitute a "prior valuation".

The Commission des valeurs mobilieres du Quebec ("CVMQ") announced on February 11 that, in the interests of having uniform regulation in this area, it will be amending its Policy Q-27 so that it will be virtually identical to the New Rule and Policy. One difference will be that the *de minimus* exemption for application of the going private and related party transaction provisions will be based on beneficial ownership of securities in Quebec as opposed to beneficial or registered ownership of securities in Ontario under the New Rule and Policy.

**Proceedings Relating to MacDonald Oil Exploration Ltd.'s Take-over Bid for Bresea Resources Ltd.**

The OSC and ASC became involved in an unusual share exchange take-over bid launched by MacDonald Oil Exploration Ltd. ("MacDonald Oil"), an Ontario-based issuer, for Bresea Resources Ltd. ("Bresea") in June 1999. Bresea, an Alberta-based CBCA company that is commonly known as the parent of Bre-X Minerals Ltd., has been in receivership since late 1997. Its most current audited financial statements were for the 1995 fiscal year and it has had no board of directors for some time. It was subject to cease-trade orders in BC and Quebec, the two jurisdictions in which it is a reporting issuer.

**Background**

In late June 1999, staff of the CVMQ contacted the take-over bid team at the OSC[2] to express concern about the bid because, among other things, no directors' circular had been sent to shareholders. Staff of the OSC, together with their colleagues at the CVMQ, ASC and BCSC, inquired further into the circumstances of the bid and expressed their concerns to MacDonald Oil and its counsel. Staff was concerned about the bid because, among other things, it appeared that Bresea shareholders did not have sufficient information to make an informed decision about whether or not to tender to the bid because: (1) no one exercising the functions customarily exercised by a target board or its management had advised the Bresea shareholders about the bid; and (2) the disclosure in MacDonald Oil's circular appeared to be deficient in terms of its compliance with securities law requirements.

When it became apparent that staff's concerns would not be resolved prior to the bid's expiry on July 12 (and that the BCSC and CVMQ did not intend to lift the temporary cease-trade orders on Bresea), the OSC and ASC, at the request of staff, issued temporary cease-trade orders stopping MacDonald Oil from completing the acquisition of Bresea shares or paying for such shares by issuing its own securities as consideration. The temporary orders were extended several times until a joint hearing of the OSC and ASC could be held to consider, among other things, whether the bid should be permanently cease-traded.

**The Commissions' Decisions**

On August 9, 1999, a joint hearing of the OSC and ASC was held to consider staff's allegations and on August 11, these commissions issued final orders. The final orders permanently cease-traded the bid, while providing for the possibility that MacDonald Oil could make another bid for Bresea upon compliance with the orders' terms and conditions.

The OSC and ASC subsequently issued their reasons for decision. (The OSC's reasons are published in (1999) 22 OSCB 6452.) These reasons deal with some interesting matters, including the following issues:

(1) The OSC and ASC affirmed that the approach to be taken to allegations of inadequate disclosure in take-over bid situations is the one provided for in *Re Standard Broadcasting Corporation Limited* (1985) 8 OSCB 3671. In that decision, the OSC adopted the test articulated by the United States Supreme Court in *TSC Industries Inc. v. Northway Inc.*, 426 U.S. 438 and the Ontario Court of Appeal in *Sparling v. Royal Trustco Ltd.* (1984), 45 O.R. (2d) 484. That standard is that an omitted fact is material if there is substantial likelihood that a reasonable shareholder would consider it important in deciding whether to tender his or her shares to a bid.

(2) The OSC and ASC indicated that, in normal circumstances where a directors' circular has been sent to offeree shareholders, the Commissions' task in assessing disclosure issues involves " ... weighing the overall effect of ... differing views [expressed by the offeror and the target board], which often counter-balance each other to a large degree." The Commissions concluded that the lack of a directors' circular does not increase the bidder's onus to disclose but " ... where there is no directors' circular to counter-balance the take-over bid circular, disclosure defects are likely to be more material." Defects that might, in effect, be corrected by a directors' circular are accentuated by the lack of a countervailing document and this may cause defects to have an unusual cumulative effect.

(3) The OSC and ASC also clarified how the disclosure requirements in the prospectus forms apply in the context of a share exchange take-over bid. The take-over bid circular forms provide that, where the bidder is offering its own securities as consideration, the bidder must include the information prescribed by the appropriate prospectus form. The prospectus forms, of course, sometimes prescribe disclosure requirements with reference to periods beginning or ending on the date of the preliminary or final prospectus. For example, the prospectus form states that, if any person or company has been a promoter within the five years immediately preceding the date of the preliminary or *pro forma* prospectus, certain information must be provided. In correspondence with staff, MacDonald Oil had suggested that the disclosure requirements relating to promoters did not apply in the context of a take-over bid (since the form did not refer to the five-year period preceding the date of the *offer*). The Commissions confirmed staff's interpretation that this form requirement required disclosure covering a five-year period preceding MacDonald Oil's bid.

[2] Most of the Bresea shares were held by shareholders with registered addresses in Ontario and Alberta.

(4) The Commissions also provided guidance as to the approach a market participant should take when the forms, applied strictly, would result in disclosure that is not meaningful. Because MacDonald Oil was making a share exchange take-over bid, it was required to provide *pro forma* financial disclosure giving effect to the proposed exchange of securities. The *pro forma* financial statements were to be prepared using the target's most recent audited financial statements. Since Bresea's most recent audited financial statements were for the 1995 fiscal year, using these statements would have resulted in stale-dated disclosure. MacDonald Oil chose instead to use the relatively recent, but incomplete and unaudited, financial statements that Bresea's receiver had included in its June 1998 interim report to the court. MacDonald Oil, however, did not obtain an exemption order permitting it to do so. At the joint hearing, staff alleged, and the Commissions agreed that, because the *pro forma* statements were based on incomplete financial statements prepared by the receiver, the statements MacDonald Oil had prepared for inclusion in the take-over bid circular materially overstated the value of MacDonald Oil if it had acquired Bresea. If MacDonald Oil had applied to the Commissions for exemptive relief, there would have been an opportunity to consider whether the *pro forma* statements, as prepared by MacDonald Oil, provided an accurate financial picture for Bresea shareholders. The Commissions' decisions emphasize the importance of consulting with staff and seeking exemptive relief if necessary, rather than proceeding with non-compliant disclosure, when literal adherence to a requirement is inappropriate.

(5) At the joint hearing, Bresea's receiver, PricewaterhouseCoopers Inc. ("PWC"), submitted that the Commissions should cease-trade Bresea altogether for a period of time because, in these very unusual circumstances, it would be extremely difficult for directors (if a board were put in place) or the receiver to provide meaningful information to Bresea shareholders about the value of their Bresea shares. The settlement negotiations between PWC and Bresea's claimants were at a very delicate stage. Accordingly, disclosure in the context of a take-over bid as to the value of Bresea could prejudice PWC's ability to negotiate a favourable settlement of the claims (a result that, obviously, would be harmful to the shareholders). Staff supported PWC's submission, noting that the requested orders would not preclude take-over bids for Bresea. The requested orders would merely have the effect of requiring prospective bidders to apply to the Commissions for relief before making their bids. The Commissions declined to grant the requested relief, noting that, if a share exchange take-over bid were made, the bidder would have to apply for exemptive relief because it would be impossible to prepare meaningful *pro forma* disclosure in compliance with the forms. The Commissions concluded that, although it might be possible to launch a cash bid for Bresea without exemptive relief, securities legislation and the vigilance of staff would provide Bresea shareholders with adequate protection against improper bids.

(6) In their reasons, the Commissions also provided guidance as to the significance of disclosure relating to, among other things: (1) the terms and conditions of take-over bids and withdrawal rights; (2) risk factor disclosure relating to the impact of solvency tests upon the bidder's ability to pay dividends, repurchase shares or redeem shares offered as consideration in its bid; (3) risk factor disclosure relating to the liquidity of share consideration (*e.g.*, where shares may be subject to hold periods or do not trade on a stock exchange); (4) self-dealing transactions; (5) material changes in the offeree's affairs; and (6) the bidder's plans for the offeree issuer.

**Recent Developments**

A few days before the Joint Hearing commenced in August, one of the respondents, Russell Martel, brought an application in the Ontario Superior Court of Justice seeking certain relief pursuant to the CBCA.[3] In general terms, Mr. Martel requested, among other things, that the Court: (1) declare that the offer documents complied with the CBCA; (2) declare that, where an offeree corporation does not have a board of directors, no directors' circular is required under the CBCA and no directors' circular was required from Bresea or PWC in respect of the Offer; (3) order correction of the offer documents and dissemination of the corrected offer documents to each offeree in the event that the Court concluded that the offer documents did not comply with the CBCA; and (4) order that MacDonald Oil could complete the delivery of the MacDonald Oil securities offered as consideration under the Offer to Bresea shareholders whose shares had been taken up by MacDonald Oil on or before July 12, 1999.

On August 31, 1999, Mr. Martel filed a Notice of Appeal with the Divisional Court in respect of the Commission's final order.

On September 29, 1999, the Commission and the Director appointed under the CBCA moved jointly to dismiss or stay the application (on the basis of jurisdictional and standing arguments) or, in the alternative, to stay the application pending the final determination of the appeal. On September 30, 1999, Fleury J., declining to determine the jurisdictional and standing arguments, ordered that the application be stayed pending the final determination of the appeal. On October 1, 1999, Mr. Martel abandoned his appeal.

On October 14, 1999, the Commission and the Director, CBCA successfully moved for a dismissal of Mr. Martel's application. Molloy J. dismissed the application as "an abuse of the process of the Court" for the following reasons:

(1) Mr. Martel did not have standing as an "interested person" under sections 204 or 205 of the CBCA because he did not have a real or legitimate stake in the proceeding in the sense of a legal pecuniary interest.

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[3] Mr. Martel was a former director and officer of MacDonald Oil. With respect to the Offer, he acted as an agent of MacDonald Oil, preparing the take-over bid circular and associated disclosure documents and providing information to investors who inquired about the Offer. He owned shares of MacDonald Oil but not of Bresea.

(2) The issues raised in the application were moot in light of the final orders. No matter what order the Court might make as to whether the bid complied with the CBCA, the bid had expired and was the subject of cease-trade orders. Accordingly, any declaration by the Court would have no effect.

(3) The relief sought with respect to declarations of compliance with the CBCA and directing MacDonald Oil to complete the delivery of the consideration flew in the face of the OSC's final order and was an attempt to circumvent that order. If Mr. Martel wanted to overcome that decision, the proper route was an appeal to the Divisional Court.

(4) To the extent that the relief sought was exemptive in nature, section 204 of the CBCA required the proceedings to be brought in an Alberta court, where Bresea has its registered office.

(5) To the extent that the relief sought related to the correction of the offer documents and their dissemination to shareholders, such relief was available only where a take-over bid was to continue. Since the bid could not continue, the Court did not have the jurisdiction to make the order sought.

**Mini-Tenders**

On December 10, 1999, the CSA released Staff Notice 61-301 titled: "Staff Guidance on the Practice of "Mini-Tenders" (the "CSA Notice") (1999) 22 OSCB 7797. The CSA Notice set out staff's current views on mini-tenders and is largely reproduced here.

**What is a Mini-Tender?**

A mini-tender is a widely-disseminated offer to purchase shares of a public company at a price below the current market price. A mini-tender is different from a take-over bid in Canada because a mini-tender offeror usually offers to acquire only a small percentage of the outstanding shares of a public company and in any event significantly less than 20% of the outstanding shares of a public company.

Numerous mini-tenders have taken place in the United States and staff is aware of at least seventeen mini-tenders that have been made for Canadian companies.

Generally, mini-tenders offer consideration that is anywhere from 3-35% below the current market price of the shares sought. This discount invites the question of why securityholders would tender their securities to a mini-tender when they could sell them in the market for a greater price.

Based upon the inquiries of staff, the only circumstance in which investors might benefit from tendering their securities to a mini-tender is in the circumstances where an individual investor holds less than a "board lot" of securities, (a "board lot" means 100 shares having a market value of $1.00 per share or greater, 500 shares having a market value of less than $1.00 and not less than $0.10 per share or 1,000 shares having a market value of less than $0.10 per share). Generally, no commissions are payable in connection with the tender of securities to a mini-tender. Therefore, proponents of mini-tenders point out that, in some circumstances, the holder of less than a board lot of securities could tender to a mini-tender to avoid minimum brokerage commissions that make the sale of his or her securities relatively costly.

Whether or not tendering to a mini-tender might be attractive in these very limited circumstances, staff would like to stress that investors should carefully examine a mini-tender to determine whether it is in their interests to tender to it. Investors are urged to consult their financial advisers in this regard.

**Dissemination of Mini-Tenders Not Required**

Currently, mini-tender offerors use the information systems put in place by market intermediaries to communicate their mini-tenders to the securityholders of target issuers. In this regard, staff expressed its view in the CSA Notice that there is currently no specific requirement under Canadian securities legislation or policies that notice of a mini-tender must be delivered to registered holders of the securities subject to the mini-tender. A mini-tender is not a "take-over bid" as defined in Canadian securities legislation. Therefore, intermediaries are not obliged under Part IX of National Policy 41 to advise their clients who are non-registered holders of securities, of the commencement of a mini-tender.

Furthermore, staff expressed its view in the CSA Notice that registrants are not obliged under securities laws to pass on mini-tenders to their clients. If registrants choose or are otherwise obliged to pass on information concerning a mini-tender to their clients, they should ensure that all relevant information concerning the mini-tender and the market for the affected security is given to their clients, including the warning referred to in item (2) below.

**Staff Concerns**

Staff has serious concerns that an investor might tender to a mini-tender based upon a misunderstanding of the mini-tender or the current market price of the security subject to the mini-tender. Mini-tenders bear a close resemblance to formal take-over bids, which are historically equated with an offering price that includes a premium to the current price. In staff's opinion, causing investors to tender to a mini-tender based upon such a misunderstanding can be abusive of the capital markets and contrary to applicable anti-fraud provisions of certain securities legislation.

As a result, staff suggested in the CSA Notice that a minimum level of disclosure be provided by the mini-tender offeror to holders of the securities subject to a mini-tender. By including this minimum disclosure with the information contained in a mini-tender, the risk that a securityholder would be tendering to a mini-tender through inadvertence or misunderstanding should be reduced or eliminated.

**Suggested Disclosure in Mini-Tenders**

Staff's view is that in order to avoid confusion and misunderstanding, a mini-tender offeror should ensure that the information that accompanies any widely-disseminated offer to purchase securities at a price below that security's current

market price should prominently include the following information:

(1) the principal market or markets for the securities of the issuer of the target securities sought to be acquired pursuant to the offer, the date of the offer and the market price of the securities immediately before the earlier of the public announcement of the offer or the date of the offer, as the case may be;

(2) a warning that the offering price is below the current market price of those securities;

(3) a statement that any person considering tendering to the offer should consult his or her financial adviser;

(4) a description of securityholders' withdrawal rights under the offer and details of the withdrawal procedure; if no such withdrawal rights exist, a clear statement should be included to that effect;

(5) if applicable, a statement that the offeror could revoke its offer at any time; and

(6) a clear calculation of the final price to be paid for the target securities.

Staff also suggested in the CSA Notice that mini-tender offerors provide a copy of their mini-tenders directly to the issuer of the securities subject to the mini-tender.

Depositories, participants and intermediaries who summarize and forward notice of mini-tenders (notwithstanding that there is currently no specific requirement to do so under Canadian securities legislation or policies, as discussed above) should ensure that their summaries prominently include the warning referred to in item (2) above. The summary should also state that any person considering tendering to the offer should first consult his or her financial adviser.

Staff will continue to monitor mini-tenders and in the event that a mini-tender is conducted in a manner or in circumstances which are prejudicial to the public interest, staff will recommend to CSA members that appropriate action be taken, which could include seeking a cease-trade order in respect of the mini-tender or the person or company making the mini-tender.

**Selected Collateral Benefit Issues under Rule 61-501**

1. Introduction

Recently, staff has considered a number of applications for exemptive relief and prefile inquiries that deal with the interaction between the collateral benefit provisions in the Ontario Securities Act (the "Act") and the provisions in Rule 61-501permitting shares tendered to a formal bid to be counted as part of the minority in a second-step going private transaction (a "GPT"). Since Rule 61-501 only came into force a few weeks ago, it would be premature to discuss this topic at length, but staff of the Take-over Bid Team thought it would be helpful to provide some guidance to persons who may be considering similar situations in the near future.

2. The Prohibition on Collateral Benefits and the Basis for Exemptive Relief

Subsection 97(2) of the Act provides that, if an offeror makes or intends to make a take-over bid or issuer bid, neither the offeror nor anyone acting jointly or in concert with the offeror shall enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner consideration of greater value than that offered to other holders of the same class of securities.

Clause 104(2)(a) of the Act provides that, if the Commission is satisfied that it would not be prejudicial to the public interest, the Commission may decide for purposes of subsection 97(2) that an agreement, commitment or understanding with a selling securityholder is made for reasons other than to increase the value of the consideration paid to such securityholder for that holder's securities and that the agreement, commitment or understanding may be entered into despite that subsection.

Read together, subsection 97(2) and clause 104(2)(a) provide for a three-step inquiry:

(1) Is the bidder or one of its joint actors proposing to enter into an agreement, commitment or understanding with a holder or beneficial owner of target securities?

(2) If the answer to question (1) is yes, will the agreement, commitment or understanding have the *effect* of providing that holder or beneficial owner with some kind of benefit that is different from the benefit the other target securityholders will be offered under the bid?

(3) If the answers to questions (1) and (2) are yes, then it would appear that the agreement, commitment or understanding falls within the scope of the prohibition in subsection 97(2). An application for exemptive relief under clause 104(2)(a) should be considered. Clause 104(2)(a) authorizes the Commission to grant such an exemption if, among other things, the *purpose* of the collateral agreement, commitment or understanding is not to increase the value of the consideration the holder or beneficial owner is receiving for his or her target securities.

It is important to note that the Commission, in granting an order under clause 104(2)(a), *is not* making a determination that an agreement, commitment or understanding does not provide for a collateral benefit. The Commission is *permitting* the bidder to enter into an arrangement that provides for an otherwise prohibited collateral benefit.

3. Can Shares Tendered to a Bid by Recipients of Collateral Benefits Be Counted as Part of the Minority in a Second-Step GPT?

Section 8.2 of Rule 61-501 provides that the votes attached to securities tendered to a formal bid may be included as votes in favour of a subsequent GPT if, among other things the tendering securityholder did not receive:

(1) a consideration per security that is not identical in amount and type to that paid to all other beneficial owners in Canada of affected securities of the same class;

(2) consideration of greater value than that paid to all other beneficial owners of affected securities of the same class.

If, in connection with a formal bid, the offeror or any of its joint actors enters into a collateral agreement, commitment or understanding with a tendering securityholder that has the effect of providing that securityholder with greater consideration than that offered to other offerees (*i.e.*, if the arrangement falls within the scope of the prohibition on collateral benefits in subsection 97(2)), then that securityholder's securities cannot be counted as part of the minority unless discretionary relief is obtained from the Director. In essence, if you need to apply to the Commission for a s. 104(2)(a) order, then you're going to need an exemption from the Director under Rule 61-501, too, if you want to count the shares tendered by the party to the collateral agreement. The fact that you obtained a s. 104(2)(a) order doesn't negate the fact that the tendering securityholder was treated differently than the other securityholders in the bid.

Staff's analysis of whether it is appropriate to recommend relief under clause 104(2)(a) likely will be similar in many, *but not all*, respects to its analysis whether it is appropriate to recommend an exemption under Rule 61-501 to permit the shares tendered by the securityholder party to the collateral agreement to be counted as part of the minority.

Accordingly, sometimes staff will recommend that both exemptions will be granted. In some circumstances, however, staff anticipates that it may recommend that the Commission grant relief under clause 104(2)(a) but recommend against the relief requested under Rule 61-501. For example, if a selling securityholder with a $10,000 investment in the target entered into a supply agreement reflecting normal commercial terms with the offeror and that supply agreement provided a revenue stream of $1 million/year to the securityholder, one might conclude that the securityholder's decision to support the bid had more to do with the prospect of entering into the supply agreement than the fact that the offer price under the bid was attractive. In such circumstances, staff might conclude that the securityholder's decision to tender its securities to the bid should not be considered a vote in favour of the price offered in the second-step GPT.

4. Arm's-Length Negotiation Exemption from the Formal Valuation Requirements

Rule 61-501 carries forward from OSC Policy 9.1 a modified version of the "previous arm's-length negotiation with a selling securityholder" exemption from the formal valuation requirements otherwise applicable to an insider bid or going private transaction. In very general terms, this exemption is available if, among other things, the consideration offered under the insider bid or going private transaction equals or exceeds the value, and is in the same form, as the highest consideration agreed to with one or more selling securityholders in prior arm's-length negotiations.

A person who proposes to rely upon the arm's-length negotiation exemption in paragraph (3) of subsection 2.4(1) or paragraph (2) of subsection 4.5(1) of Rule 61-501 should keep in mind that a collateral agreement, commitment or understanding entered into with the selling securityholder whose negotiations are supposed to serve as a proxy for a formal valuation may undermine the basis for relying upon this valuation exemption. This is because the arm's-length negotiation exemption is available only if the offeror or proponent of the going private transaction reasonably believes that, if there were any factors peculiar to the selling securityholder considered relevant to the selling securityholder in assessing the consideration, such factors did not have the effect of reducing the price that otherwise would have been acceptable to the selling securityholder. A collateral agreement, commitment or understanding with the bidder certainly would be a "factor peculiar to the selling securityholder". The question will be whether that collateral agreement, commitment or understanding had the effect of reducing the price the selling securityholder was willing to accept.

**Applications for Exemptive Relief in Connection with Hostile Bids**

In connection with hostile take-over bids, staff sometimes receives requests from counsel to one or more of the bidder, the target board or rival offerors that the OSC not grant any "*ex parte*" exemptive relief. That is, counsel for the bidder (or the target or a rival offeror) wishes to be advised of any applications that have been submitted for relief in connection with the bid and to have an opportunity to make submissions to staff and/or the Commission in respect of such applications.

The Take-over Bid Team at the OSC believes it would be useful to provide some guidance about how it will respond to such requests.

The first issue that arises is whether applications can, or should, be kept confidential in this context. Paragraph C(2) of OSC Policy 2.1 states that, unless confidentiality is specifically requested, a copy of any application for exemptive relief will be placed on the public file as soon as it is received by the Commission. This paragraph also indicates that applicants should be prepared to demonstrate that confidentiality is reasonable in the circumstances and would not be contrary to the public interest. In making submissions as to confidentiality, applicants are advised to consider the principle articulated in subsection 140(2) of the Act, which deals with the confidentiality of materials required to be filed under Ontario securities law. That provision states that the Commission may hold material in confidence "so long as the Commission is of the opinion that the material so held discloses intimate financial, personal or other information and the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection."

In essence, requests for confidentiality will not necessarily be granted and the onus is on the applicant to overturn the presumption favouring public availability of applications. Staff will scrutinize carefully requests for confidentiality, particularly in the context of contentious transactions involving participants who are adverse in interest. An applicant whose request for

confidentiality is opposed by staff has the option of withdrawing the application or requesting a meeting with a Commissioner to consider its request for confidentiality.

It does not follow, however, that staff will assume responsibility for advising persons or companies that applications that may affect their interests have been placed on the public file. In the context of a hostile bid, there are several alternatives available to the participants. First, they can check the public file regularly (daily, if necessary) to see whether an application has been filed. In the alternative, the participants can reach an agreement amongst themselves to send copies of applications to each other at the same time they send their applications to the Commission for review.

As noted above, staff has been receiving correspondence from counsel requesting that "*ex parte*" relief not be granted. Is it reasonable for participants in a hostile bid to expect to be given the opportunity to make submissions in respect of another participant's application for exemptive relief, either before staff decides whether or not to recommend that relief be granted or before the Commission makes a decision?

In the context of applications for exemptive relief, the term "*ex parte*" is a bit of a misnomer since the term implies that the person making the request to intervene has a right to notice of an application and a right to make submissions before the Commission makes a decision. In reality, the only persons with standing in this context are the applicant, staff and the Commission. Nothing in Ontario securities legislation, the OSC's rules of practice or policies, or the *Statutory Powers Procedure Act* gives anyone who may be affected by the outcome of an application for exemptive relief a right to make submissions to staff or the Commission *before* that relief is granted.[4] (By contrast, paragraphs E(1) and (2) of Policy 2.1 provide that no application will be refused unless the *applicant* is afforded the opportunity of a hearing.)

Section 14 of the Act permits any person or company affected by a decision of the Commission to apply to the Commission for an order revoking or varying such decision. The Commission's decision in *Re Ultramar PLC and Lasmo PLC* (1991) 14 OSCB 5221 provides guidance as to the circumstances in which such an order may be made.

Does all of this mean that staff will never consider submissions by other participants in the context of a hostile bid? No, it doesn't. Staff is expected to review applications and reach a conclusion about whether it is, or isn't, in the public interest to recommend that the requested relief be granted. In reaching such a conclusion, staff may and often does conclude that it is necessary to obtain information from persons other than the applicant. Staff will not ignore potentially relevant information just because it comes from a participant whose interests are opposed to those of the applicant or because the information arrives late in the day.

The foregoing discussion is not intended to suggest that staff will proceed to contact persons who may have relevant information without obtaining the applicant's consent to do so. It does mean, however, that an applicant who refuses to authorize staff to discuss issues arising out of the application with other participants may be advised that staff will not be able to recommend that the requested relief be granted.

**Shareholder Activism**

Catalyst investors, *i.e.*, sophisticated shareholders who invest in companies with a view to effecting significant change, either consensually or through the mechanism of a proxy battle, have been involved in a number of high profile transactions in Canada recently. Staff has received a number of queries about the activities of these investors. In a few situations, a participant in the proxy battle has requested that staff or the OSC intervene. These requests for intervention may involve allegations that:

(1) there has been insider trading by one or more activist shareholders proposing changes in the issuer's affairs; and/or

(2) the shareholders who have requisitioned a meeting for the purpose of considering certain proposals regarding the issuer are acting "jointly or in concert" with each other, so that their shareholdings should be aggregated (with the result that purchases of shares by one or more members of the requisitioning group triggered the early warning or take-over bid thresholds).

Staff would like to caution investors who are considering playing an activist role in an issuer's affairs that they must be careful not to run afoul of, among other things, the tipping and insider trading provisions. For example, through discussions with the issuer's management or directors about the issuer's future direction, a catalyst investor could become privy to material undisclosed information. The individuals who disclosed the information to the investor may be guilty of illegal tipping. The investor, in turn, could err in disclosing such material information to other investors (*e.g.*, in connection with a discussion about requisitioning a meeting) or in proceeding to buy or sell the issuer's securities (*e.g.*, as part of a strategy to acquire a toe-hold block). In such circumstances, issues relating to illegal tipping and insider trading could arise.

Of course, an investor can take precautions that will enable it to play a more active role in an issuer's affairs without acquiring material undisclosed information in the process. For example, in discussions with management or other investors, an investor can refrain from requesting information that is likely to constitute material, non-public information and make a point of stating up-front that such information should not be disclosed to it. If such information is inadvertently disclosed, the investor must avoid passing the information on to others and must avoid trading unless and until the information is disseminated.

Staff does not want to imply that catalyst investors have been breaching securities laws, nor does staff want to discourage shareholder activism. In particular, staff would also like to point out that, just because investors are talking to each other does not mean that securities laws are being violated. Staff also would like to caution market participants who might want

[4] The situation would be different, for example, where a participant in a hostile bid requested that the Commission exercise its powers under section 127 of the Act to restrain the conduct of another participant (*e.g.*, to cease-trade a rights plan). This is because section 127 expressly provides that the Commission shall not make an order, except a temporary order, unless a hearing is held.

to use allegations of the type described above as a sword in a proxy battle. In staff's view, the mere fact that shareholders have signed a requisition for a meeting does not, without more, constitute them as persons acting jointly or in concert for purposes of the early warning and take-over bid thresholds. Ordinarily, the preferred course of action will be to raise questions or concerns about investors' conduct directly with the investors or their representatives first and involve staff only if there is a lack of cooperation or issues remain unresolved.

**Conclusion**

As we enter the new millennium, there have been a number of recent developments in the securities regulation of take-over/issuer bids, going private transactions and related party transactions. As the dynamic mergers and acquisitions environment continues to evolve, it is important that Canadian securities regulation in this area remain current and responsive.

May 25, 2000

## 1.2 Notice of Hearings

### 1.2.1 Koman Info-link Inc., Koman Investment Inc. a.k.a. Koman Investment Inc. (B.V.I.), Simon Ko and Jose Castaneda - ss. 127 and 127.1

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

**AND**

**IN THE MATTER OF**
**KOMAN INFO-LINK INC.,**
**KOMAN INVESTMENT INC. a.k.a. KOMAN INVESTMENT INC. (B.V.I.),**
**SIMON KO AND JOSE CASTANEDA**

**NOTICE OF RETURN OF HEARING**
**(Subsections 127 and 127.1)**

**WHEREAS** on the 10th day of September, 1998, the Ontario Securities Commission (the "Commission") ordered, pursuant to clause 2 of the subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), that all trading in securities by Koman Info-Link Inc. ("Koman"), Koman Investment Inc. a.k.a. Koman Investment Inc. (B.V.I.) ("Koman Investment Inc."), Simon Ko ("Ko"), John Ping Sum Lam ("Lam") and Jose Castaneda ("Castaneda") cease for a period of fifteen days from the date of the order (the "Temporary Order");

**AND WHEREAS** on the 22nd day of September, 1998 the Commission ordered pursuant to subsection 127(7) of the Act that the Temporary Order be extended against Koman, Koman Investment Inc., Ko, Lam and Castaneda until the hearing is concluded and that the hearing be adjourned *sine die*;

**TAKE NOTICE** that the Commission will hold a hearing pursuant to sections 127 and 127.1 of the Act at the Commission's offices on the, 20 Queen Street West, 19th Floor, Executive Boardroom, Toronto, Ontario, commencing on 2nd day of June, 2000, 9:00 a.m., or as soon thereafter as the hearing can be held:

(a) to make an order under clause 2 of subsection 127(1) of the Act that trading in securities by the respondents cease permanently or for such other period as specified by the Commission;

(b) to make an order under subsection 127(3) of the Act that any exemptions in Ontario securities law do not apply to the respondents;

(c) to make an order that Ko is prohibited from becoming or acting as a director or officer of any issuer;

(d) to make an order that the respondents or any of them be reprimanded;

(e) to make an order that the respondents, or any of them, pay the costs of Staff's investigation in relation to the matter subject to this proceeding;

(f) to make an order that the respondents, or any of them, pay the costs of the proceeding incurred by or on behalf of the Commission; and/or

(g) to make such other order as the Commission considers appropriate.

**BY REASON OF** the allegations set out in the Statement of Allegations and such additional allegations as counsel may advise and the Commission may permit;

**AND TAKE FURTHER NOTICE** that any party to the proceedings may be represented by counsel if he or she attends or submits evidence at the hearing;

**AND TAKE FURTHER NOTICE** upon failure of any party to attend at the time and place set for the hearing, the hearing may proceed in the absence of that party and the party is not entitled to any further notice of the proceeding.

May 31st, 2000.

"John Stevenson"

### 1.2.2 Koman Info-link Inc. et al. - Statement of Allegations

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

**AND**

**IN THE MATTER OF**
**KOMAN INFO-LINK INC.,**
**KOMAN INVESTMENT INC. a.k.a. KOMAN INVESTMENT INC. (B.V.I.)**
**SIMON KO, AND JOSE CASTANEDA**

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

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

**Introduction**

1. Koman Info-Link Inc. ("Koman") is a corporation incorporated on May 17, 1996 pursuant to the laws of Ontario, and carried on business in an office located in Toronto, Ontario from approximately August, 1996 to approximately September 11, 1998. During the material times, Koman held itself out as an affiliate of Koman Investment Inc. a.k.a. Koman Investment Inc. (B.V.I.) ("Koman Investment Inc."). During the material times, Koman Investment Inc. was a corporation incorporated on May 23, 1996 pursuant to the laws of the British Virgin Islands. During the material times, Simo Ko ("Ko") was the sole officer and director of Koman.

2. During the material times, Koman employed Jose Castaneda ("Castaneda") as a trader or Account Executive for Koman clients (hereafter referred to as clients or investors).

3. As an Account Executive, Castaneda had full discretionary trading authority over certain clients' accounts. Some of Koman's clients appointed Castaneda as Account Executive pursuant to agreements entered into between the clients and Koman Investment Inc. (referred to below in paragraph 7(a)).

4. During the material times, Koman, Koman Investment Inc. and Ko were not registered to trade in securities pursuant to section 25(1) of the *Securities Act*, R.S.O. 1990, c. S.5 amended (the "Act"). Koman and Koman Investment Inc. were reporting issuers under the Act. Castaneda has been registered, at various times, to trade in securities under section 26 of the Act as a registered salesperson for the sale of scholarships only. Castaneda was not registered to trade in the securities offered by Koman to Koman's investors.

**Koman/Koman Investment Inc. Operations**

5. Beginning in or about August, 1996, Koman and Koman Investment Inc. established what purported to be a foreign currency trading operation in Toronto, Ontario. Koman and Koman Investment Inc. solicited funds from investors residing in Ontario for the purpose of providing investors with the opportunity to purchase or sell foreign exchange contracts (the "Forex Contracts") in any one of six foreign currencies or gold bullion on margin. All trades were carried out for speculative purposes. The Forex Contracts had no maturity dates and investors did not take delivery of any currency.

6. Koman also purchased and sold securities listed on the Hong Kong Stock Exchange on behalf of investors, and in this capacity, acted as a dealer as defined in section 1(1) of the Act.

7. In summary, Koman's operations included the following:

   (a) providing Koman clients with forms of agreements (the "Agreements") to enter into with Koman Investment Inc. and overseeing the signing of these Agreements in respect of the Forex Contracts and securities listed on the Hong Kong Stock Exchange;

   (b) placing advertisements in newspapers for the solicitation of individuals to invest funds with Koman for the purpose of purchasing and selling Forex Contracts;

   (c) providing seminars to investors regarding various aspects of trading in Forex Contracts;

   (d) accepting funds from investors in the form of cash, bank drafts and cheques for the purpose of trading in Forex Contracts and securities listed on the Hong Kong Stock Exchange;

   (e) opening and operating bank accounts in the name of Koman for the deposit of funds received from investors and for disbursement of funds for various purposes described below; and

   (f) recruiting persons to act as Account Executives for some investors, with full trading authority over investors' accounts, and arranging for Account Executives to act in this capacity on behalf of certain investors.

**Foreign Currency Trading Operation**

8. To open an account, investors were required to first deposit a minimum of $5,000 (USD) into an account held by Koman. Koman required that the client commit one to two percent of the cost of the Forex Contract (depending on the time of the day or night the trade was made) from the client's investment account as a margin payment. The portion of the cost of the investment not provided by the client was represented to be loaned to the client by Koman. Koman charged the client interest on the outstanding balance.

9. Koman represented to investors that client funds deposited with it were used to acquire investments in any one of six foreign currencies offered in units equivalent to approximately $100,000 (USD), as well as

gold bullion. Forex Contracts were not purchased in each investor's name. Koman purchased and sold the Forex Contracts through an account held in Koman's name with Topworth Investments Inc. located in Macau.

10. A commission in the amount of $80 (USD) was charged by Koman for each completed transaction which consisted of a purchase and sale of a Forex Contract.

11. Salespersons employed by Koman, or Account Executives receiving commissions from Koman, were expected to solicit funds from their own contacts for the purpose of opening an account for a client with Koman.

12. As stated above, certain investors appointed a "trading agent" referred to as an "Account Executive" with full discretion to trade on behalf of the client pursuant to the Agreements referred to in paragraph 7(a). The Account Executive had discretion over the size, denomination and number of Forex Contracts transacted on behalf of the client. An Account Executive also had discretion to close out his or her client's position in a given foreign currency at any time, thereby crystallizing a gain (less interest and Koman's commission) or incurring a loss. Crystallized losses (plus Koman's commission and interest) were debited from the funds on deposit in the client's account. Crystallized gains were credited to the client's account with interest, if applicable.

13. Castaneda was appointed as an Account Executive for some of the clients of Koman, and exercised complete discretionary trading authority for investors in respect of the Forex Contracts.

14. Some of Koman's clients suffered significant trading losses through trading in Forex Contracts, whether trading on their own behalf through Koman, or through the authorization of Account Executives to trade in Forex Contracts on their behalf.

15. In particular, a Koman investor, W.F., provided funds in the amount of $242,327.31 (USD) to Koman to trade in Forex Contracts between approximately February, 1997 and July, 1997. During the material times, Castaneda was appointed by W.F. to act as one of the Account Executives in respect of W.F.'s accounts with Koman. During the material times, Koman debited W.F.'s accounts for a total of $83,584.00 (USD) for commissions and $56,119.75 (USD) for interest charges. By March, 1998, W.F. had suffered a net loss of $242,182.65 (USD).

16. Investor, M.A., provided funds in the amount of approximately $100,000.00 (CDN) to Koman to trade in Forex Contracts during the period from approximately late November, 1996 to May, 1997. During the material times, Castaneda was appointed by M.A. to act as one of the Account Executives in respect of M.A.'s accounts. By October, 1997, M.A. was advised that there were no further funds remaining in her accounts with Koman. M.A. had withdrawn some funds previously. However, M.A. suffered net losses in the amount of $60,000.00 to $70,000.00 (CDN).

**Koman's Hong Kong Stock Department**

17. Koman also formed a Hong Kong Sock Department ("HKSD") for the purpose of trading securities listed on the Hong Kong Stock Exchange on behalf of investors (the "HKSD Investors").

18. To open an account, the HKSD Investors were required to deposit $5,000 (USD) for a non-margin account or $15,000 (USD) for a margin account. The HKSD Investor was required to maintain a minimum balance of $5,000 (USD) at all times if the investor wished to trade in securities.

19. The HKSD Investors could trade securities on their own account through Koman or appoint an Account Executive to trade in securities through Koman on the investors' behalf.

20. Koman had an omnibus margin account in its name for the purpose of trading securities on behalf of investors, and trades were transacted through AMMB Securities (H.K.) Limited ("AMMB") located in Hong Kong.

**Funds Received From Investors**

21. Koman accepted a total of approximately $1.1 million (USD) and $1.8 million (CAD) from approximately 151 investors for the purpose of trading in Forex Contracts.

22. Koman accepted from approximately 23 investors a total of approximately $136,000 (USD), $4,450,000 (HKD) and $593,000 (CAD) for the purpose of trading in the securities listed on the Hong Kong Stock Exchange.

23. Koman accepted funds from investors in the form of cash, bank drafts and cheques for the purpose of purchasing the Forex Contracts and securities listed on the Hong Kong Stock Exchange. The cash payments received from investors were not deposited in Koman's bank accounts.

**Koman Bank Accounts/Co-Mingling of Funds**

24. During the material times, Koman did not maintain a trust account to receive and expend funds received from investors. Funds received from investors in the form of bank drafts and cheques for the purpose of purchasing the Forex Contracts were deposited in Koman's bank account(s) and co-mingled with funds received from investors for the purpose of purchasing securities listed on the Hong Kong Stock Exchange. Koman also paid certain business or other expenses from these accounts.

25. In particular, funds were deposited to and disbursed from the two Koman bank accounts denominated in Canadian dollars as follows: (i) Koman received funds in Canadian dollars from investors and Ko; and (ii) Koman disbursed money from these accounts to investors, Ko, Koman's Account Executives and employees and brokerage firms (such as AMMB and Topworth).

26. Funds were deposited to and disbursed from two Koman U.S. dollar accounts as follows: (i) Koman received funds in American dollars from investors and brokerage firms (such as AMMB and Topworth); and (ii) Koman disbursed money from these accounts to investors, Ko, Koman Account Executives and employees, and to brokerage firms (such as AMMB and Topworth in the form of margin payments).

**Koman Record Keeping**

27. Koman did not maintain books and records in accordance with requirements contained in Ontario securities law, and in particular, in accordance with the requirements contained in section 113 of the Regulation to the Act. During the material times, Koman did not implement appropriate internal controls to ensure that funds received from investors for investment purposes were not co-mingled with funds used for the payment of Koman's business or other expenses. Further, Koman did not maintain proper books and records in accordance with the requirements contained in Ontario securities law for the purpose of determining the use by Koman of all funds accepted from investors.

**CONDUCT CONTRARY TO THE PUBLIC INTEREST**

28. In conducting the activities described above:

(a) Koman and Koman Investment Inc. distributed securities, namely the Forex Contracts, without filing and obtaining a receipt for a prospectus and without an exemption from the requirement to file a prospectus contrary to section 53 of the Act;

(b) the Respondents, Koman, Koman Investment Inc., Ko and Castaneda each traded in securities, namely the Forex Contracts, without registration and without an exemption from the registration requirements contrary to section 25 of the Act;

(c) Koman traded in securities as a dealer, namely the securities listed on the Hong Kong Stock Exchange, without registration and without an exemption from the registration requirements contrary to section 25 of the Act;

(d) Koman acted as portfolio manager and/or as an advisor with respect to trading in the Forex Contracts on behalf of certain investors without registration or an exemption from the registration requirements contrary to section 25 of the Act;

(e) Koman failed to maintain books and records in accordance with requirements contained in Ontario securities law, and in particular in accordance with the requirements contained in section 113 of the Regulation to the Act. During the material times, Koman did not implement appropriate internal controls to ensure that funds received from investors for investment purposes were not co-mingled with funds used for the payment of Koman's business or other expenses. Further, Koman did not maintain proper books and records in accordance with the requirements contained in Ontario securities law for the purpose of determining the use by Koman of all funds accepted from investors.

(f) In allowing Koman to engage in the conduct described above, Ko acted in a manner contrary to the public interest.

29. The conduct of Koman and Koman Investment Inc. described above was contrary to the public interest.

30. Such additional allegations as counsel may advise and the Commission may permit.

**DATED** at Toronto this 31st day of May, 2000.

### 1.2.3 Otis-Winston Ltd. et al. - s. 127

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

**AND**

**IN THE MATTER OF**
**OTIS-WINSTON LTD., XILLIX TECHNOLOGIES CORP.,**
**and DIGITAL CYBERNET CORPORATION**

**NOTICE OF HEARING**
**(Section 127)**

**TAKE NOTICE** that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at its offices on the 19th Floor, Executive Boardroom, 20 Queen Street West, Toronto, Ontario commencing on June 7, 2000, at 10:00 a.m. or as soon thereafter as the hearing can be held.

**TO CONSIDER** whether, pursuant to section 127(1) of the Act, it is in the public interest for the Commission to order:

(a) that all trading in common shares of Digital Cybernet Corporation ("Digital Cybernet") by Otis-Winston Ltd. ("Otis-Winston") and in common shares of Xillix Technologies Corp. ("Xillix") in exchange for Digital Cybernet common shares, tendered in response to an Offer to Purchase made by Otis-Winston on May 3, 2000 cease permanently;

(b) that all trading of Digital Cybernet common shares by Otis-Winston cease until October 6, 2000;

(c) that all trading by Otis-Winston in any securities cease permanently;

(d) to make such other order as the Commission may deem appropriate;

**BY REASON OF** the allegations set out in the Statement of Allegations of Staff of the Commission and such additional allegations as counsel may advise and the Commission may permit;

**AND TAKE FURTHER NOTICE** that any party to the proceeding may be represented by counsel if that party attends or submits evidence at the hearing;

**AND TAKE FURTHER NOTICE** that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

June 1st, 2000

"John Stevenson"

### 1.2.4 Otis-Winston Ltd. et al. - Statement of Allegations

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

**AND**

**IN THE MATTER OF**
**OTIS-WINSTON LTD., XILLIX TECHNOLOGIES CORP.,**
**and DIGITAL CYBERNET CORPORATION**

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

**The Parties**

1. Otis-Winston Ltd. ("Otis-Winston") is an Ontario corporation. Ivan Cavric is the Chief Financial Officer of Otis-Winston.

2. Xillix Technologies Corp. ("Xillix") is a British Columbia corporation and a reporting issuer. There are approximately 31,790,000 outstanding common shares of Xillix.

3. Digital Cybernet Corporation ("Digital Cybernet") purports to be a reporting issuer in Ontario. Digital Cybernet purported to become a reporting issuer by filing a securities exchange take-over bid circular (dated September 27, 1999, the same date as Digital Cybernet's incorporation) for Central America Marketing Inc. on October 6, 1999.

4. Digital Cybernet shares are subject to a hold period until October 6, 2000.

**The Subject Offer to Purchase**

5. On May 3, 2000, Otis-Winston filed with SEDAR a Form 42 and an offer to purchase shares (the "Offering Document") announcing its intention to acquire up to 590,000 Xillix shares. This represents only 1.85% of the outstanding Xillix shares and is therefore not a take-over bid pursuant to the Act. This bid will expire on June 1, 2000.

6. The Offering Document states that Otis-Winston will deliver two Digital Cybernet shares for one Xillix Share.

7. The Offering Document was not mailed to all Xillix shareholders. The Offering Document was delivered to the offices of the Canadian Depository for Securities ("CDS"), which prepared a Depository Bulletin describing the Offer and delivered the Bulletin to all Xillix shareholders.

8. As set out below, the Offering Document does not contain meaningful disclosure concerning Digital Cybernet shares. Accordingly, offering the Digital Cybernet common shares as consideration for tendering the Xillix common shares is contrary to the public interest.

9. The offer is internally inconsistent as to the consideration being offered. In portions of the Offering Document, reference is made to two common shares of Digital Cybernet being offered in exchange for one common share of Xillix. In the Form 42, filed, the consideration is listed as two dollars per common share of Xillix.

10. The valuation in respect of the Xillix shares, as described in the Offering Document, was prepared by De Rosa Accounting Services in Niagra Falls. Americo and Anita De Rosa are principal shareholders or former principal shareholders of Digital Cybernet or a related company. The valuation is not included in any material filed.

11. The value of Digital Cybernet shares is not properly disclosed in the Offering Document.

12. Digital Cybernet purported to become a reporting issuer on October 6, 1999. According to section 72(5) of the Act, the first trade in previously issued securities of a company that has ceased to be a private company, other than a further trade exempted under 72(1) of the Act, is a distribution except where, among other things, the issuer has been a reporting issuer for at least twelve months. As stated below, there have been no trades in the common shares of Digital Cybernet since October 6, 1999, which satisfy the provisions of section 72.

13. Otis-Winston is not registered to trade in securities in Ontario, and therefore any transfer of Digital Cybernet common shares to Xillix shareholders, without the appropriate registration or exemption, has been or will be in breach of s. 25 of the Act.

**The History of Digital Cybernet**

14. Digital Cybernet purported to become a reporting issuer on October 6, 1999 by filing a securities exchange take-over bid circular (the "CAM Circular") for Central America Marketing Inc. ("CAM"). According to the CAM Circular, Digital Cybernet was incorporated on September 27, 1999, the same day that this take-over bid was made.

15. According to the CAM Circular, Americo De Rosa was the President and a Director of Digital Cybernet and also its largest shareholder. At the same time, Americo and Anita De Rosa are also disclosed as majority shareholders of CAM, at the time the CAM Circular was released.

16. Northcap Holdings Inc. ("Northcap") acquired 1,180,000 Digital Cybernet shares on February 29, 2000, pursuant to a Quebec only take-over bid. On February 28, 2000, Northcap filed with the Quebec Securities Commission an offer to purchase between 20% and 30% of the outstanding common shares of Digital Cybernet, on the basis of ten common shares of Digital Cybernet for one common share of Northcap. This offer was not filed in Ontario.

17. The circular that accompanied the February 28, 2000 Northcap offer disclosed that the principal shareholder of Northcap is Ivan Cavric, who was also President, Secretary, Treasurer and a Director. Ivan Cavric is also a shareholder of Digital Cybernet.

18. On March 3, 2000, Digital Cybernet filed a Directors Circular with the Quebec Securities Commission, disclosing that Americo De Rosa and Anita De Rosa had accepted the Northcap offer. This offer was not a take-over bid pursuant to Part XX of the Act, nor did it comply with the take-over bid provisions. Therefore the transfer by the De Rosas to Northcap of Digital Cybernet common shares was not pursuant to a take-over as contemplated by section 72.

19. Accordingly, the acquisition of the Digital Cybernet common shares by Northcap was in violation of the hold period required by section 72(5) of the Act.

20. Thereafter, on May 3, 2000,Northcap directed its transfer agent to register 1,180,000 shares of Digital Cybernet in the name of Otis-Winston. As state above, the original acquisition by Northcap of the Digital Cybernet shares was in breach of the Act.

**DATED** at Toronto this first day of June, 2000.

## 1.3 News Releases

### 1.3.1 Koman Info-Link Inc. , Koman Investment Inc., Simon Ko and Jose Castaneda

June 1, 2000

**KOMAN INFO-LINK INC. , KOMAN INVESTMENT INC. SIMON KO AND JOSE CASTANEDA**

**Toronto** - On May 31, 2000 the Ontario Securities Commission (the "Commission") issued a Notice of Return of Hearing and related Statement of Allegations against Koman Info-Link Inc. ("Koman"), Koman Investment Inc., Simon Ko ("Ko") and Jose Castaneda ("Castaneda"). The Commission previously ordered on September 10, 1998 that all trading in securities by Koman, Koman Investment Inc., Ko and Castaneda cease, which order was continued pending the conclusion of the hearing.

The allegations made by Staff of the Commission against the respondents include the following:

- Beginning in August, 1996, Koman, an Ontario company, established what purported to be a foreign currency trading operation in Toronto, Ontario. Koman held itself out as an affiliate of Koman Investment Inc., a corporation incorporated under the laws of the British Virgin Islands. During the material times, Simon Ko was the sole officer and director of Koman. Koman employed Castaneda as a trader or account executive for Koman's clients.

- Koman and Koman Investment Inc. solicited funds from investors for the purpose of providing investors with the opportunity to purchase or sell foreign exchange contracts (the "Forex Contracts") in any one of six foreign currencies or gold bullion on margin. All trades were carried out for speculative purposes. The Forex Contracts had no maturity dates and investors did not take delivery of any currency.

- Castaneda was appointed as an Account Executive for some of the clients of Koman, and exercised complete discretionary trading authority for investors in respect of the Forex Contracts.

- Some of Koman's clients suffered significant trading losses through trading in Forex Contracts, whether trading on their own behalf through Koman, or through the authorization of Account Executive to trade in Forex Contracts on their behalf.

- Koman also formed a Hong Kong stock department for the purpose of trading securities on the Hong Kong Stock Exchange on behalf of investors.

- Koman accepted a total of approximately $1.1 million (USD) and $1.8 million (CAD) from approximately 151 investors for the purpose of trading in Forex Contracts.

- Koman accepted from approximately 23 investors a total of approximately $136,000 (USD), $4,450,000 (HKD) and $593,000 (CAD) for the purpose of trading in the securities listed on the Hong Kong Stock Exchange.

- During the material times, Koman and Koman Investment Inc. distributed securities, namely the Forex Contracts, without filing a prospectus. Koman, Koman Investment Inc., Ko and Castenada traded in Forex Contracts without registration contrary to Ontario securities law. Koman traded in securities as a dealer, namely the securities listed on the Hong Kong Stock Exchange, without the required registration. Koman also failed to maintain books and records in accordance with the requirements of Ontario securities law.

The hearing will commence on Friday, June 2, 2000 at 9:00 a.m. at the Commission's offices at 20 Queen Street West, 19th Floor, Executive Boardroom, Toronto, Ontario. The purpose of the hearing will be for the Ontario Securities Commission to consider whether to approve proposed settlements of this matter. Terms of the proposed settlements will only be released if and when the Commission approves the proposed settlements.

The Commission also made an application before the Superior Court of Justice for an order appointing a receiver of all of the property held in the name of Koman. On Thursday, May 18, 2000, KPMG Inc. was appointed receiver of the property of Koman.

Copies of the Notice of Return of Hearing and Statement of Allegations are available at www.osc.gov.on.ca or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario

References:

Frank Switzer
Manager, Corporate Relations
(416) 593-8120

Joanna Fallone
Manager, Case Assessment
(416) 593-8304

### 1.3.2 Koman Info-Link Inc., Koman Investment Inc. Simon Ko and Jose Castaneda

June 5, 2000

**KOMAN INFO-LINK INC. , KOMAN INVESTMENT INC. SIMON KO AND JOSE CASTANEDA**

**Toronto** - On May 31, 2000 the Ontario Securities Commission (the "Commission") issued a Notice of Return of Hearing and related Statement of Allegations against Koman Info-Link Inc. ("Koman"), Koman Investment Inc., Simon Ko ("Ko") and Jose Castaneda ("Castaneda"). The Commission previously ordered on September 10, 1998 that all trading in securities by Koman, Koman Investment Inc., Ko and Castaneda cease, which Order is continued pending the conclusion of the hearing.

The hearing scheduled for Friday, June 2, 2000 has been adjourned until Wednesday, June 7, 2000 at 10:00 a.m. at the Commission's offices at 20 Queen Street West, 19th Floor, Executive Boardroom, Toronto, Ontario. The purpose of the hearing will be for the Commission to consider whether to approve proposed settlements with the respondents to this proceeding. Terms of the proposed settlements will only be released if and when the Commission approves the proposed settlements.

Copies of the Notice of Return of Hearing and Statement of Allegations are available at www.osc.gov.on.ca or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario

**References:**

Frank Switzer
Manager, Corporate Relations
(416) 593-8120

Michael Watson
Director, Enforcement
(416) 593-8128

### 1.3.3 OSC Hearing into Mini-Tender Offering

June 6th, 2000

**OSC HEARING INTO MINI-TENDER OFFERING**

**Toronto** - The hearing in this matter, originally scheduled to take place on June 7, 2000 at 10 a.m. at 20 Queen St. West, Toronto will now proceed on that date at the Alcohol and Gaming Commission, 20 Dundas Street West, 7th Floor, Hearing Room "D" , Toronto, Ontario.

Copies of the Notice of Hearing, Statement of Allegations and Temporary Order are attached or are available on the Commission's Web site at www.osc.gov.on.ca.

**References:**

Stan Magidson
Director, Takeovers, Mergers & Acquisitions
(416) 593-8124

Jean-Pierre Maisonneuve
Corporate Communications Officer
Corporate Relations Branch
(416) 595-8913

### 1.3.4 Koman Info-Link Inc., Koman Investment Inc., Simon Ko and Jose Castaneda

June 7, 2000

**KOMAN INFO-LINK INC. , KOMAN INVESTMENT INC. SIMON KO AND JOSE CASTANEDA**

**Toronto** - At a hearing today the Ontario Securities Commission (the "Commission") approved a settlement agreement entered between Staff of the Commission and Koman Info-Link Inc. ("Koman"), Koman Investment Inc. and Simon Ko ("Ko"). The Commission also approved a settlement between Staff of the Commission and Jose Castaneda ("Castaneda").

In the settlement agreement entered into between Staff and the respondents, Koman, Koman Investment Inc. and Ko, the respondents admitted to the following:

- Beginning in August, 1996, Koman, an Ontario company, established what purported to be a foreign currency trading operation in Toronto, Ontario. Koman held itself out as an affiliate of Koman Investment Inc., a corporation incorporated under the laws of the British Virgin Islands. During the material times, Simon Ko was the sole officer and director of Koman.

- Koman and Koman Investment Inc. solicited funds from investors for the purpose of providing investors with the opportunity to purchase or sell foreign exchange contracts (the "Forex Contracts") in any one of six foreign currencies or gold bullion on margin. All trades were carried out for speculative purposes. The Forex Contracts had no maturity dates and investors did not take delivery of any currency.

- Koman recruited persons to act as Account Executives for some investors, with full trading authority over investors' accounts.

- Some of Koman's clients suffered significant trading losses through trading in Forex Contracts, whether trading on their own behalf through Koman, or through the authorization of Account Executives to trade in Forex Contracts on their behalf.

- Koman also formed a Hong Kong Stock Department for the purpose of trading securities on the Hong Kong Stock Exchange on behalf of investors.

- Koman accepted a total of approximately $1.1 million (USD) and $1.8 million (CAD) from approximately 151 investors for the purpose of trading in Forex Contracts.

- Koman accepted from approximately 23 investors a total of approximately $136,000 (USD), $4,450,000 (HKD) and $593,000 (CAD) for the purpose of trading in the securities listed on the Hong Kong Stock Exchange.

- During the material times, Koman and Koman Investment Inc. distributed securities, namely the Forex Contracts, without filing a prospectus. Koman, Koman Investment Inc. and Ko traded in Forex Contracts without registration contrary to Ontario securities law. Koman traded in securities as a dealer, namely the securities listed on the Hong Kong Stock Exchange, without the required registration. Koman also failed to maintain books and records in accordance with the requirements of Ontario securities law.

In the settlement agreement entered into between Staff and Castaneda, Castaneda admitted, among other things, that he was appointed as an Account Executive for some of the clients of Koman, and exercised complete discretionary trading authority for investors in respect of the Forex Contracts. Castaneda also admitted that he traded in Forex Contracts without registration contrary to Ontario securities law, and that some of the investors for whom Castaneda acted as an Account Executive suffered significant trading losses.

In approving the settlement between Staff and Koman, Koman Investment Inc. and Ko, the Commission stated that it viewed the respondents' conduct as very serious breaches of the *Securities Act*.

The Commission ordered that Koman, Koman Investment Inc. and Ko be prohibited from trading in securities permanently, and that Castaneda be prohibited from trading in securities for a period of five years. The Commission further ordered that Ko resign his position as the sole officer and director of Koman, and that he be prohibited from becoming or acting as a director or officer of any issuer for a period of fifteen years, save and except for any position he may hold as an officer of an issuer in his sole capacity as an individual providing architectural services. Under the terms of the settlement, Castaneda agreed not to apply for registration in any capacity under the Act for a period of fifteen years. The Commission also reprimanded each of Koman, Koman Investment Inc., Ko and Castaneda.
By reason of a Temporary Cease Trading Order made by the Commission on September 10, 1998, the respondents were prohibited from trading in securities, pending the conclusion of the hearing today.

Prior to the hearing today, the Commission made an application before the Superior Court of Justice for an order appointing a receiver of all of the property held in the name of Koman. On Thursday, May 18, 2000, KPMG Inc. was appointed receiver of the property of Koman.

Copies of the Notice of Return of Hearing, Statement of Allegations and Settlement Agreements are available at www.osc.gov.on.ca or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario

References:

Frank Switzer
Manager, Corporate Relations
(416) 593-8120

Michael Watson
Director, Enforcement Branch
(416) 593-8156

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# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Koman Info-Link Inc., Koman Investment Inc. a.k.a. Koman Investment Inc. (B.V.I.), Simon Ko and Jose Castaneda - s. 127(1)

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

**AND**

**IN THE MATTER OF**
**KOMAN INFO-LINK INC.,**
**KOMAN INVESTMENT INC. a.k.a. KOMAN INVESTMENT INC. (B.V.I.),**
**SIMON KO AND JOSE CASTANEDA**

**ORDER**
**(Section 127(1))**

**WHEREAS** on the 10th day of September, 1998, the Ontario Securities Commission (the "Commission") ordered, pursuant to clause 2 of the subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), that all trading in securities by Koman Info-Link Inc. ("Koman"), Koman Investment Inc. a.k.a. Koman Investment Inc. (B.V.I.) ("Koman Investment Inc."), Simon Ko ("Ko"), John Ping Sum Lam ("Lam") and Jose Castaneda ("Castaneda") cease for a period of fifteen days from the date of the order (the "Temporary Order");

**AND WHEREAS** on the 22nd day of September, 1998 the Commission ordered pursuant to subsection 127(7) of the Act that the Temporary Order be extended against all respondents until the hearing is concluded and that the hearing be adjourned *sine die*;

**AND WHEREAS** on May 31, 2000 the Commission issued a Notice of Return of Hearing pursuant to sections 127 and 127.1 of the Act in respect of the Respondents;

**AND WHEREAS** the Respondents, Koman, Koman Investment Inc. and Ko entered into a settlement agreement dated June 1, 2000 (the "Settlement Agreement") in which Koman, Koman Investment Inc. and Ko agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Koman, Koman Investment Inc. and Ko and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order;

**IT IS ORDERED THAT:**

(1) the Settlement Agreement dated June 1, 2000, attached to this Order, is hereby approved;

(2) pursuant to clause 6 of subsection 127(1) of the Act, Koman, Koman Investment Inc. and Ko are hereby reprimanded;

(3) pursuant to clause 2 of subsection 127(1) of the Act, Koman, Koman Investment Inc. and Ko are each prohibited from trading in securities permanently effective from the date of this Order;

(4) pursuant to clause 7 of subsection 127(1) of the Act, Ko is required to resign his position as the sole officer and director of Koman effective from the date of this Order; and

(5) pursuant to clause 8 of subsection 127(1) of the Act, Ko is prohibited from becoming or acting as a director or officer of any issuer for a period of fifteen years effective from the date of this Order, save and except any position Ko may hold as an officer with an issuer either employed by the issuer or offering services to the issuer in his sole capacity as an individual providing architectural services, which services are solely related to building design and construction contract administration.

June 7th, 2000.

"J. A. Geller" "R. Stephen Paddon"

## 2.1.2 Koman Info-Link Inc., Koman Investment Inc. a.k.a. Koman Investment Inc. (B.V.I.), Simon Ko and Jose Castaneda - Settelment Agreement

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

**AND**

**IN THE MATTER OF KOMAN INFO-LINK INC., KOMAN INVESTMENT INC. a.k.a. KOMAN INVESTMENT INC. (B.V.I.), SIMON KO AND JOSE CASTANEDA**

**SETTLEMENT AGREEMENT**

### I INTRODUCTION

1. On the 10th day of September, 1998, the Ontario Securities Commission (the "Commission") ordered, pursuant to clause 2 of the subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), that all trading in securities by Koman Info-Link Inc. ("Koman"), Koman Investment Inc. a.k.a. Koman Investment Inc. (B.V.I.) ("Koman Investment Inc."), Simon Ko ("Ko"), John Ping Sum Lam ("Lam") and Jose Castaneda ("Castaneda") cease for a period of fifteen days from the date of the order (the "Temporary Order").

2. On the 22nd day of September, 1998, the Commission ordered pursuant to subsection 127(7) of the Act that the Temporary Order be extended against all respondents until the hearing is concluded and that the hearing be adjourned *sine die*.

3. By Notice of Return of Hearing dated May 31, 2000 in respect of Koman, Koman Investment Inc., Ko and Castaneda (the "Notice of Hearing"), the Commission announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the Act, in the opinion of the Commission, it is in the public interest for the Commission:

   (a) to make an order under clause 2 of subsection 127(1) of the Act that trading in securities by the respondents cease permanently or for such other period as specified by the Commission;

   (b) to make an order under subsection 127(3) of the Act that any exemptions in Ontario securities law do not apply to the respondents;

   (c) to make an order that Ko resign his position as the sole officer and director of Koman;

   (d) to make an order that Ko is prohibited from becoming or acting as a director or officer of any issuer;

   (e) to make an order that the respondents or any of them be reprimanded;

   (f) to make an order that the respondents, or any of them, pay the costs of Staff's investigation in relation to the matter subject to this proceeding;

   (g) to make an order that the respondents, or any of them, pay the costs of the proceeding incurred by or on behalf of the Commission; and/or

   (h) to make such other order as the Commission considers appropriate.

### II JOINT SETTLEMENT RECOMMENDATION

4. Staff of the Commission ("Staff") agree to recommend settlement of the proceedings initiated in respect of the respondents, Koman, Koman Investment Inc. and Ko, by the Notice of Hearing in accordance with the terms and conditions set out below. Koman, Koman Investment Inc. and Ko agree to the settlement on the basis of the facts agreed to as hereinafter provided and each of Koman, Koman Investment Inc. and Ko consent to the making of an Order in the form attached as Schedule "A" on the basis of the facts set out below.

5. This settlement agreement, including the attached Schedule "A" (collectively, the "Settlement Agreement"), will be released to the public only if and when the settlement is approved by the Commission.

### III STATEMENT OF FACTS

**Acknowledgement**

6. Staff and the Respondents, Koman, Koman Investment Inc. and Ko, agree with the facts set out in this Part III.

**Introduction**

7. Koman is a corporation incorporated on May 17, 1996 pursuant to the laws of Ontario, and carried on business in an office located in Toronto, Ontario from approximately August, 1996 to approximately September 11, 1998. During the material times, Koman held itself out as an affiliate of Koman Investment Inc. During the material times, Koman Investment Inc. was a corporation incorporated on May 23, 1996 pursuant to the laws of the British Virgin Islands. During the material times, Ko was the sole officer and director of Koman.

8. During the material times, Koman employed Lam as Koman's business manager, and as a trader or Account Executive for Koman clients (hereinafter referred to as clients or investors).

9. During the material times, Koman employed Castaneda as a trader or Account Executive for Koman.

10. As Account Executives, Castaneda and Lam had full discretionary trading authority over certain clients' accounts. Some of Koman's clients appointed Castaneda and Lam as Account Executives pursuant to

agreements entered into between the clients and Koman Investment Inc. (referred to below in paragraph 15(a)).

11. During the material times, Koman, Koman Investment Inc. and Ko were not registered to trade in securities pursuant to section 25(1) of the *Securities Act*, R.S.O. 1990, c. S.5 amended (the "Act"). During the material times, Koman and Koman Investment Inc. were not reporting issuers under the Act. Castaneda was not registered to trade in the securities offered by Koman to Koman's investors.

**Appointment of KPMG Inc. as Receiver of Koman's Property**

12. On May 18, 2000, KPMG Inc. ("KPMG") was appointed receiver of all of the property (the "Property") held in the name of Koman pursuant to an application by the Commission under section 129 of the Act for an Order of the Superior Court of Justice. The Order provides, among other things, that the Receiver is authorized and empowered to defend administrative hearings as may in its judgment be necessary for the proper protection of the Property, and settlement of any such proceeding.

**Koman/Koman Investment Inc. Operations**

13 Beginning in or about August, 1996, Koman and Koman Investment Inc. established what purported to be a foreign currency trading operation in Toronto, Ontario. Koman and Koman Investment Inc. solicited funds from investors residing in Ontario for the purpose of providing investors with the opportunity to purchase or sell foreign exchange contracts (the "Forex Contracts") in any one of six foreign currencies or gold bullion on margin. All trades were carried out for speculative purposes. The Forex Contracts had no maturity dates and investors did not take delivery of any currency.

14. Koman also purchased and sold securities listed on the Hong Kong Stock Exchange on behalf of investors, and in this capacity, acted as a dealer as defined in section 1(1) of the Act.

15. In summary, Koman's operations included the following:

(a) providing Koman clients with forms of agreements (the "Agreements") to enter into with Koman Investment Inc. and overseeing the signing of these Agreements in respect of the Forex Contracts and securities listed on the Hong Kong Stock Exchange;

(b) placing advertisements in newspapers for the solicitation of individuals to invest funds with Koman for the purpose of purchasing and selling Forex Contracts;

(c) providing seminars to investors regarding various aspects of trading in Forex Contracts;

(d) accepting funds from investors in the form of cash, bank drafts and cheques for the purpose of trading in Forex Contracts and securities listed on the Hong Kong Stock Exchange;

(e) opening and operating bank accounts in the name of Koman for the deposit of funds received from investors and for disbursement of funds for various purposes described below; and

(f) recruiting persons to act as Account Executives for some investors, with full trading authority over investors' accounts, and arranging for Account Executives to act in this capacity on behalf of certain investors. Such Account Executives were appointed by Koman clients pursuant to the Agreements referred to in paragraph 15(a).

**Foreign Currency Trading Operation**

16. To open an account, investors were required to first deposit a minimum of $5,000 (USD) into an account held by Koman. Koman required that the client commit one to two percent of the cost of the Forex Contract (depending on the time of the day or night the trade was made) from the client's investment account as a margin payment. The portion of the cost of the investment not provided by the client was represented to be loaned to the client by Koman. Koman charged the client interest on the outstanding balance.

17. Koman represented to investors that client funds deposited with it were used to acquire investments in any one of six foreign currencies offered in units equivalent to approximately $100,000 (USD), as well as gold bullion. Forex Contracts were not purchased in each investor's name. Koman purchased and sold the Forex Contracts through an account held in Koman's name with Topworth Investments Inc. located in Macau.

18. A commission in the amount of $80 (USD) was charged by Koman for each completed transaction which consisted of a purchase and sale of a Forex Contract.

19. Salespersons employed by Koman, or Account Executives receiving commissions from Koman, were expected to solicit funds from their own contacts for the purpose of opening an account for a client with Koman.

20. As stated above, certain investors appointed a "trading agent" referred to as an "Account Executive" with full discretion to trade on behalf of the client pursuant to the Agreements referred to in paragraph. 15(a). The Account Executive had discretion over the size, denomination and number of Forex Contracts transacted on behalf of the client. An Account Executive also had discretion to close out his or her client's position in a given foreign currency at any time, thereby crystallizing a gain (less interest and Koman's commission) or incurring a loss. Crystallized losses (plus Koman's commission and interest) were debited from the funds on deposit in the client's account. Crystallized gains were credited to the client's account with interest, if applicable.

21. Lam and Castaneda were each appointed as an Account Executive for some of the clients of Koman, and exercised complete discretionary trading authority for investors in respect of the Forex Contracts. Such Account Executives were appointed by Koman clients pursuant to the Agreements referred to in paragraph 15(a).

22. Some of Koman's clients suffered significant trading losses through trading in Forex Contracts, whether trading on their own behalf through Koman, or through the authorization of Account Executives to trade in Forex Contracts on their behalf.

23. In particular, a Koman investor, W.F., provided funds in the amount of $242,327.31 (USD) to Koman to trade in Forex Contracts between approximately February, 1997 and July, 1997. During the material times, Castaneda and Lam were appointed by W.F. to act as Account Executives in respect of W.F.'s accounts with Koman. During the material times, Koman debited W.F.'s accounts for a total of $83,584.00 (USD) for commissions and $56,119.75 (USD) for interest charges. By March, 1998, W.F. had suffered a net loss of $242,182.65 (USD).

24. Investor, M.A., provided funds in the amount of approximately $100,000.00 (CDN) to Koman to trade in Forex Contracts during the period from approximately late November, 1996 to May, 1997. During the material times, Castaneda and Lam were appointed by M.A. to act as Account Executives in respect of M.A.'s accounts. By October, 1997, M.A. was advised that there were no further funds remaining in her accounts with Koman. M.A. had withdrawn some funds previously. However, M.A. suffered net losses in the amount of $60,000.00 to $70,000.00 (CDN).

**Koman's Hong Kong Stock Department**

25. Koman also formed a Hong Kong Stock Department ("HKSD") for the purpose of trading securities listed on the Hong Kong Stock Exchange on behalf of investors (the "HKSD Investors").

26. To open an account, the HKSD Investors were required to deposit $5,000 (USD) for a non-margin account or $15,000 (USD) for a margin account. The HKSD Investor was required to maintain a minimum balance of $5,000 (USD) at all times if the investor wished to trade in securities.

27. The HKSD Investors could trade securities on their own account through Koman or appoint an Account Executive to trade in securities through Koman on the investors' behalf.

28. Koman had an omnibus margin account in its name for the purpose of trading securities on behalf of investors, and trades were transacted through AMMB Securities (H.K.) Limited ("AMMB") located in Hong Kong.

**Funds Received From Investors**

29. Koman accepted a total of approximately $1.1 million (USD) and $1.8 million (CAD) from approximately 151 investors for the purpose of trading in Forex Contracts.

30. Koman accepted from approximately 23 investors a total of approximately $136,000 (USD), $4,450,000 (HKD) and $593,000 (CAD) for the purpose of trading in the securities listed on the Hong Kong Stock Exchange.

31. Koman accepted funds from investors in the form of cash, bank drafts and cheques for the purpose of purchasing the Forex Contracts and securities listed on the Hong Kong Stock Exchange. The cash payments received from investors were not deposited in Koman's bank accounts.

**Koman Bank Accounts/Co-Mingling of Funds**

32. During the material times, Koman did not maintain a trust account to receive and expend funds received from investors. Funds received from investors in the form of bank drafts and cheques for the purpose of purchasing the Forex Contracts were deposited in Koman's bank account(s) and co-mingled with funds received from investors for the purpose of purchasing securities listed on the Hong Kong Stock Exchange. Koman also paid certain business or other expenses from these accounts.

33. In particular, funds were deposited to and disbursed from the two Koman bank accounts denominated in Canadian dollars as follows: (i) Koman received funds in Canadian dollars from investors and Ko; and (ii) Koman disbursed money from these accounts to investors, Ko, Koman's Account Executives and employees, brokerage firms (such as AMMB and Topworth), and to persons or companies for purposes which Koman and Ko have represented to Staff are related to Koman's business expenses. Koman and Ko have represented to Staff that funds were disbursed to pay for travel to China for the purpose of exploring property development opportunities for Koman and to recruit new clients to trade in Forex Contracts and securities listed on the Hong Kong Stock Exchange.

34. Funds were deposited to and disbursed from two Koman U.S. dollar accounts as follows: (i) Koman received funds in American dollars from investors and brokerage firms (such as AMMB and Topworth); and (ii) Koman disbursed money from these accounts to investors, Ko, Koman Account Executives and employees, brokerage firms (such as AMMB and Topworth in the form of margin payments), and to persons or companies for purposes which Koman and Ko have represented to Staff are related to Koman's business expenses.

**Koman Record Keeping**

35. Koman did not maintain books and records in accordance with requirements contained in Ontario securities law, and in particular, in accordance with the

requirements contained in section 113 of the Regulation to the Act. During the material times, Koman did not implement appropriate internal controls to ensure that funds received from investors for investment purposes were not co-mingled with funds used for the payment of Koman's business or other expenses. Further, Koman did not maintain proper books and records in accordance with the requirements contained in Ontario securities law for the purpose of determining the use by Koman of all funds accepted from investors.

**CONDUCT CONTRARY TO THE PUBLIC INTEREST**

36. In conducting the activities described above:

(a) Koman and Koman Investment Inc. distributed securities, namely the Forex Contracts, without filing and obtaining a receipt for a prospectus and without an exemption from the requirement to file a prospectus contrary to section 53 of the Act;

(b) Koman, Koman Investment Inc. and Ko each traded in securities, namely the Forex Contracts, without registration and without an exemption from the registration requirements contrary to section 25 of the Act;

(c) Koman traded in securities as a dealer, namely the securities listed on the Hong Kong Stock Exchange, without registration and without an exemption from the registration requirements contrary to section 25 of the Act;

(d) Koman acted as portfolio manager and/or as an advisor with respect to trading in the Forex Contracts on behalf of certain investors without registration or an exemption from the registration requirements contrary to section 25 of the Act;

(e) Koman failed to maintain books and records in accordance with requirements contained in Ontario securities law, and in particular in accordance with the requirements contained in section 113 of the Regulation to the Act. During the material times, Koman did not implement appropriate internal controls to ensure that funds received from investors for investment purposes were not co-mingled with funds used for the payment of Koman's business or other expenses. Further, Koman did not maintain proper books and records in accordance with the requirements contained in Ontario securities law for the purpose of determining the use by Koman of all funds accepted from investors.

(f) In allowing Koman to engage in the conduct described above, Ko acted in a manner contrary to the public interest.

37. The conduct of Koman and Koman Investment Inc. described in paragraphs 36(a) to 36(e) was contrary to the public interest.

**IV POSITION OF KOMAN, KOMAN INVESTMENT INC. AND KO**

38. Koman's position as provided to Staff is described below.

39. The Agreement referred to in paragraph 15(a) contained terms and references to deal with the following:

- identification of the client including arrangement of a client account number
- an acknowledgment that the client understands the terms and conditions of the agreement
- an election to allow the client to designate an account executive if the client so desires
- an election by the client of the fashion by which the client wished to receive information about the client's account

40. Koman has represented to Staff that Koman purchased Forex Contracts on behalf of clients. In addition, Koman purchased Forex Contracts for its own account. In some instances, while a Forex Contract was open, interest may have accrued to the benefit of the investor, in which case it was credited to the client's account.

**V TERMS OF SETTLEMENT**

41. Koman, Koman Investment Inc. and Ko agree to the following terms of settlement:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Koman, Koman Investment Inc. and Ko will cease trading in securities permanently;

(b) pursuant to clause 6 of subsection 127(1) of the Act, Koman, Koman Investment Inc. and Ko will be reprimanded by the Commission;

(c) pursuant to clause 7 of subsection 127(1) of the Act, Ko is required to resign his position as the sole director and officer of Koman effective the date of the Order of the Commission approving the proposed settlement agreement herein; and

(d) pursuant to clause 8 of subsection 127(1) of the Act, Ko is prohibited from becoming or acting as a director or officer of any issuer for a period of 15 years effective the date of the Order of the Commission approving the proposed settlement agreement herein, save and except any position Ko may hold as an officer with an issuer either employed by the issuer or offering services to the issuer in his sole capacity as an individual providing architectural services, which services are solely related to building design and construction contract administration.

## VI STAFF COMMITMENT

42. If this Settlement Agreement is approved by the Commission, Staff will not initiate any complaint to the Commission or request the Commission to hold a hearing or issue any order in respect of any conduct or alleged conduct of Koman, Koman Investment Inc. or Ko in relation to the facts set out in Part III of this Settlement Agreement. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Koman, Koman Investment Inc. and Ko in relation to the facts set out in Part III of this Settlement Agreement.

## VII PROCEDURE FOR APPROVAL OF SETTLEMENT

43. The approval of the settlement as set out in the Settlement Agreement shall be sought at a public hearing before the Commission scheduled for such date as is agreed to by Staff and Koman, Koman Investment Inc. and Ko in accordance with the procedures described herein and such further procedures as may be agreed upon between Staff and Koman, Koman Investment Inc. and Ko.

44. If this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting Koman, Koman Investment Inc. and Ko in this matter and Koman, Koman Investment Inc. and Ko each agree to waive any right to a full hearing and appeal of this matter under the Act.

45. If this Settlement Agreement is approved by the Commission, the parties to this Settlement Agreement will not make any statement that is inconsistent with this Settlement Agreement.

46. If, for any reason whatsoever, this settlement is not approved by the Commission, or the Order set forth in Schedule "A" is not made by the Commission:

    (a) each of Staff and the Respondents, Koman, Koman Investment Inc. and Ko, will be entitled to proceed to a hearing of the allegations in the Notice of Hearing and related Statement of Allegations unaffected by the Settlement Agreement or the settlement negotiations;

    (b) the terms of the Settlement Agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of Staff and the Respondents, Koman, Koman Investment Inc. and Ko, or as may be otherwise required by law; and

    (c) the Respondents, Koman, Koman Investment Inc. and Ko, further agree that each will not raise in any proceeding the Settlement Agreement or the negotiation or process of approval thereof as a basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.

47. If, prior to the approval of this Settlement Agreement by the Commission, there are new facts or issues of substantial concern, in the view of Staff, regarding the facts set out in Part III of this Settlement Agreement, Staff will be at liberty to withdraw from this Settlement Agreement. Notice of such intention will be provided to Koman, Koman Investment Inc. and Ko in writing. In the event of such notice being given, the provisions of paragraph 46 in this part will apply as if this Settlement Agreement had not been approved in accordance with the procedures set out herein.

## VIII DISCLOSURE OF SETTLEMENT AGREEMENT

48. Counsel for Staff or counsel for the respondents may refer to any part or all of this Settlement Agreement in the course of the hearing convened to consider this agreement. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all parties to the Settlement Agreement until approved by the Commission, and forever if, for any reason whatsoever this settlement is not approved by the Commission.

49. Any obligation as to confidentiality shall terminate upon the approval of this Settlement Agreement by the Commission.

## IX EXECUTION OF SETTLEMENT AGREEMENT

50. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

**DATED** this 1st day of June, 2000.

**SIGNED IN THE PRESENCE OF:**

**Koman Info. Link Inc.**
**Per: "Simon Ko"**

**Koman Investment Inc. a.k.a.**
**Koman Investment Inc. (B.V.I.)**
**Per: "Janet Ko"**

**Staff of the Ontario Securities Commission**
**"Joanna Fallone"**
**Manager, Case Assessment**

**Consent of KPMG Inc., Receiver of the property of Koman Info-Link Inc. ("Koman")**

KPMG Inc. consents to the signing of this Settlement Agreement by Simon Ko on behalf of Koman, in his capacity as the sole officer and director of Koman, for the sole purpose of settlement of the proceeding commenced against Koman and other respondents by Notice of Hearing dated September 10, 1998 and continued by Notice of Return of Hearing dated May 31, 2000 pursuant to sections 127 and

127.1 of the Act. KPMG Inc. does not admit or deny the facts set out in Part III of the Settlement Agreement.

**KPMG Inc.**
**Per: " Blair F. Davidson"**
**Senior Vice-President**

**SIGNED IN THE PRESENCE OF:**

**"Elaine Ko"** **"Simon Ko"**

## 2.1.3 Koman Info-Link Inc. et al. - s. 127(1)

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

**AND**

**IN THE MATTER OF**
**KOMAN INFO-LINK INC.,**
**KOMAN INVESTMENT INC. a.k.a. KOMAN INVESTMENT INC. (B.V.I.),**
**SIMON KO AND JOSE CASTANEDA**

**ORDER**
**(Section 127(1))**

**WHEREAS** on the 10th day of September, 1998, the Ontario Securities Commission (the "Commission") ordered, pursuant to clause 2 of the subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), that all trading in securities by Koman Info-Link Inc. ("Koman"), Koman Investment Inc. a.k.a. Koman Investment Inc. (B.V.I.) ("Koman Investment Inc."), Simon Ko ("Ko"), John Ping Sum Lam ("Lam") and Jose Castaneda ("Castaneda") cease for a period of fifteen days from the date of the order (the "Temporary Order");

**AND WHEREAS** on the 22nd day of September, 1998 the Commission ordered pursuant to subsection 127(7) of the Act that the Temporary Order be extended against all respondents until the hearing is concluded and that the hearing be adjourned *sine die*;

**AND WHEREAS** on May 31, 2000 the Commission issued a Notice of Return of Hearing pursuant to sections 127 and 127.1 of the Act in respect of the Respondents;

**AND WHEREAS** the Respondent, Castaneda, entered into a settlement agreement dated May 31, 2000 (the "Settlement Agreement") in which Castaneda agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from Castaneda and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order;

**IT IS ORDERED THAT:**

(1) the Settlement Agreement dated May 31, 2000, attached to this Order, is hereby approved;

(2) pursuant to clause 6 of subsection 127(1) of the Act, Castaneda is hereby reprimanded; and

(3) pursuant to clause 2 of subsection 127(1) of the Act, Castaneda is prohibited from trading in securities for a period of five years effective from the date of this Order.

June 7th, 2000.

"J. A. Geller" "R. Stephen Paddon"

### 2.1.4 Koman Info-Link Inc., Koman Investment Inc. a.k.a. Koman Investment Inc. (B.V.I.), Simon Ko and Jose Castaneda - Settelment Agreement

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

**AND**

**IN THE MATTER OF KOMAN INFO-LINK INC., KOMAN INVESTMENT INC. a.k.a. KOMAN INVESTMENT INC. (B.V.I.), SIMON KO AND JOSE CASTANEDA**

**SETTLEMENT AGREEMENT**

**I INTRODUCTION**

1. On the 10th day of September, 1998, the Ontario Securities Commission (the "Commission") ordered, pursuant to clause 2 of the subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), that all trading in securities by Koman Info-Link Inc. ("Koman"), Koman Investment Inc. a.k.a. Koman Investment Inc. (B.V.I.) ("Koman Investment Inc."), Simon Ko ("Ko"), John Ping Sum Lam ("Lam") and Jose Castaneda ("Castaneda") cease for a period of fifteen days from the date of the order (the "Temporary Order").

2. On the 22nd day of September, 1998, the Commission ordered pursuant to subsection 127(7) of the Act that the Temporary Order be extended against all respondents until the hearing is concluded and that the hearing be adjourned *sine die*.

3. By Notice of Return of Hearing dated May 31, 2000 in respect of Koman, Koman Investment Inc., Ko and Castaneda (the "Notice of Hearing"), the Commission announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the Act, in the opinion of the Commission, it is in the public interest for the Commission:

   (a) to make an order under clause 2 of subsection 127(1) of the Act that trading in securities by the respondents cease permanently or for such other period as specified by the Commission;

   (b) to make an order under subsection 127(3) of the Act that any exemptions in Ontario securities law do not apply to the respondents;

   (c) to make an order that Ko resign his position as the sole officer and director of Koman;

   (d) to make an order that Ko is prohibited from becoming or acting as a director or officer of any issuer;

   (e) to make an order that the respondents or any of them be reprimanded;

   (f) to make an order that the respondents, or any of them, pay the costs of Staff's investigation in relation to the matter subject to this proceeding;

   (g) to make an order that the respondents, or any of them, pay the costs of the proceeding incurred by or on behalf of the Commission; and/or

   (h) to make such other order as the Commission considers appropriate.

**II JOINT SETTLEMENT RECOMMENDATION**

4. Staff of the Commission ("Staff") agree to recommend settlement of the proceedings initiated in respect of the respondent, Castaneda, by the Notice of Hearing in accordance with the terms and conditions set out below. Castaneda agrees to the settlement on the basis of the facts agreed to as hereinafter provided and Castaneda consents to the making of an Order in the form attached as Schedule "A" on the basis of the facts set out below.

5. This settlement agreement, including the attached Schedule "A" (collectively, the "Settlement Agreement"), will be released to the public only if and when the settlement is approved by the Commission.

**III STATEMENT OF FACTS**

**Acknowledgement**

6. Staff and Castaneda agree with the facts set out in this Part III.

7. Beginning in approximately September, 1996, Castaneda was employed as a trader or Account Executive for Koman. Koman's clients provided funds for the purpose of purchasing or selling foreign exchange contracts (the "Forex Contracts") in any one of six foreign currencies or gold bullion on margin. All trades were carried out for speculative purposes. The Forex Contracts had no maturity dates and investors did not take delivery of any currency.

8. Some of Koman's clients appointed Castaneda as an Account Executive pursuant to agreements entered into between the clients and Koman/Koman Investment Inc. (the "Agreements"). As an Account Executive, Castaneda had full discretionary authority to trade on behalf of Koman's clients pursuant to the Agreement.

9. As an Account Executive, Castaneda had discretion over the size, denomination and number of Forex Contracts transacted on behalf of the client. Castaneda also had discretion to close out the client's position in a given foreign currency at any time, thereby crystallizing a gain (less interest and Koman's commission) or incurring a loss. Crystallized losses (plus Koman's commission and interest) were debited from the funds on deposit in the client's account. Crystallized gains were credited to the client's account with interest, if applicable.

10. During the period from approximately September, 1996 until approximately September, 1998, Castaneda traded

in the Forex Contracts on behalf of Koman's clients. Castaneda has been registered, at various times, to trade in securities under section 26 of the Act as a registered salesperson for the sale of scholarships only. During the material times, Castaneda was not registered under the Act to trade in the securities offered by Koman to Koman's investors.

11. A commission in the amount of $80 (USD) was charged by Koman for each completed transaction which consisted of a purchase and sale of a Forex Contract. Castaneda received commissions from Koman for his trading activity on behalf of Koman's clients. During the period from February, 1997 to August, 1997, for example, Castaneda earned commissions in the amount of $62,820.00 (USD) from Koman in respect of Castaneda's trading activity as an Account Executive on behalf of Koman's clients.

12. Some of the investors for whom Castaneda acted as an Account Executive suffered significant trading losses.

13. In particular, a Koman investor, W.F., provided funds in the amount of $242,327.31 (USD) to Koman to trade in Forex Contracts between approximately February, 1997 and July, 1997. During the material times, Castaneda was appointed by W.F. to act as one of the Account Executives in respect of W.F.'s accounts with Koman. During the material times, Koman debited W.F.'s accounts for a total of $83,584.00 (USD) for commissions and $56,119.75 (USD) for interest charges. By March, 1998, W.F. had suffered a net loss of $242,182.65 (USD).

14. Investor, M.A., provided funds in the amount of approximately $100,000.00 (CDN) to Koman to trade in Forex Contracts during the period from approximately late November, 1996 to May, 1997. During the material times, Castaneda was appointed by M.A. to act as one of the Account Executives in respect of M.A.'s accounts. By October, 1997, M.A. was advised that there were no further funds remaining in her accounts with Koman. M.A. had withdrawn some funds previously. However, M.A. suffered net losses in the amount of $60,000.00 to $70,000.00 (CDN).

## CONDUCT CONTRARY TO THE PUBLIC INTEREST

15. In conducting the activities described above Castaneda traded in securities, namely the Forex Contracts, without registration and without an exemption from the registration requirements contrary to section 25 of the Act and contrary to the public interest.

## IV TERMS OF SETTLEMENT

16. Castaneda agrees to the following terms of settlement:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Castaneda will cease trading in securities for a period of five years effective from the date of approval of this Settlement Agreement by the Commission;

(b) Castaneda agrees not to apply for registration in any capacity under the Act for a period of fifteen years effective from the date of approval of this Settlement Agreement by the Commission; and

(c) pursuant to clause 6 of subsection 127(1) of the Act, Castaneda will be reprimanded by the Commission.

## V STAFF COMMITMENT

17. If this Settlement Agreement is approved by the Commission, Staff will not initiate any complaint to the Commission or request the Commission to hold a hearing or issue any order in respect of any conduct or alleged conduct of Castaneda in relation to the facts set out in Part III of this Settlement Agreement.

## VI PROCEDURE FOR APPROVAL OF SETTLEMENT

18. The approval of the settlement as set out in the Settlement Agreement shall be sought at a public hearing before the Commission scheduled for such date as is agreed to by Staff and Castaneda in accordance with the procedures described herein and such further procedures as may be agreed upon between Staff and Castaneda.

19. If this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting Castaneda in this matter and Castaneda agrees to waive any right to a full hearing and appeal of this matter under the Act.

20. If this Settlement Agreement is approved by the Commission, the parties to this Settlement Agreement will not make any statement that is inconsistent with this Settlement Agreement.

21. If, for any reason whatsoever, this settlement is not approved by the Commission, or the Order set forth in Schedule "A" is not made by the Commission:

(a) each of Staff and the Respondent, Castaneda, will be entitled to proceed to a hearing of the allegations in the Notice of Hearing and related Statement of Allegations unaffected by the Settlement Agreement or the settlement negotiations;

(b) the terms of the Settlement Agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of Staff and the Respondent, Castaneda, or as may be otherwise required by law; and

(c) the Respondent, Castaneda, further agree that each will not raise in any proceeding the Settlement Agreement or the negotiation or process of approval thereof as a basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.

22. If, prior to the approval of this Settlement Agreement by the Commission, there are new facts or issues of substantial concern, in the view of Staff, regarding the

facts set out in Part III of this Settlement Agreement, Staff will be at liberty to withdraw from this Settlement Agreement. Notice of such intention will be provided to Castaneda in writing. In the event of such notice being given, the provisions of paragraph 21 in this part will apply as if this Settlement Agreement had not been approved in accordance with the procedures set out herein.

VII DISCLOSURE OF SETTLEMENT AGREEMENT

23. Counsel for Staff or the Respondent, Castaneda, may refer to any part or all of this Settlement Agreement in the course of the hearing convened to consider this agreement. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all parties to the Settlement Agreement until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.

24. Any obligation as to confidentiality shall terminate upon the approval of this Settlement Agreement by the Commission.

VIII EXECUTION OF SETTLEMENT AGREEMENT

25. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

**DATED** this 31st day of May, 2000.

**SIGNED IN THE PRESENCE OF:**

**"Jose Castaneda"**

**Staff of the Ontario Securities Commission**

**"Michael Watson"**
**Director of Enforcement**

## 2.1.5 407 International Inc. - MRRS Decision

**Headnote**

Section 4.5 of NP 47- Director waives the requirement of subclause 4.1(1)(a)(i) to permit an issuer to distribute non-convertible debt securities under the POP System - the issuer is a share capital corporation and it has outstanding debt securities with a substantial principal amount - the issuer would be eligible to participate in the POP System under subsection 4.3(1) of NP 47 but for the fact that it has less than 12 months as a reporting issuer.

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am.

**Regulations Cited**

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am.,

**Policies Cited**

National Policy Statement No. 47, ss. 4.1(1)(a)(i), 4.3(1), & 4.5.

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION**
**OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NOVA SCOTIA AND NEWFOUNDLAND**

**AND**

**IN THE MATTER OF**
**THE MUTUAL RELIANCE REVIEW SYSTEM**
**FOR EXEMPTIVE RELIEF APPLICATIONS AND**

**AND**

**IN THE MATTER OF**
**407 INTERNATIONAL INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from 407 International Inc. (the "Issuer") for a decision under the securities legislation and securities directions (collectively the "Legislation") of each of the Jurisdictions that the Issuer be granted a waiver from the provisions of subparagraph 4.1(1)(a)(i) of National Policy 47 ("NP 47") and the applicable securities legislation of Quebec (collectively, the "POP Eligibility Requirement"), so as to permit the Issuer to participate in the prompt offering qualification system pursuant to NP 47 and the applicable securities legislation of Quebec (collectively, the "POP System");

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the

Ontario Securities Commission is the principal jurisdiction for this application;

**AND UPON** the Issuer having represented to the Decision Makers as follows:

1. The Issuer was incorporated on March 17, 1999 under the *Business Corporations Act* (Ontario) (the "OBCA"), for the purpose of submitting a bid to the Government of the Province of Ontario (the "Province") for the purchase from the Province of all the issued and outstanding shares of 407 ETR Concession Company Limited (the "Concessionaire"). The bid was accepted and the purchase was completed on May 5, 1999 at a purchase price of approximately $3.107 billion.

2. The Concessionaire was established by the Province as a Crown agency to oversee the design, construction, operation, maintenance, management and financing of Highway 407. The Concessionaire was continued as a share capital corporation under the OBCA on April 6, 1999 and, pursuant to a 99 year concession and ground lease agreement (the "Concession Agreement") entered into with the Province, holds the concession rights in respect of Highway 407.

3. The Issuer became a reporting issuer in each of the Jurisdictions that recognizes the concept of reporting issuer status on July 21, 1999, being the date on which the Issuer obtained receipts in the applicable Jurisdictions for the final prospectus of the Issuer qualifying the initial public offering (the "IPO") of $1.1 billion principal amount of senior bonds of the Issuer.

4. The Issuer has issued $650 million principal amount of real return senior bonds by way of a private placement on August 20, 1999.

5. The Issuer has also issued $400 million principal amount of senior bonds by way of a final prospectus of the Issuer dated October 8, 1999.

6. The Issuer issued $325 million principal amount of amortizing real return replaceable senior bonds by way of a private placement on February 2, 2000. Such senior bonds were replaced by $325 million principal amount of amortizing real return replacement senior bonds on March 15, 2000 following the filing of a final prospectus of the Issuer dated March 9, 2000 qualifying the distribution of the replacement senior bonds.

7. The Issuer issued $430 million principal amount of exchangeable senior bonds by way of a separate final prospectus of the Issuer dated March 9, 2000 (all of the outstanding senior bonds of the Issuer are hereinafter collectively called the "Bonds").

8. As at the date hereof, the Issuer has issued an aggregate of $2.905 billion principal amount of Bonds, of which $2.255 billion principal amount was issued by way of four (4) long form prospectuses filed within an eight (8) month period.

9. To the best of its knowledge, the Issuer is not in default of any requirement of the Legislation of any Jurisdiction referred to in paragraph 3 above.

10. Canadian Bond Rating Service Inc., Dominion Bond Rating Service Limited and Standard & Poor's Rating Services have assigned ratings of A, A and A, respectively, in respect of the Bonds.

11. The acquisition of the Concessionaire by the Issuer was funded, in part, through monies borrowed from or credit facilities made available by the following groups of lenders: (i) loans of $2.3 billion advanced by a syndicate of sixteen Canadian and foreign banks pursuant to a senior bridge credit facility (the "Senior Bridge Credit Facility"); (ii) loans of $150 million advanced by a Canadian chartered bank pursuant to a junior bridge credit facility (the "Junior Bridge Credit Facility"); and (iii) credit facilities (including letters of credit available for drawdown) in an aggregate amount of $775 million made available by subordinated lenders pursuant to a subordinated credit facility (the "Subordinated Credit Facility"). In addition, three Canadian chartered banks provided credit support to the Issuer in respect of the interest rate hedging program established by the Issuer in connection with the acquisition.

12. The Issuer has financed the repayment of the Senior Bridge Credit Facility with the Bonds and also intends to finance the repayment of the Junior Bridge Credit Facility and the Subordinated Credit Facility with debt.

13. In connection with its substantial financing requirements, the Issuer, together with its financial advisors, has developed a capital markets platform (the "Capital Markets Platform") which provides common security and common principal covenants for all its lenders. The Capital Markets Platform encompasses an ongoing program capable of accommodating a variety of corporate debt instruments and borrowing, including term bank debt, revolving bank lines of credit, publicly issued and privately placed debt securities, commercial paper, medium-term notes, interest rate and currency swaps and other hedging instruments.

14. In order for the Capital Markets Platform to be utilized in an efficient and cost effective manner, the Issuer requires the maximum degree of flexibility in considering potential financing arrangements. Accordingly, in order to facilitate the timely issuance from time to time of debt securities pursuant to the Capital Markets Platform, the Issuer wishes to avail itself of the opportunity to issue such securities by way of short form or shelf prospectuses.

15. The Issuer proposes to file an initial annual information form (the "Initial AIF") pursuant to the provisions of the POP System in respect of its fiscal year ended December 31, 1999.

16. Assuming that the Initial AIF is accepted by the Decision Makers and that the Issuer is not in default of any requirement of the Legislation of any Jurisdiction, the Issuer would be eligible to participate in the POP System but for the fact that it has not been a reporting issuer for 12 months.

17. Given the size of the Issuer, the favourable ratings assigned to its Bonds by Canadian rating agencies, the

high level of interest in the Bonds among Canadian investors and the expectation that the Issuer will seek access to the public markets frequently and in a substantial fashion, the Issuer is followed by a broad range of research analysts, investment advisors and other users of financial information.

**AND WHEREAS** under the System, this Decision Document evidences the decision of each Decision Maker (the "Decision");

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers under the Legislation is that the POP Eligibility Requirement be waived to enable the Issuer to issue non-convertible debt securities under the POP System provided that the Issuer complies with all of the filing requirements and procedures and each of the other eligibility requirements of the POP System except that the eligibility certificate to be filed under the POP System shall make reference to this waiver.

May 31st, 2000.

"Iva Vranic"

## 2.1.6 5-Year Protected Canadian Bond Index Fund and 5-Year Protected Balanced Index Fund - MRRS Decision

**Headnote**

MRRS for Exemptive Relief Applications - applicant manages mutual funds which track the performance of certain indexes; manager is a wholly owned subsidiary of a company whose shares form part of these indexes; exemption granted from subsections 111(2)(a) and 111(3) of the Act in respect of proposed investments by the funds in securities os substantial security holder of mutual funds' manager and distributor.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., ss.111(2)(a), ss.111(3) and section 113

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND**

**AND**

**IN THE MATTER OF**
**THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF**
**5-YEAR PROTECTED CANADIAN BOND INDEX FUND AND 5-YEAR PROTECTED BALANCED INDEX FUND**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan, Quebec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from CIBC Securities Inc. in its capacity as trustee (the "Trustee") of the 5-Year Protected Canadian Bond Index Fund and 5-Year Protected Balanced Index Fund (the "Funds" and, together with the Trustee, the "Filers") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation which would prohibit the Funds from acquiring or holding securities of Canadian Imperial Bank of Commerce ("CIBC"), being a substantial security holder of the manager and distributor, shall not apply to the Filers;

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

**AND WHEREAS** the Filers have represented to the Decision Makers that:

1. Each of the Funds is an open-ended mutual fund trust established under the laws of Ontario on November 20, 1998;

2. Units of the Funds were offered pursuant to a prospectus dated November 20, 1998; however sales of units of the Funds were capped by the Trustee on May 14, 1999;

3. The head office of the Trustee is in Ontario and Ontario was the principal jurisdiction in respect of the filing of the simplified prospectuses under which Units of the Funds were offered;

4. The Trustee is the trustee, administrator and principal distributor of each of the Funds;

5. The Trustee is a wholly-owned subsidiary of CIBC.

6. The Funds' investment manager is TAL Global Asset Management Ltd. ("TAL");

7. The investment objective of the 5-Year Protected Canadian Bond Index Fund is to achieve a return that approximates the performance of a generally recognized index of the Canadian bond market, currently being the Scotia Capital Markets Universe Bond Index (the "SCM Index") and the portfolio of this Fund is invested primarily in a broad range of debt instruments of issuers that make up the SCM Index, in substantially the same proportion as they are weighted in that index;

8. The investment objective of the 5-Year Protected Balanced Index Fund is to achieve long-term growth through capital appreciation and income by investing primarily in a combination of debt instruments, equity securities and options, futures and forward contracts based on Canadian, U.S. and international indices;

9. The SCM Index and The Toronto Stock Exchange 300 Index (the "TSE 300 Index") are currently two of the indices which the 5-Year Protected Balanced Index Fund tracks such that the Fund's portfolio is invested in debt instruments of issuers that make up the SCM Index and equity securities of issuers that make up the TSE 300 Index, in each case, in substantially the same proportion as they are weighted in such indexes;

10. Among the debt securities comprising the SCM Index are debt securities issued by CIBC and among the equity securities comprising the TSE 300 Index are equity securities issued by CIBC;

11. To date the Funds have not invested in CIBC debt securities and the 5-Year Protected Balanced Index Fund has not invested in CIBC equity securities;

12. The proportion of the 5-Year Protected Bond Index Fund's assets to be invested in CIBC debt securities is not a matter to be determined at the discretion of the Trustee or TAL;

13. The proportion of the 5-Year Protected Balanced Index Fund's assets to be invested in CIBC debt securities and CIBC equity securities is not a matter to be determined at the discretion of the Trustee or TAL;

14. The investments by the Funds in CIBC debt securities and by the 5-Year Protected Balanced Index Fund in CIBC equity securities represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Funds;

**AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**AND WHEREAS** each of the Decision-Makers is satisfied that the test contained in the Legislation that provides the Decision-Maker with the jurisdiction to make the Decision has been met;

The Decision of the Decision-Makers under the Legislation is that the requirement contained in the Legislation prohibiting the Funds from acquiring and continuing to hold CIBC debt securities and CIBC equity securities, as the case may be, shall not apply to the Funds provided that the proportion of the Funds' assets to be invested in CIBC debt securities and, in the case of the 5-Year Protected Balanced Index Fund, CIBC equity securities, is determined according to each Funds' investment objective of investing in securities in substantially the same proportion as they are weighted on the generally recognized indexes which each of the Funds track, presently the SCM Index and the TSE 300 Index, and not pursuant to the discretion of CIBC SI or TAL.

May 29th, 2000.

"Howard I. Wetston" "Robert W. Korthals"

### 2.1.7 Artisan Funds - MRRS Decision

**Headnote**

Subsection 62(5) - Extension of lapse date sought to permit renewal of simplified prospectus of certain funds to coincide with introduction of new funds into simplified prospectus

**Statute Cited**

*Securities Act*, R.S.O. 1990, c.S.5, as am

**Rules Cited**

National Instrument 81-101 Mutual Fund Prospectus Disclosure
National Policy 12-201 Mutual Reliance Review System for Exemptive Relief Applications

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHWEAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND AND NEWFOUNDLAND**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF THE ARTISAN FUNDS**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authorities or regulator (the "Decision Maker")in each of the provinces of British Columbia. Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (the "Jurisdictions") has received an application (the "Application") from Loring Ward Investment Counsel Ltd. ("LoringWard") and the Artisan Funds (the "Funds") (collectively the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the time limits pertaining to the distribution of units under the prospectus of the Funds be extended to those time limits that would be applicable if the lapse date of the prospectus was August 4, 2000.

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief
Applications (the "System"), The Manitoba Securities Commission is the principal regulator for this application;

**AND WHEREAS** the Filer has represented to the Decision Makers that:

(a) Loring Ward is a corporation incorporated under the laws of Manitoba. Loring Ward is the trustee, manager and promoter of each of the Funds. The head office of Loring Ward is located in Manitoba.

(b) The Funds are open-ended mutual fund trusts established under the laws of Manitoba.

(c) The Funds are "reporting issuers" (or equivalent) under the Act and are not in default of any requirements under the Act or the regulations thereto.

(d) Units of the Funds are presently offered for sale on a continuous basis in each province and territory in Canada pursuant to a prospectus dated May 25, 1999 (the "Prospectus"), for which a receipt was issued in Manitoba on May 26, 1999.

(e) In accordance with the Legislation, the earliest lapse date for distribution of units of the Funds is May 25, 2000. Under the Legislation of some Jurisdictions the lapse date is the date of the receipt for the prospectus. In those Jurisdictions the lapse date is later than May 25, 2000.

(f) On January 28, 2000, Loring Ward filed a preliminary simplified prospectus in respect of five (5) mutual funds that would be added to the Artisan group of funds and a related application in respect thereof under National Policy No. 39 (the "Pending Application").

(g) The requested lapse date extension would allow sufficient time for Loring Ward to finalize the Pending Application in advance of redrafting the Prospectus and include the five new funds into the Prospectus. The extension would also allow enough time to comply with the plain language and other disclosure requirements contained in National Instrument 81-101.

(h) Since the date of the Prospectus, no material changes have occurred and no amendments to the Prospectus have been made. Accordingly, the Prospectus contains up-to-date information regarding each of the Funds. The lapse date extension requested herein will not affect the currency or accuracy of the information contained in the Prospectus and, accordingly, would not be prejudicial to the public interest.

**AND WHEREAS** under the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

The Decision of the Decision Makers under the Legislation is that the time limits
provided by the Legislation as they apply to a distribution of securities under the Prospectus are hereby extended to the time limits that would be applicable if the lapse date for the distribution of securities under the Prospectus was August 4, 2000.

**DATED** at Winnipeg, Manitoba this day of May, 2000.

"R.B. Bouchard"

## 2.1.8 Churchill Corporation - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief from insider trading reporting requirements regarding securities purchased under an automatic securities purchase plan subject to alternate reporting in accordance with proposed N1 55-101

**Applicable Ontario Statutory Provision**

Securities Act, R.S.O. 1990, c.S.5, as am. 121(2).

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF THE PROVINCES**
**OF**
**BRITISH COLUMBIA, ALBERTA,**
**SASKATCHEWAN, MANITOBA AND ONTARIO**

**AND**

**IN THE MATTER OF**
**THE MUTUAL RELIANCE REVIEW**
**SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF**
**THE CHURCHILL CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario (the "Jurisdictions") has received an application from The Churchill Corporation (the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to file insider trading reports shall not apply to insiders of the Filer who purchase shares of the Corporation pursuant to the Corporation's Employee Share Purchase Plan;

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission ("ASC") is the principal regulator for this application;

**AND WHEREAS** the Filer has represented to the Decision Makers that:

1. The Corporation was formed in Alberta pursuant to a Certificate of Amalgamation dated December 31, 1987;

2. The Corporation has an authorized capital consisting of 110,000,000 Class "A" common shares ("Common Shares"), 10,000,000 First Preferred Shares and 10,000,000 Second Preferred Shares (collectively, the "Preferred Shares") of which as at March 29, 2000 there were 11,080,274 Common Shares and no Preferred Shares outstanding;

3. The Common Shares of the Corporation are listed for trading on The Toronto Stock Exchange under the symbol "CUQ";

4. The Corporation has advised that it is not in default of any securities legislation in the Province of Alberta or any other Jurisdiction;

5. The Corporation's head office is located at 12836 - 146th Street, Edmonton, Alberta, T5L 2H7;

6. The Corporation maintains an Employee Share Purchase Plan (the "Plan") whereby employees of the Corporation and its subsidiaries are eligible to make contribution to the Plan, which were, and are, matched by the Corporation up to a maximum of 3% of an employee's base salary;

7. All contributions are invested in Common Shares which are purchased on the open market by the Plan Administrator through the facilities of The Toronto Stock Exchange and are vested continuously after the first 3 months following the initial enrollment in the Plan;

8. The Plan is an "automatic securities purchase plan" as defined in the proposed National Instrument 55-101 of the Canadian Securities Administrators ("NI 55-101")

**AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

**IT IS HEREBY ORDERED THAT** the Decision of the Decision Makers under the Legislation is that the requirement contained in the Legislation to file insider trading reports shall not apply with respect to the acquisition by an insider of the Filer of securities of the Filer through the Plan, provided that:

(a) The insider reports, in the form prescribed for insider trading reports under the Legislation, all acquisitions of securities under the Plan that have not previously been reported by or on behalf of the insider:

  (i) for any securities acquired under the Plan during a calendar year which have been disposed of or transferred, within the time required by the Legislation for reporting the disposition or transfer; and

  (ii) for any securities acquired under the Plan during a calendar year which have not been disposed of or transferred, within 90 days after the end of the calendar;

(b) The Decision shall not apply to the acquisition of securities under the Plan where the securities are acquired with the proceeds of a lump sum payment;

(c) The Decision shall not apply to the acquisition of securities under the Plan by an insider that beneficially

owns, directly or indirectly, voting securities of the Filer, or exercises control or direction over voting securities of the Filer, or a combination of both, that carry more than 10% of the voting rights attaching to all outstanding voting securities of the Filer;

(d) The Decision shall expire in each Jurisdiction upon the date that NI 55-101 comes into effect in that Jurisdiction;

**DATED** at Calgary, Alberta on May 29, 2000.

"Patricia Johnston"

**AND WHEREAS** the ASC is satisfied that it would not be prejudicial to the public interest to make the Decision;

**IT IS HEREBY ORDERED THAT** ASC Order #98/06/271, dated June 11, 1998, is hereby revoked.

**DATED** at Calgary, Alberta on May 29th, 2000.

"Patricia Johnston"

## 2.1.9 Deutsche Telekom AG - MRRS Decision

**Headnote**

Section 147 - distribution in Ontario of ordinary shares in the form of shares as American depository shares in connection with a Canadian offering exempt from sections 54(1), 56(2) and 58 and 59 of the Act (insofar as those sections concern the form of certificates) and sections 1(4) (insofar as that subsection requires that the notes to the financial statements in a prospectus refer to the GAAP option), 2(2) and 2(5) of the Regulation provided the form and content of the prospectus complies with certain requirements set out in draft National Policy Statement 53 (including the use of the Rule 430A procedures) - issuer exempt from Part IX of the Regulation provided proxies and proxy solicitation material provided to U.S. security holders are also provided to Ontario security holders.

Section 211 - Certain U.S. underwriters exempt from section 208(1)(d) of the Regulation in order to permit trading with designated institutions - U.S. international dealer registrants authorized to participate in Canadian offering as underwriters.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5, ss. 1(1), 54(1), 56(2), 58, 59, 75, 77, 78, 79, 80(b)(iii), 81, 88(2)(b), 147 and Part XIX.

Securities Exchange Act of 1934 (U.S.), an act of June 6, 1934, 48 stat. 881; 15 U.S. Code, Sections 78a-78jj, as amended.

Securities Act of 1933 (U.S.), an act of May 27, 1933; 48 Stat. 74; 15 U.S. Code, Sections 77a-77aa, as amended.

**Regulations Cited**

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 1(4), 2(2), 2(5), 100(3), 208, 211 and Part IX.

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NEWFOUNDLAND, NOVA SCOTIA AND PRINCE EDWARD ISLAND**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF DEUTSCHE TELEKOM AG**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Makers") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island (collectively, the "Jurisdictions") has received an application from Deutsche Telekom AG (the "Company") for a

decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that:

1. The Canadian Offering (as defined below) is exempt from:

   (a) the form and content requirements applicable to a preliminary prospectus under the Legislation;

   (b) the requirement in the Legislation that a prospectus be accompanied by such financial statements, reports or other documents as is required by the Legislation;

   (c) the requirement in the Legislation that a prospectus contain the form of certificate required to be executed by the Company;

   (d) the requirement in the Legislation that a prospectus contain the form of certificate required to be executed by the underwriters;

   (e) the requirement in the Legislation that the notes to the financial statements contained in a prospectus contain a statement as to the choice of generally accepted accounting principles that have been applied;

   (f) the requirement in the Legislation that reports prepared by auditors on the financial statements contained in a prospectus be prepared in accordance with generally accepted auditing standards and the requirement that such reports be prepared in accordance with the applicable provisions of the Legislation; and

   (g) the requirement in the Legislation that each financial statement contained in a prospectus contain an auditor's report on the statement.

2. (a) In the Province of Ontario only, dealers registered as international dealers under the Ontario Act (as defined below) may act as market intermediaries to distribute the Offered Shares (as defined below) to designated institutions or equivalent institutional purchasers as defined in the Ontario Regulation (as defined below) in the course of the Canadian Offering (as defined below); and

   (b) dealers registered as international dealers under the Ontario Act (as defined below) shall be exempt from the requirement in the Legislation to be registered as an underwriter for the purposes of the Canadian Offering.

3. The prospectus and registration requirements of the Legislation shall not apply to the distribution of the Bonus Shares (as defined below).

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications ("MRRS"), the Ontario Securities Commission (the "Commission") is the principal regulator for this application;

**AND WHEREAS** the Company has represented to the Decision Makers that:

(a) The Company is a private law stock corporation organized under the laws of the Federal Republic of Germany.

(b) The Company's principal executive office is located at Friedrich-Ebert-Allee 140, 53113 Bonn, Germany.

(c) The Company is a telecommunications service provider.

(d) The authorized capital of the Company consists of ordinary shares (no par value) (the "Shares").

(e) The Shares to be offered in Canada as part of the Global Offering (as defined below) are being offered by Kreditanstalt für Wiederaufbau (the "Selling Shareholder").

(f) The Shares will be offered in Canada in the form of Shares or American Depositary Shares (an "ADS"). Each ADS represents the right to receive one Share. The ADSs are normally evidenced by American Depositary Receipts ("ADRs") and are held by Citibank, N.A., as depositary (the "Depositary").

(g) The Shares are listed on the Frankfurt Stock Exchange and on the other German stock exchanges in Berlin, Bremen, Dusseldorf, Hamburg, Hannover, Munich and Stuttgart under the symbol "DTE". The ADSs are listed on the New York Stock Exchange under the symbol "DT". The Shares are also listed on the Tokyo Stock Exchange, and the Shares and ADSs are eligible for quotation and trading through the Stock Exchange Automated Quotation System of the London Stock Exchange.

(h) As of March 31, 2000, the Selling Shareholder owned approximately 22% of the Company's shares while the Federal Republic of Germany owned approximately 43% of the Company's shares. The Federal Republic of Germany also owned approximately 80% of the Selling Shareholder.

(i) The Company is a "foreign issuer", as that term is defined in draft National Policy No. 53 ((1993) 16 OSCB 4125), the "Foreign Issuer Prospectus and Disclosure System" (as amended by CSA Notice #95-4, 18 O.S.C.B. 1893, collectively "NP 53");

(j) The Company is a reporting issuer in the Jurisdictions (where such a concept exists under the Legislation).

(k) By way of an order of the Commission dated October 1, 1996, as amended by an order of the Commission dated November 8, 1996 (the "Previous Ontario Orders"), the Commission ordered, among other things, that:

   (i) pursuant to clause 80(b)(iii) of the Securities Act (Ontario), R.S.O. 1990, c. S-5, as amended (the "Ontario Act") that the Company be exempted from the requirements of sections 75, 77, 78 and 79 of the Ontario Act provided that:

(A) The Company comply with the requirements of the New York Stock Exchange in respect of making public disclosure of material information on a timely basis, and forthwith issue in Canada and file with the Commission, any press release that discloses a material change in its affairs.

(B) The Company comply with U.S. securities laws relating to current reports and annual reports.

(C) The Company file with the Commission two copies of any material filed with the SEC:

(1) in the case of current reports, forthwith after the earlier of the date the report is filed with the SEC and the date it is required to be filed with the SEC; and

(2) in the case of other documents, within 24 hours after they are filed with the SEC.

(D) The Company provide any such documents to each security holder whose last address as shown on the books of the Company is in Ontario, to the extent, in the manner and at the time required by U.S. securities laws.

(ii) pursuant to clause 88(2)(b) of the Ontario Act, that the Company and the Depositary be exempted from the requirements of section 81 and Part XIX of the Ontario Act and, pursuant to section 147 of the Ontario Act, that the Company and the Depositary be exempted from the related provisions of Part IX of Regulation 1015, R.R.O. 1990, as amended (the "Ontario Regulation") provided that any proxies and proxy solicitation material provided to U.S. security holders are provided, at the same time and in the same manner, to security holders of the same class whose last address as shown on the books of the Company is in Ontario.

Orders were also obtained from the securities regulatory authorities in the other Jurisdictions (where applicable) substantially similar to the foregoing Previous Ontario Orders. In addition, orders were obtained in certain of the Jurisdictions exempting insiders of the Company from the requirement to file insider reports on transactions in securities of the Company (collectively such orders including the Previous Ontario Orders, the "Previous Orders").

(l) The Company is not on the list of defaulting reporting issuers maintained pursuant to subsection 72(9) of the Ontario Act and is not in default of any requirement of the securities legislation of each of the Jurisdictions.

(m) The Company is not a collective investment program, mutual fund or registered or required to be registered as an investment company under the United States Investment Company Act of 1940.

(n) The Company is not a commodity pool issuer.

(o) The offering (the "Global Offering") of Shares and Option Shares (as defined below), if any, which may be offered in the form of ADSs or Shares in the United States and Canada (collectively, the "Offered Shares"), includes:

(i) a global retail offering that includes a public offering in the United States and Canada (the "North American Offering"); and

(ii) a global institutional offering consisting of private placements or public offerings to institutional investors around the world.

(p) The Selling Shareholder will grant the underwriters options to purchase additional Shares, all or a portion of which the underwriters may elect to receive in the form of ADSs (each an "Option Share"), to cover over-allotments, if any.

(q) In the United States and Canada, qualified retail investors who order ADSs in the North American Offering prior to a specified date and who can demonstrate, among other things, continuous holding of such ADSs through a specified date, will be entitled to receive bonus ADSs from the Selling Shareholder (the "Bonus Shares") at a ratio of one bonus ADS for each specified number of ADSs acquired in the North American Offering (the "Bonus Share Ratio"). The applicable Bonus Share Ratio has not yet been determined.

(r) The Company currently:

(i) has an aggregate market value and public float (being the aggregate market value of equity securities held by persons or companies that are not affiliates or associates of the Company) of equity securities in excess of Cdn. $3 billion and Cdn. $1 billion, respectively;

(ii) has a class of securities registered pursuant to subsection 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended (the "1934 Act"); and

(iii) is required to file reports pursuant to subsection 15(d) of the 1934 Act.

(s) The North American Offering in the United States is anticipated to be completed as follows:

(i) a registration statement on Form F-3 (the "Registration Statement") under the Securities Act of 1933, as amended (the "1933 Act"), containing a form of prospectus that complies with the form and content requirements of the 1933 Act (the "U.S. Prospectus") will be

prepared and filed with the Securities and Exchange Commission (the "SEC");

(ii) the Registration Statement may be amended one or more times, prior to being declared effective, including amendments required to address any comments of the SEC; and

(iii) the Registration Statement containing the final form of the U.S. Prospectus (subject to the fact that the Company may use the procedures permitted by Rule 430A under the 1933 Act ("Rule 430A") or Rule 434 under the 1933 Act ("Rule 434") which requires preparation of a Pricing Prospectus (as defined below)) will eventually be declared effective by the SEC.

(t) The North American Offering in Canada (the "Canadian Offering") is expected to account for less than 10% of the total size of the Global Offering.

(u) The Canadian Offering will be made in accordance with the following:

(i) Prospective purchasers of Offered Shares in the Jurisdictions will receive a Canadian preliminary prospectus (the "Preliminary Prospectus") that includes a preliminary U.S. Prospectus forming part of the Registration Statement, and a Canadian final prospectus (the "Final Prospectus") that includes the form of the U.S. Prospectus at the time the Registration Statement is declared effective by the SEC.

(ii) At any time the U.S. Prospectus forming part of the Registration Statement, as it may be amended prior to being declared effective, is delivered to prospective purchasers of Offered Shares in the United States, a corresponding amendment to the Preliminary Prospectus will be delivered to prospective purchasers of Offered Shares in the Jurisdictions. The Final Prospectus, as and when supplemented by the Pricing Prospectus (as defined below) will be delivered to prospective purchasers of Offered Shares in the Jurisdictions.

(iii) If the Company uses the procedures under Rule 430A or Rule 434, both a Final Prospectus (without pricing and pricing-related information) and a pricing prospectus that contains disclosure identical to the Final Prospectus but for the inclusion of pricing and pricing-related information and any other non-material changes to the Final Prospectus permitted to be included under U.S. securities laws (the "Pricing Prospectus") will be prepared and filed with the securities regulatory authorities in the Jurisdictions. The information contained in the Pricing Prospectus that was omitted from the Final Prospectus shall be deemed to be included in the Final Prospectus as of the date of effectiveness of the Registration Statement.

(iv) Each of the Preliminary Prospectus, the Final Prospectus and the Pricing Prospectus (collectively, together with any amendments thereto, the "Prospectuses") will include Canadian wrap pages containing the additional information, legends and certificates (which certificates may be signed by an agent authorized in writing) as required by NP 53 substantially in the form of Appendix A to this Decision and shall provide full, true and plain disclosure of all material facts relating to the Global Offering and shall contain no untrue statement of a material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

(v) Each of the Prospectuses (together with, as applicable, the documents required by NP 53 as detailed in Appendix B to this Decision) will be filed with each of the securities regulatory authorities in the Jurisdictions as nearly as practicable contemporaneously with the filing of the Registration Statement, and any amendments thereto, with the SEC.

(vi) At the time of filing the Final Prospectus:

(A) the Company or its legal counsel will certify in writing to the securities regulatory authorities in the Jurisdictions that the Registration Statement has been declared effective by the SEC (which certificate may be in the form of an electronic transmission); and

(B) the Company will file with the securities regulatory authorities in the Jurisdictions an executed submission to jurisdiction and appointment of agent for service of process as required by NP 53 and substantially in the form of Appendix C to this Decision.

(vii) The financial statements in the Prospectuses will not be reconciled to Canadian Generally Accepted Accounting Principles ("GAAP"), but the Prospectuses will include appropriate U.S. GAAP information in accordance with U.S. securities laws.

(v) The receipt for the Preliminary Prospectus will be issued forthwith when the Preliminary Prospectus, the supporting documents detailed in Appendix B, and the letter, in substantially the form of Appendix D hereto (the "MRRS Letter"), have been filed with the Commission.

(w) In connection with the Final Prospectus, the Company will file the documents detailed in Appendix B.

(x) The Company will file the Pricing Prospectus with the securities regulatory authorities in the Jurisdictions, but does not expect to receive a receipt (within the meaning of the Legislation) for the Pricing Prospectus.

(y) The Canadian Offering will be made through underwriters within the underwriting syndicate for the Global Offering, selling group members or their affiliates who:

(i) if offering Offered Shares to the public, are appropriately registered under the Legislation (in the Jurisdictions where such a concept exists); and

(ii) in Ontario only, if offering Offered Shares only to designated institutions or equivalent institutional purchasers as defined in the Ontario Regulation are in a contractual relationship with the Company and are registered as international dealers under the Ontario Act.

(z) The Company currently is and upon completion of the Global Offering will continue to be subject to the informational requirements of the 1934 Act and will file reports and other information with the SEC on an ongoing basis. The Company currently is and upon completion of the Global Offering will continue to be exempt from the requirements of the 1934 Act relating to proxy statements and the insiders of the Company currently are and upon completion of the Global Offering will continue to be exempt from the insider reporting requirements of the 1934 Act.

(aa) The Previous Orders continue to be operative and applicable to the Company and the Company will continue to comply with the terms of the Previous Orders.

(bb) Insiders of the Company will continue to be exempt from the requirement to file insider reports on transactions involving securities of the Company in accordance with applicable Legislation and the Previous Orders.

(cc) The Registration Statement, the Prospectuses and any other disclosure documents filed pursuant to the Decision will be amended in accordance with U.S. securities laws, but will contain the legends, where applicable, and the certificates as required, in each case in accordance with the requirements of NP 53 and substantially in the form of Appendix A to this Decision.

(dd) Where the Registration Statement is amended in a manner that modifies the U.S. Prospectus in any material respect, an unsigned copy of the documents containing the modification will be filed with the securities regulatory authorities in the Jurisdictions as nearly as practicable contemporaneously with the filing of the amendment with the SEC. If the receipt for the Final Prospectus has not been issued and the filing has been made as a result of the occurrence of a material adverse change since the last filing, such documents will be filed as an amendment to the Preliminary Prospectus. The Company will specify, on filing, that such documents have been filed as such under the Legislation. Any modifications made to the Final Prospectus by filing a post-effective amendment to the Registration Statement with the SEC will be made by filing an amendment to the Final Prospectus with the securities regulatory authorities in the Jurisdictions.

(ee) An amendment will be filed with the securities regulatory authorities in the Jurisdictions and delivered to prospective purchasers of Offered Shares in the Jurisdictions in the event of a material adverse change in the additional disclosure contained only in the Preliminary Prospectus or a material change in the additional disclosure contained only in the Final Prospectus or the Pricing Prospectus.

(ff) Disclosure will be made in the Prospectuses of the obligations of the Company regarding continuous disclosure, proxy and proxy solicitation, shareholder communication and insider reporting as described above.

**AND WHEREAS** pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that:

1. The Canadian Offering is exempt from:

(a) the form and content requirements applicable to a preliminary prospectus under the Legislation;

(b) the requirement in the Legislation that a prospectus be accompanied by such financial statements, reports or other documents as is required by the Legislation;

(c) the requirement in the Legislation that a prospectus contain the form of certificate required to be executed by the Company;

(d) the requirement in the Legislation that a prospectus contain the form of certificate required to be executed by the underwriters;

(e) the requirement in the Legislation that the notes to the financial statements contained in a prospectus contain a statement as to the choice of generally accepted accounting principles that have been applied;

(f) the requirement in the Legislation that reports prepared by auditors on the financial statements contained in a prospectus be prepared in accordance with generally accepted auditing standards and the requirement that such reports be prepared in accordance with the applicable provisions of the Legislation; and

(g) the requirement in the Legislation that each financial statement contained in a prospectus contain an auditor's report on the statement;

provided that the Prospectuses and any amendments thereto are prepared and filed in compliance with

paragraphs (s)(i), (u), (w), (cc), (dd), and (ee) of this Decision.

2. The prospectus and registration requirements of the Legislation shall not apply to the distribution of the Bonus Shares provided that the first trades in the Bonus Shares, other than a further trade exempted by the Legislation, shall be deemed to be distributions under the Legislation unless such first trades are made in the following circumstances:

   (i) with respect to the Jurisdictions where the trade takes place, the Company is a reporting issuer or the equivalent under the Legislation of such Jurisdiction and the Company is and has been a reporting issuer or the equivalent thereunder for 12 months except in those Jurisdictions where the Legislation does not contain the concept of a reporting issuer or the equivalent;

   (ii) if the holder of the Bonus Shares is in a special relationship (where such expression is defined in the Legislation) with the Company, the holder of the Bonus Shares has reasonable grounds to believe that the Company is not in default of any requirement of the Legislation;

   (iii) disclosure to the relevant Jurisdiction has been made of the exempt trade;

   (iv) no unusual effort is made to prepare the market or to create a demand for the Bonus Shares and no extraordinary commission or consideration is paid in respect of such trade; and

   (v) such a first trade is not from the holdings of any holder of the Bonus Shares or combination of holders of Bonus Shares holding a sufficient number of any securities of the Company to affect materially the control of the Company, but any holding of a or combination of holders of Bonus Shares holding more than 20 percent of the outstanding voting securities of the Company shall, in the absence of evidence to the contrary, be deemed to affect materially the control of the Company.

3. (a) In the Province of Ontario only, dealers registered as international dealers under the Ontario Act may act as market intermediaries to distribute the Offered Shares to designated institutions or equivalent institutional purchasers as defined in the Ontario Regulation in the course of the Canadian Offering; and

   (b) in the Province of Ontario only, dealers registered as international dealers under the Ontario Act shall be exempt from the requirement in the Legislation to be registered as an underwriter for the purposes of the Canadian Offering.

May 30th, 2000.

"Howard I. Wetston" "R. Stephen Paddon"

**Appendix A**
**ADDITIONAL INFORMATION, LEGENDS AND CERTIFICATE**

The outside front cover page of the preliminary prospectus shall contain a statement in red ink in the following form:

> "This is a preliminary prospectus relating to these securities, a copy of which has been filed with the securities regulatory authority in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Newfoundland, Prince Edward Island and Nova Scotia, but which has not yet become final for the purpose of a distribution to the public. Information contained herein is subject to completion or amendment. These securities may not be sold to, nor may offers to buy be accepted from, residents of such jurisdictions prior to the time a receipt is obtained for the final prospectus from the appropriate securities regulatory authority."

The outside or inside front cover page of the Prospectuses shall contain statements in the following form:

> "This offering is being made in Canada by a selling shareholder of a foreign issuer pursuant to disclosure documents prepared in accordance with U.S. securities laws. Prospective purchasers should be aware that these requirements may differ from those of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island. Rights and remedies available under Canadian corporate law may not be available. The financial statements included in this Prospectus have not been prepared in accordance with Canadian generally accepted accounting principles and thus are unlikely to be comparable to financial statements of Canadian issuers and differences could be pervasive and material."

> "Certain of the experts named in this Prospectus and all of the directors and officers of both the Company and the Selling Shareholder reside outside of Canada. Substantially all of the assets of these persons and of the Company are located outside of Canada. The Company has appointed [name and address of agent for service] as its agent for service of process in Canada for any actions or proceedings related to this offering, but it may not be possible for investors to effect service of process within Canada upon the experts and directors and officers referred to above. It also may not be possible to enforce against the Company, its directors and officers, the Selling Shareholder and certain of the experts named in this Prospectus judgments obtained in Canadian courts predicated upon the civil liability provisions of applicable securities laws in Canada."

> "This Prospectus constitutes a public offering of these securities only in those provinces where they may be lawfully offered for sale and therein only by persons permitted to sell such securities. No securities commission or similar authority in Canada or the United States has in any way passed upon the merits of the securities offered hereunder and any representation to the contrary is an offence."

The Prospectuses shall contain a statement in the following form:

> "Securities legislation in certain of the provinces of Canada provides purchasers with the right to withdraw from an agreement to purchase securities within two business days after receipt or deemed receipt of a prospectus or any amendment. In several provinces of Canada, securities legislation further provides a purchaser with rights of rescission or, in some jurisdictions, damages where the prospectus or any amendment contains a misrepresentation or is not delivered to the purchaser, provided that such remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities regulation of the province. Purchasers should refer to the applicable provisions of the securities regulation of their province for particulars of these rights or consult with a lawyer. Rights and remedies also may be available to purchasers under U.S. or other foreign law. Purchasers may wish to consult with a U.S. or other foreign lawyer for particulars of these rights."

The Prospectuses shall contain disclosure that orders have been received from the Canadian securities regulatory authorities providing relief from compliance with the usually applicable requirements regarding continuous disclosure, proxies and proxy solicitation, shareholder communication and insider reporting, as well as disclosure that such relief permits the Company to comply with certain informational requirements applicable in the United States instead of the continuous disclosure requirements usually applicable in Canada provided that the relevant documents are filed with the Canadian securities regulatory authorities and are provided to security holders in Canada to the extent, in the manner and at the time required by applicable U.S. requirements.

The outside or inside front cover page of the Prospectuses shall contain a statement in the following form:

> "Simultaneously with this offering of securities in Canada and in the United States, the securities may be offered and/or traded in other jurisdictions outside of Canada and the United States subject to the transparency and market regulation rules of those jurisdictions. Prospective purchasers should be aware that the rules regarding availability of market information and market regulation (including stabilization practices) of those foreign jurisdictions may differ from and be less rigorous than those of the various provinces of Canada."

The Preliminary Prospectus and the Pricing Prospectus shall contain:

(a) a certificate of the Company in the following form:

> "The foregoing, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this Prospectus as required by the securities laws of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed as required by the securities laws of Quebec."

(b) an underwriters' certificate in the following form:

> "To the best of our knowledge, information and belief, the foregoing, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the Prospectus as required by the securities laws of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed as required by the securities laws of Quebec."

The Final Prospectus shall contain:

(c) a certificate of the Company in the following form:

> "The foregoing, together with the documents incorporated herein by reference and the information deemed to be incorporated herein by reference, as of the date of the prospectus providing the information permitted to be omitted from this prospectus, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this Prospectus as required by the securities laws of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed as required by the securities laws of Quebec."

(d) an underwriters' certificate in the following form:

> "To the best of our knowledge, information and belief, the foregoing, together with the documents incorporated herein by reference and the information deemed to be incorporated herein by reference, as of the date of the prospectus providing the information permitted to be omitted from this prospectus, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this Prospectus as required by the securities laws of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed as required by the securities laws of Quebec.

The Prospectuses shall contain disclosure required pursuant to Canadian securities legislation in the Jurisdictions regarding

the names of persons or companies having an interest of not less than 5% in the capital of each of the underwriters, unless such underwriter (or, in the case of a non-Canadian underwriter, a Canadian affiliate of such underwriter) is a member of the Investment Dealers Association of Canada and complies with that organization's regulation regarding the disclosure of such information.

## Appendix B
## Supporting Documents

### A. Preliminary Prospectus

| Document | Number of Copies |
|---|---|
| Preliminary Prospectus (signed) (English) | 1 |
| (French-Quebec only) | 1 |
| Preliminary Prospectus (unsigned) (English) | 2 |
| (French-Quebec only) | 2 |
| Registration Statement (unsigned, with all amendments and exhibits) | 1 |
| Eligibility Certificate | 1 |
| Power(s) of Attorney (if required) | 1 |
| MRRS Letter (see Appendix D) | 1 |
| Filing Fee | N/A |

### B. Final Prospectus

| Document | Number of Copies |
|---|---|
| Final Prospectus (signed) (English) | 2 |
| (French-Quebec only) | 2 |
| Consent(s) of Experts | 1 |
| Appointment of Agent for Service | 1 |
| Power(s) of Attorney (if required) | 1 |
| MRRS Letter (see Appendix D) | 1 |
| Filing Fee | N/A |

### C. Pricing Prospectus, if applicable

| Document | Number of Copies |
|---|---|
| Pricing Prospectus (signed) (English) | 1 |
| (French-Quebec only) | 1 |

### D. Amended Preliminary Prospectus or Amended Prospectus, if applicable

| Document | Number of Copies |
|---|---|
| Amended Prospectus (signed) (English) | 2 |
| (French-Quebec only) | 2 |
| Amended Registration Statement | 1 |
| Consent of Experts | 1 |
| MRRS Letter (see Appendix D) | 1 |
| Filing Fee | N/A |

## Appendix C
## Forms of Submission to Jurisdiction and Appointment of Agent For Service of Process

1. Name of issuer (the "Issuer"):

2. Jurisdiction of incorporation of Issuer:

3. Address of principal place of business of Issuer:

4. Description of securities (the "Securities"):

5. Date of prospectus (the "Prospectus") pursuant to which the Securities are offered:

6. Name of agent (the "Agent"):

7. Address for service of process of Agent in Canada:

8. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of or relating to or concerning the distribution of the Securities made or purported to be made pursuant to the Prospectus or the obligations of the Issuer as a reporting issuer, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of:

   (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces and territories of Canada in which the Securities are distributed pursuant to the Prospectus; and

   (b) any administrative proceeding in any such province or territory,

   in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made pursuant to the Prospectus or obligations of the Issuer as a reporting issuer.

10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in the form hereof at least 30 days prior to termination of this Submission to Jurisdiction and Appointment of Agent for Service of Process for any reason whatsoever.

11. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days prior to any change in the name or above address of the Agent.

12. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of the province of **[Ontario]**.

Dated:

**ISSUER**

By:

Name:
Title:

The undersigned accepts the appointment as agent for service of process of **[ISSUER]** pursuant to the terms and conditions of the foregoing Appointment of Agent for Service of Process.

Dated:

**AGENT FOR SERVICE**

By:

Name:
Title:

**Appendix D**
**Deutsche Telekom AG**

[l], 2000

Ontario Securities Commission
as Principal Regulator under the Mutual Reliance Review System
Cadillac Fairview Tower
Suite 1800, 20 Queen Street West
Toronto, Ontario M5H 3S8

Dear Sirs & Mesdames:

**RE: Deutsche Telekom AG (the "Issuer") – [Preliminary or Final] Prospectus dated (the "Prospectus"**

In accordance with the requirements of National Policy 43-201 ("NP 43-201") and in accordance with the requirements of the MRRS Decision Document dated May [l], 2000 issued by the securities regulatory authorities in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island on behalf of the Issuer (the "Decision Document") and in connection with the filing of the Prospectus, the Issuer hereby confirms that:

1. Materials, including all required translations, have been filed with all non-principal regulators that have not opted out of NP 43-201 for the materials.

2. In respect of each jurisdiction in which the materials are filed, the Issuer has filed or delivered all documents required to be filed or delivered under the Decision Document and is not subject to a cease trade order issued by a local securities regulatory authority.

3. In each jurisdiction in which securities will be offered to purchasers, at least one underwriter that has signed the appropriate underwriter's certificate as detailed in the Decision Document is registered or has been exempted from the requirement to be registered.

4. [In the case of the Final Prospectus], all necessary relief from applicable securities legislation or securities directions has been applied for and granted by the principal regulator and non-principal regulators.

We respectfully request that a [preliminary/final] MRRS decision document be issued in respect of the Prospectus.

Yours very truly,

Deutsche Telekom AG

## 2.1.10 Hewlett-Packard Company - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - distribution of shares of a foreign company which is not a reporting issuer as a dividend in kind is not subject to the registration and prospectus requirements of the Act, subject to certain conditions - de minimus Ontario holders - first trade is a distribution unless such first trade is conducted through a stock exchange outside of Canada.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53, 35(1)13, 72(1)(g)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK, NEWFOUNDLAND, NOVA SCOTIA, ONTARIO, QUEBEC AND SASKATCHEWAN**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF HEWLETT-PACKARD COMPANY**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Quebec and Saskatchewan (the "Jurisdictions") has received an application from Hewlett-Packard Company (the "Filer") for a decision under the securities legislation (the "Legislation") of the Jurisdictions that the requirements contained in the Legislation to be registered to trade in a security and to file a preliminary prospectus and a prospectus and receive receipts therefor (the "Registration and Prospectus Requirements") shall not apply to a proposed distribution (the "Distribution") by the Filer of common shares of Agilent Technologies, Inc. ("AT") to shareholders of the Filer;

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

**AND WHEREAS** the Filer has represented to the Decision Makers that:

1. The Filer is a corporation incorporated under the laws of the State of Delaware in the United States, is not a reporting issuer or equivalent under the Legislation and has no present intention of becoming a reporting issuer or equivalent in any of the Jurisdictions.

2. The authorized share capital of the Filer consists of 4,800,000,000 common shares with a par value of $0.01 each and 300,000,000 shares of preferred stock with a par value of $0.01 each. As at March 31, 2000 there were 1,003,641,071 common shares issued and outstanding (the "Filer Shares") held by approximately 133,110 shareholders of record with 1,583 of these registered holders (approximately 1.2% of registered holders) resident in Canada holding approximately 520,591 common shares (0.05% of the Filer Shares).

3. The Filer Shares are listed on the New York Stock Exchange (the "NYSE") and are not listed for trading on any Canadian stock exchange. No published market exists for the Filer Shares in Canada.

4. AT is a corporation incorporated under the laws of the State of Delaware in the United States, is not a reporting issuer or equivalent under the Legislation and has no present intention of becoming a reporting issuer or equivalent in any of the Jurisdictions.

5. The authorized capital of AT consists of 2,000,000,000 common shares with a par value of $0.01 per share and 125,000,000 preferred shares with a par value of $0.01 per share, of which, as at February 29, 2000, 452,051,019 common shares and no preferred shares were issued and outstanding. Canadian resident shareholders of AT represent less than 10% of the registered shareholders of AT and hold less than 10% of the issued and outstanding common shares of AT.

6. Upon completion of the Distribution, AT shareholders resident in Canada will represent less than 10% of the holders of AT common shares and will hold less than 10% of the issued and outstanding common shares of AT.

7. The common shares of AT are listed on the NYSE and are not listed for trading on any Canadian stock exchange. No published market exists for the common shares of AT in Canada.

8. The Filer is presently the controlling shareholder of AT holding approximately 84.1% of the outstanding common shares (the "AT Shares") of AT. Pursuant to the Distribution, the Filer plans to distribute the AT Shares to its existing shareholders as a dividend in kind.

9. The Distribution will be effected in compliance with Delaware law and meets the requirements of staff legal bulletin No. 4 of the United States Securities and Exchange Commission for exemption from registration under the United States Securities Act of 1933 and the Regulations made thereunder (collectively, the "Applicable U. S. Law").

10. Residents in the Jurisdictions holding Filer Shares will receive, in connection with the Distribution, the same disclosure documentation to be received by shareholders of the Filer resident in the United States.

11. On an ongoing basis, residents in the Jurisdictions who receive the AT Shares upon completion of the Distribution will be concurrently sent by AT copies of all continuous disclosure materials sent to AT shareholders resident in the United States.

**AND WHEREAS** pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation which provides the Decision Maker with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers under the Legislation is that the Registration and Prospectus Requirements shall not apply to the Distribution provided that:

a. the Distribution is effected in accordance with the Applicable U.S. Law;

b. all materials relating to the Distribution sent by or on behalf of the Filer to shareholders of the Filer resident in the United States are sent concurrently to shareholders of the Filer resident in the Jurisdictions; and

c. the first trade of the AT Shares acquired pursuant to this Decision shall be a distribution or primary distribution to the public under the Legislation unless:

   i. such first trade is executed through the facilities of a stock exchange outside of Canada; and

   ii. such first trade is made in accordance with the rules of such stock exchange and all applicable laws.

May 29th, 2000.

"Howard I. Wetston" "J. F. Howard"

### 2.1.11 Interaction Resources Ltd. and Highland Energy Inc. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Relief from the identical consideration requirement of the Legislation in connection with a securities-exchange take-over bid - Instead of U.S. target shareholders receiving securities as consideration for the target shares held by them, they will receive the cash proceeds from the sale of such securities by a depository.

**Applicable Ontario Statutes**

*Securities Act*, R.S.O. 1990 c. S.5, as am., ss. 97(1), 104(2)(c).

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION**
**OF ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA**
**ONTARIO, NEWFOUNDLAND, AND**
**NOVA SCOTIA**

**AND**

**IN THE MATTER OF**
**THE MUTUAL RELIANCE REVIEW SYSTEM**
**FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF**
**INTERACTION RESOURCES LTD.**

**AND**

**IN THE MATTER OF**
**HIGHLAND ENERGY INC.**

**MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Newfoundland and Nova Scotia (the "Jurisdictions") has received an application from Interaction Resources Ltd. ("Interaction") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that in connection with Interaction's offer (the "Offer") to purchase all of the issued and outstanding common shares (the "Highland Shares") of Highland Energy Inc. ("Highland") on the basis of 0.96 common shares of Interaction (the "Interaction Shares") for each Highland Share, Interaction shall be exempt from the requirement in the Legislation to offer all holders of the same class of securities identical consideration (the "Identical Consideration Requirement") insofar as certain holders of Highland Shares who accept the Offer will receive the cash proceeds from the sale of Interaction Shares in accordance with the procedure described in paragraph 3.10 below, instead of receiving Interaction Shares;

2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the principal regulator for this application;

3. AND WHEREAS Interaction has represented to the Decision Makers that:

   3.1 Interaction is a corporation continued under the laws of Alberta. Interaction's head office is located in Calgary, Alberta;

   3.2 Interaction is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Nova Scotia. The Interaction Shares are listed and posted for trading on The Toronto Stock Exchange (the "TSE");

   3.3 Interaction is not in default of any requirement of the Legislation;

   3.4 Highland is a corporation amalgamated under the laws of Alberta. It is a reporting issuer in British Columbia, Alberta, Saskatchewan, Ontario and Quebec. The Highland Shares are listed and posted for trading on the Canadian Venture Exchange;

   3.5 Highland is not in default of any requirement of the Legislation;

   3.6 On April 24, 2000, Interaction mailed the Offer to all shareholders of Highland (the "Highland Shareholders");

   3.7 The Offer is being made in compliance with the Legislation of the Jurisdictions except to the extent that exemptive relief is granted in respect of the Identical Consideration Requirement;

   3.8 To the knowledge of Interaction after reasonable inquiry, Highland Shareholders resident in the United States (collectively, the "U.S. Shareholders") hold, in the aggregate, less than 2% of the outstanding Highland Shares;

   3.9 The Interaction Shares that may be issued under the Offer have not been and will not be registered or otherwise qualified for distribution pursuant to the securities legislation in the United States or any other jurisdiction outside Canada. Accordingly, the delivery of Interaction Shares to U.S. Shareholders or the citizens or residents of any other jurisdiction outside of Canada where the Interaction Shares may not be delivered without further action by Interaction (collectively with "U.S. Holders", the "Non-Canadian Holders") may constitute a violation of the laws of such jurisdictions;

   3.10 Interaction proposes to deliver Interaction Shares to Montreal Trust Company of Canada (the "Depositary"), for sale of such Interaction

Shares by the Depositary on behalf of such Non-Canadian Holders. All Interaction Shares that the Depositary is required to sell will be pooled and sold by the Depositary through the TSE in a manner that is intended to minimize any adverse effect such a sale could have on the market price of Interaction Common Shares as soon as reasonably possible after the date Interaction first takes up any of the Highland Shares tendered by Non-Canadian Shareholders. As soon as reasonably possible after completion of such sale, and in any event no later than three business days after completion of such sale, the Depositary will deliver to each Non-Canadian Holder whose Interaction Shares have been sold by the Depositary a cheque in Canadian funds in an amount equal to such Non-Canadian Holder's *pro rata* share of the proceeds of sale (net of all applicable commissions and withholding taxes) of all Interaction Shares sold by the Depositary;

4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker ( collectively, the "Decision");

5. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

6. THE DECISION of the Decision Makers under the Legislation is that in connection with the Offer, Interaction is exempt from the Identical Consideration Requirement, insofar as Non-Canadian Holders who accept the Offer will receive the cash proceeds from the Depositary's sale of the Interaction Shares in accordance with the procedure set out in paragraph 3.10 above, instead of receiving such Interaction Shares.

**DATED** at Edmonton, Alberta this 18th day of May, 2000.

"Eric T. Spink",
Vice-Chair

"Thomas G. Cooke", Q.C.,
Member

## 2.1.12 Mackenzie Financial Corporation et al. - MRRS Decision

**Headnote**

Investment by mutual funds in securities of another mutual fund that is under common management for specified purpose exempted from the requirements of clause 111(2)(b), subsection 111(3), clauses 117(1)(a) and 117(1)(d) and clause 118(2)(a), subject to certain specified conditions.

**Statutes Cited**

*Securities Act* (Ontario), R.S.O. 1990 c.S.5, as am. ss. 111(2)(b), 111(3), 113, 117(1)(a), 117(1)(d), 117(2), 118(2)(a) and 121(2)(a)(ii).

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA AND NEWFOUNDLAND**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF MACKENZIE FINANCIAL CORPORATION ("MACKENZIE")**

**AND**

**UNIVERSAL RSP SELECT MANAGERS FAR EAST FUND**
**UNIVERSAL RSP SELECT MANAGERS INTERNATIONAL FUND**
**UNIVERSAL RSP SELECT MANAGERS JAPAN FUND**
**UNIVERSAL RSP SELECT MANAGERS USA FUND**
**(Collectively, the "Rsp Funds")**
**UNIVERSAL SELECT MANAGERS FAR EAST FUND**
**UNIVERSAL SELECT MANAGERS INTERNATIONAL FUND**
**UNIVERSAL SELECT MANAGERS JAPAN FUND**
**UNIVERSAL SELECT MANAGERS USA FUND**
**(collectively, the "Underlying Funds")**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application (the "Application") from Mackenzie Financial Corporation ("Mackenzie" or the "Manager"), the RSP Funds and the Underlying Funds for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that:

1. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making and holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder shall not apply in

respect of certain investments to be made by the RSP Funds in their corresponding Underlying Funds;

2. the requirements contained in the Legislation requiring the management company to file a report relating to a purchase or sale of securities between the mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies, shall not apply in respect of certain investments to be made by the RSP Funds in their corresponding Underlying Funds; and

3. the requirements contained in the Legislation prohibiting the portfolio manager (or in the case of the *Securities Act* (British Columbia), the mutual fund or responsible person) from knowingly causing an investment portfolio managed by it (the mutual fund) to invest in the securities of an issuer in which a responsible person is a partner, officer or director unless the specific fact is disclosed to the client, and, if applicable, the written consent of the client to the investment is obtained before the purchase shall not apply in respect of certain investments to be made by the RSP Funds in their corresponding Underlying Funds;

The Legislation outlined above in paragraphs 1 through 3 will be referred to in this Decision Document as the "Applicable Legislation";

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

**AND WHEREAS** it has been represented by the Manager to the Decision Makers that:

1. Each of the RSP Funds and the Underlying Funds is an open-ended mutual fund trust established under the laws of the Province of Ontario. Mackenzie is a corporation established under the laws of the Province of Ontario and for the each of the RSP Funds and the Underlying Funds will be the trustee, manager and promoter. Mackenzie will be the registrar and transfer agent for all of the Underlying Funds and the RSP Funds. The head office of Mackenzie is in Toronto, Ontario.

2. The RSP Funds and the Underlying Funds will be reporting issuers. The securities of each of the Underlying Funds and the RSP Funds will be qualified under a simplified prospectus and annual information form (collectively, the "Prospectus") to be filed shortly in all provinces and territories.

3. Each of the RSP Funds seeks to achieve its investment objective while ensuring that securities of the RSP Fund do not constitute "foreign property" for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans and similar plans ("Registered Plans").

4. To achieve its investment objective, each of the RSP Funds invests its assets in securities such that its units will, in the opinion of tax counsel to the RSP Funds, be "qualified investments" for Registered Plans and will not constitute foreign property in a Registered Plan. This will primarily be achieved through the implementation of a derivative strategy. However, the RSP Funds also intend to invest a portion of their assets in securities of the Underlying Funds. This investment by the RSP Funds will at all times be below the maximum foreign property limit prescribed for Registered Plans (the "Permitted Limit").

5. The investment objectives of the Underlying Funds are achieved through investment primarily in foreign securities.

6. The direct investments by the RSP Funds in the Underlying Funds will be within the Permitted Limit (the "Permitted RSP Fund Investment"). The Manager and the RSP Funds will comply with the conditions of this Decision in respect of such investments. The amount of direct investment by each RSP Fund in its corresponding Underlying Fund will be adjusted from time to time so that, except for transitional cash, the aggregate of derivative exposure to, and direct investment in, the Underlying Fund will equal 100% of the assets of the RSP Fund.

7. Except to the extent evidenced by this Decision and specific approvals granted by the Canadian securities administrators pursuant to National Instrument 81-102 ("NI 81-102"), the investments by the RSP Funds in the Underlying Funds have been structured to comply with the investment restrictions of the Legislation and NI 81-102.

8. In the absence of this Decision, pursuant to the Legislation, each of the RSP Funds is prohibited from (a) knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder; and (b) knowingly holding an investment referred to in subsection (a) hereof. As a result, in the absence of this Decision a RSP Fund would be required to divest itself of any investments referred to in subsection (a) herein.

10. In the absence of this Decision, the Legislation requires the Manager to file a report on every purchase or sale of securities of the Underlying Funds by the RSP Funds.

11. By virtue of Mackenzie being the trustee of the RSP Funds and the Underlying Funds and, therefore, an "associate" of each such mutual fund and because Mackenzie is the portfolio manager of the RSP Funds and certain of the directors and officers of Mackenzie are also officers of the RSP Funds and the Underlying Funds and as such, a "responsible person" pursuant to the Legislation, in the absence of this Decision, Mackenzie would be prohibited from causing the RSP Funds to invest in the Underlying Funds unless the specific fact is disclosed to investors and, if applicable, the written consent of investors is obtained before the purchase.

**AND WHEREAS** pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

The Decision of the Decision Makers pursuant to the Legislation is that the Applicable Legislation shall not apply so as to prevent the RSP Funds from investing in, or redeeming the securities of, the Underlying Funds and such investment does not require further consent from or notice to securityholders of the RSP Funds or the Decision Makers.

**PROVIDED IN EACH CASE THAT:**

1. this Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with the matters in subsection 2.5(1) of NI 81-102; and

2. the foregoing Decision shall only apply in respect of investments in, or transactions with, the Underlying Funds that are made by the RSP Funds in compliance with the following conditions:

   a) the RSP Funds and the Underlying Funds are under common management and the Underlying Funds' securities are offered for sale in the jurisdiction of the Decision Maker pursuant to a prospectus which has been filed with and accepted by the Decision Maker;

   b) each RSP Fund restricts its aggregate direct investment in its corresponding Underlying Fund to a percentage of its assets that is within the Permitted Limit;

   c) the investment by the RSP Funds in the Underlying Funds is compatible with the fundamental investment objective of the RSP Funds;

   d) the Prospectus will describe the intent of the RSP Funds to invest in a specified Underlying Fund;

   e) the RSP Funds may change the Permitted RSP Fund Investments only if they change their fundamental investment objectives in accordance with the Legislation;

   f) no sales charges are payable by the RSP Funds in relation to their purchases of securities of the Underlying Funds;

   g) there are compatible dates for the calculation of the net asset value of the RSP Funds and the Underlying Funds for the purpose of the issue and redemption of the securities of such mutual funds;

   h) no redemption fees or other charges are charged by the Underlying Funds in respect of the redemption by the RSP Funds of securities of the Underlying Funds owned by the RSP Funds;

   i) the arrangements between or in respect of the RSP Funds and the Underlying Funds are such as to avoid the duplication of management fees;

   j) no fees and charges of any sort are paid by a RSP Fund or by an Underlying Fund or by the manager or principal distributor of a RSP Fund or an Underlying Fund or by any affiliate or associate of any of the foregoing entities to anyone in respect of a RSP Fund's purchase, holding or redemption of the securities of the Underlying Fund;

   k) in the event of the provision of any notice to securityholders of the Underlying Funds, as required by the constating documents of the Underlying Funds or by the laws applicable to the Underlying Funds, such notice will also be delivered to the securityholders of the RSP Funds; all voting rights attached to the securities of the Underlying Funds that are owned by the RSP Funds will be passed through to the securityholders of the RSP Funds; in the event that a securityholders' meeting is called for an Underlying Fund, all of the disclosure and notice material prepared in connection with such meeting will be provided to the securityholders of the corresponding RSP Fund and such securityholders will be entitled to direct a representative of the RSP Fund to vote that RSP Fund's holding in the Underlying Fund in accordance with their direction; and the representative of the RSP Fund will not be permitted to vote the RSP Fund's holdings in the Underlying Fund except to the extent the securityholders of the RSP Fund so direct;

   l) in addition to receiving the annual and, upon request, the semi-annual financial statements, of the RSP Funds, securityholders of the RSP Funds will receive the annual and, upon request, the semi-annual financial statements, of the Underlying Funds in either a combined report, containing both the RSP Funds' and Underlying Funds' financial statements, or in a separate report containing the Underlying Funds' financial statements; and

   m) to the extent that the RSP Funds and the Underlying Funds do not use a combined simplified prospectus and annual information form and financial statements containing disclosure about the RSP Funds and the Underlying Funds, copies of the simplified prospectus, annual information form and annual and semi-annual financial statements relating to the Underlying Funds may be obtained upon request by a securityholder of the RSP Funds.

May 31st, 2000.

"Howard I. Wetston" "R. Stephen Paddon"

### 2.1.13 N-45° First CMBS Issuer Corporation - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Waiver granted pursuant to section 4.5 of National Policy Statement No. 47 (and equivalent Quebec legislation) to enable issuer to participate in the POP System and the Shelf System (as contemplated in National Policy Statement No. 44 (and equivalent Quebec legislation) to distribute asset-backed securities in accordance with proposed National Instruments 44-101 and 44-102.

**Applicable National Policies**

National Policy Statement No. 47 - Prompt Offering Qualification System.

National Policy Statement No. 44 - Rules for Shelf Prospectus Offerings and for Pricing Offerings After the Final Prospectus is Receipted.

**Proposed National Instruments**

Proposed National Instrument 44-101 Prompt Offering Qualification System (1998), 21 OSCB 1148.

Proposed National Instrument 44-102 Shelf Distribution (1998), 21 OSCB 6206.

**IN THE MATTER OF THE SECURITIES LEGISLATION OF THE PROVINCES OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND PRINCE EDWARD ISLAND**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF N-45° FIRST CMBS ISSUER CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island (the "Jurisdictions") has received an application from N-45° First CMBS Issuer Corporation (the "Issuer") for a decision pursuant to section 4.5 of Canadian Securities Administrators' National Policy Statement No. 47 ("NP 47") and pursuant to the applicable securities legislation of Quebec including but not limited to, those set forth in Title II and Title III of the *Securities Act* and *Regulation* (Québec) (the "POP Requirements") (and together with National Policy Statement No. 44 ("NP 44") and the applicable securities legislation of Québec, including but not limited to those set forth in Title II and Title III of the *Securities Act* and *Regulation* (Québec) (the "Shelf Requirements"), collectively, the POP Requirements and the Shelf Requirements referred to as the "Policies") that the eligibility requirements (the "Eligibility Requirements") contained in the Policies for participation in the Prompt Offering Qualification System (the "POP System"), participation in the shelf system (the "Shelf System"), use of the Shelf Procedures as defined in the Shelf Requirements with an Approved Rating by an Approved Rating Organization (all as defined in the POP Requirements), and for the utilization of annual information forms (each, an "AIF"), a preliminary short form base shelf prospectus ("preliminary Shelf Prospectus") or a preliminary short form prospectus ("preliminary Short Form Prospectus"), a final short form base shelf prospectus ("final Shelf Prospectus") or a final short form prospectus ("final Short Form Prospectus"), shelf prospectus supplements (each, a "Prospectus Supplement") and any necessary supporting documents shall not apply to the Issuer in respect of proposed offerings of Asset-Backed Securities (as defined below);

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the *Commission des valeurs mobilières du Québec* is the principal regulator for this application;

**AND WHEREAS** the Issuer has represented to the Decision Makers that:

1. The Issuer was incorporated pursuant to the *Canada Business Corporations Act* on June 30, 1998. The authorised share capital of the Issuer is composed of an unlimited number of common shares, 100 of which are issued and outstanding. The Issuer is a wholly owned subsidiary of HYPOTHÈQUES CDPQ INC. and an indirect wholly-owned subsidiary of Caisse de dépôt et placement du Québec. The Issuer's head office is located at 1981 McGill College Avenue, 6TH Floor, Montréal, Québec, H3A 3C7.

2. The Issuer filed a prospectus dated May 25, 1999 in respect of its initial public offering of Series 1999-1 Bonds which consisted of commercial mortgage-backed securities and obtained receipts therefor from the respective regulatory authorities of each Canadian provinces. At closing, net proceeds received therefrom by the Issuer was allocated by the Issuer to the purchase of a portfolio of 99 secured loans (the "*Secured Loans*"), the global principal balance of which was $254,114,786.

   The Secured Loans are secured by first ranking hypothecs (mortgages) on immovable properties.

3. The Issuer has no other assets but the Secured Loans, which are subject to a first ranking hypothec (mortgage) pursuant to a deed of collateral hypothec entered into between the Issuer and MONTREAL TRUST COMPANY for the benefit of the bondholders. The bondholders have no recourse against either the Issuer or against any other party and have recourse only against the Issuer's Secured Loans portfolio.

4. The Issuer wishes to make further distributions of securities issuable in series that are primarily serviced by

the cash flows of a segregated pool of receivables or other financial assets, either fixed or renewable, which in accordance with their respective terms, are cashable within finite time periods and any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders ("Asset-Backed Securities"), including commercial mortgage-backed securities either in the form of bonds, notes or pass-through certificates, the proceeds of which shall be used to purchase receivables or other financial assets. The holders of Asset-Backed Securities issued pursuant to such additional distributions contemplated by the Issuer will be granted separately exclusive recourse to the segregated pool of receivables or other financial assets backing such securities. No rights shall be granted to anyone upon the Secured Loans in the course of any such additional distributions.

5. The Asset-Backed Securities that the Issuer intends to offer to the public shall have been assigned Approved Ratings by one or more Approved Rating Organization based in part on the yield and quality of the underlying assets.

6. The Issuer would not be eligible to participate in the POP System without this decision of the Decision Makers because it has not been a reporting issuer for 12 months and does not satisfy the public float eligibility criteria set forth in the POP Requirements.

7. In connection with each proposed offering by the Issuer:

   (a) the Issuer will have a current AIF;

   (b) at the time of the filing of its most recent AIF or preliminary Shelf or Short Form Prospectus or final Shelf or Short Form Prospectus, as the case may be, the Issuer will not be in default of any requirement of securities legislation, and

   (c) at the time of the filing of its most recent AIF or preliminary Shelf or Short Form Prospectus, as the case may be, or final Shelf or Short Form Prospectus, as the case may be, the Issuer will have reasonable grounds for believing that:

      (i) all Asset-Backed Securities that it may distribute under the POP System or Shelf System will receive an Approved Rating from at least one Approved Rating Organization; and

      (ii) no Asset-Backed Securities that it may distribute under the POP System or Shelf System will receive a rating lower than an Approved Rating from any Approved Rating Organization.

8. Each AIF of the Issuer will be prepared in accordance with Appendix A of NP 47, with the following amendments:

   (a) the disclosure in AIF's filed by the Issuer will be modified to reflect the special nature of its business; and

   (b) if the Issuer has Asset-Backed Securities outstanding, the AIF will disclose:

      (i) a description of any events, covenants, standards or preconditions that are dependant or based on the economic performance of the underlying pool of financial assets and that may impact on the timing or amount of payments or distributions to be made under the Asset-Backed Securities;

      (ii) for the past two completed financial years of the Issuer or such lesser period commencing on the first date on which the Issuer had Asset-Backed Securities outstanding, information on the underlying pool of financial assets relating to:

         (A) the composition of the pool as of the end of the financial year or partial period;

         (B) income and losses from the pool, on at least a quarterly basis;

         (C) the payment, prepayment and collection experience of the pool on a quarterly basis; and

         (D) any significant variances experienced in the matters referred to in sub-clauses (A), (B) and (C);

      (iii) if any of the information disclosed under clause (ii) of this paragraph 9 has been audited, the existence and results of the audit;

      (iv) the investment parameters applicable to investments of any cash flow surpluses;

      (v) the amount of payments made in respect of principal and interest or capital and yield on Asset-Backed Securities of the Issuer outstanding during the most recently completed financial year or partial period;

      (vi) the occurrence of any events that have led or with the passage of time could lead to the accelerated payment of principal or capital of Asset-Backed Securities; and

      (vii) the identity of any principal obligors for the outstanding Asset-Backed Securities of the issuer at the end of the most recent financial year or partial period, unless this disclosure was waived by the securities regulatory authorities when the Asset-Backed Securities were offered to the public, the percentage of the underlying pool of financial assets represented by obligations of each principal obligor and whether the principal obligor, if any, has filed an AIF in any jurisdiction or a Form 10-K or Form 20-F in the United States, unless this disclosure was waived by the securities regulatory authorities when the Asset-Backed Securities were offered to the public.

9. The preliminary Shelf or Short Form Prospectus, as the case may be, and final Shelf or Short Form Prospectus, as the case may be, of the Issuer will be prepared in accordance with Appendix B of NP 47 and Part A of

Schedule IV to the regulation made under the *Securities Act* (Québec), with such amendments in connection with the Shelf System as are specified in subsection 2.3 (b), Section 3 and Appendix B of NP 44 and Section III.1 of Division III of Chapter I of Title II to the regulation under the *Securities Act* (Québec), and with the following additional amendments:

(a) the disclosure in the preliminary Shelf or Short Form Prospectus, as the case may be, and final Shelf or Short Form Prospectus, as the case may be, filed by the Issuer will be modified to reflect the special nature of its business;

(b) the preliminary Shelf or Short Form Prospectus, as the case may be, and final Shelf or Short Form Prospectus, as the case may be, will describe or set out:

(i) the material attributes and characteristics of the Asset-Backed Securities to be offered, including details on:

(A) the rate of interest or stipulated yield and any premium;

(B) the date for repayment of principal or return of capital and any circumstances in which payments of principal or capital may be made before such date, including any redemption or pre-payment obligations or privileges of the Issuer and any events that may trigger early liquidation or amortization of the underlying pool of financial assets;

(C) provisions for the accumulation of cash flows to provide for the repayment of principal or return of capital;

(D) provisions permitting or restricting the issuance of additional securities and any other material negative covenants applicable to the Issuer;

(E) the nature, order and priority of the entitlements of holders of Asset-Backed Securities and any other entitled persons or companies to receive cash flows generated from the underlying pool of financial assets; and

(F) any events, covenants, standards or preconditions that are dependant or based on the economic performance of the underlying pool of financial assets and that may impact on the timing or amount of payments or distributions to be made under the Asset-Backed Securities;

(ii) information on the underlying pool of financial assets for the period from the date as at which the following information was presented in the Issuer's current AIF to a date not more than 90 days before the date of the issuance of a receipt for the preliminary Shelf or Short Form Prospectus, as the case may be, relating to:

(A) the composition of the pool as of the end of the period;

(B) income and losses from the pool for the period; and

(C) the payment, prepayment and collection experience of the pool for the period;

(iii) the type or types of the financial assets, the manner in which the financial assets originated or will originate and, if applicable, the mechanism and terms of the agreement governing the transfer of the financial assets comprising the underlying pool to or through the Issuer, including the consideration paid for the financial assets;

(iv) any person or company (including its general business activities and its material responsibilities under the Asset-Backed Securities) who:

(A) originates, sells or deposits a material portion of the financial assets comprising the pool, or has agreed to do so;

(B) acts as a trustee, custodian, bailee, agent or other similar intermediary of the Issuer or any holder of the Asset-Backed Securities, or has agreed to do so;

(C) administers or services the financial assets in the pool or provides administrative or managerial services to the Issuer, or has agreed to do so, on a conditional basis or otherwise, if (1) finding a replacement provider of the services at a cost comparable to the cost of the current provider is not reasonably likely, (2) a replacement provider of the services is likely to achieve materially worse results than the current provider, or (3) the current provider of the services is likely to default in its service obligations because of its current financial condition, or (4) the disclosure is otherwise material;

(D) provides a guarantee or other credit enhancement to support the obligations of the Issuer under the Asset-Backed Securities or the performance or some or all of the financial assets in the pool, or has agreed to do so; or

(E) lends to the Issuer in order to facilitate the timely payment or repayment of amounts payable under the Asset-Backed Securities, or has agreed to do so;

(v) the terms of any material relationships between (A) the persons or companies referred to in subparagraph (iv) of this paragraph 9 and any of their respective affiliates, and (B) the Issuer and any of its affiliates;

(vi) any provisions relating to termination of services or responsibilities of any of the persons or companies referred to in subparagraph (iv) of this paragraph 9 and the terms on which a replacement may be appointed; and

(vii) any risk factors associated with the Asset-Backed Securities, including disclosure of material risks associated with changes in interest rates or prepayment levels, and any circumstances where payments on the Asset-Backed Securities could be impaired or disrupted as a result of any reasonably foreseeable event that may delay, divert or disrupt the cash flows dedicated to service the Asset-Backed Securities;

provided that if any of the foregoing information will be disclosed in a final Prospectus Supplement, it may be omitted from the corresponding Shelf Prospectus; and

(c) the final Shelf Prospectus will contain a statement that the Issuer undertakes that it will not distribute Asset-Backed Securities of a type that at the time of distribution have not previously been distributed by prospectus in Ontario ("Novel Asset-Backed Securities") without pre-clearing with the Decision Makers the disclosure to be contained in any Prospectus Supplement pertaining to the distribution of such Novel Asset-Backed Securities;

(d) the preliminary Shelf or Short Form Prospectus and final Shelf or Short Form Prospectus, as the case may be, will disclose any factors or considerations identified by the Approved Rating Organization as giving rise to unusual risks associated with the securities to be distributed.

10. Final Prospectus Supplement will be prepared in accordance with Shelf Requirements, and will include all of the shelf information pertaining to the distribution of Asset-Backed Securities which was omitted from the Shelf Prospectus.

**AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers pursuant to the Policies is that the Eligibility Requirements set forth in the POP Requirements shall not apply to the Issuer in connection with the offerings of Asset-Backed Securities and that the Issuer may participate in the POP System and the Shelf System to distribute Asset-Backed Securities with an Approved Rating from time to time, and for the purposes of any such distribution to utilize AIFs, a preliminary Shelf or Short Form Prospectus, as the case may be, a final Shelf or Short Form Prospectus, as the case may be, Prospectus Supplements and any necessary supporting documents, with such amendments from the form requirements of the Policies, as applicable, as are set forth herein, provided that:

(i) the Issuer complies with paragraphs 7, 8, 9 and 10 hereof;

(ii) except as provided herein, the Issuer complies with all of the filing requirements and procedures set out in the POP Requirements and the Shelf Requirements;

(iii) the Issuer files an undertaking before or concurrently with its preliminary Shelf Prospectus, if utilized, which states that:

(a) the Issuer will not distribute under the final Shelf Prospectus Novel Asset-Backed Securities without pre-clearing the disclosure pertaining to the distribution of such Novel Asset-Backed Securities in any Prospectus Supplement with the Decision Makers; and

(b) specifically, the Issuer will not distribute such Novel Asset-Backed Securities unless:

(i) the draft Prospectus Supplements pertaining to the distribution of such Novel Asset-Backed Securities have been delivered to the Decision Makers in substantially final form; and

(ii) either:

(A) the Decision Makers have confirmed their acceptance of each draft Prospectus Supplement in substantially final form or in final form; or

(B) 21 days has elapsed since the date of delivery of each draft Prospectus Supplement in substantially final form to the Decision Makers and the Decision Makers have not provided written comments on the draft Prospectus Supplement;

(iv) the Issuer files with each AIF an eligibility certificate certifying that the Issuer satisfies the eligibility requirements set out in subparagraphs 7(b) and 7(c) hereof, and which makes reference to this Decision;

(v) at the time of the filing of its preliminary Shelf or Short Form Prospectus, the Issuer:

(a) has received confirmation from at least one Approved Rating Organization that the Asset-Backed Securities to be distributed thereunder will receive an Approved Rating, subject to final determination of the specific attributes of the Asset-Backed Securities; and

(b) has not been informed by any Approved Rating Organization of an intention to provide a rating, whether on a provisional or final basis, of the Asset-Backed Securities that is lower than an Approved Rating;

(vi) the Issuer files with its preliminary Shelf or Short Form Prospectus, an eligibility certificate certifying that the Issuer satisfies the eligibility requirements set out in subparagraphs 7(b) and 7(c) hereof, and which makes reference to this Decision; and

(vii) this Decision will automatically expire upon the latter of proposed National Instrument 44-101 and proposed National Instrument 44-102 coming into force and being adopted as a rule in each of the Jurisdictions.

May 16th, 2000.

"Viateur Gagnon" "Guy Lemoine"

**DANS L'AFFAIRE DE**
**LA LÉGISLATION EN VALEURS MOBILIÈRES DES**

**PROVINCES DE LA COLOMBIE-BRITANNIQUE, D'ALBERTA, DE SASKATCHEWAN, DU MANITOBA, DE L'ONTARIO, DU QUÉBEC,DU NOUVEAU-BRUNSWICK, DE NOUVELLE-ÉCOSSE, DE TERRE-NEUVE ET DE L'ÎLE-DU-PRINCE-ÉDOUARD**

**ET**

**DANS L'AFFAIRE DU**
**RÉGIME D'EXAMEN CONCERTÉ DES DEMANDES DE DISPENSE**
**ET**

**DANS L'AFFAIRE DE**
**PREMIÈRE CORPORATION ÉMETTRICE DE TACHC N-45°**

**DOCUMENT DE DÉCISION DU REC**

**CONSIDÉRANT QUE** l'autorité locale en valeurs mobilières ou l'agent responsable (le « **décideur** ») respectif de chacune des Provinces de la Colombie-Britannique, d'Alberta, de Saskatchewan, du Manitoba, de l'Ontario, du Québec, du Nouveau-Brunswick, de Nouvelle-Écosse, de Terre-Neuve et de l'Île-du-Prince-Édouard (les « **territoires** ») ont reçu une demande de Première Corporation Émettrice de TACHC N-45° (la « **société** ») pour une décision, aux termes de l'article 4.5 de l'instruction nationale canadienne no. 47 des autorités canadiennes en valeurs mobilières (« NP 47 ») et aux termes de la législation en valeurs mobilières applicable du Québec, y compris, de manière non limitative, les titres II et III de la *Loi sur les valeurs mobilières* et du *Règlement* (Québec) (les « exigences de prospectus simplifié ») (et ensemble avec l'instruction nationale canadienne no. 44 (« NP 44 ») et la législation en valeurs mobilières applicable du Québec, y compris, de manière non limitative, les titres II et III de la *Loi sur les valeurs mobilières* et du *Règlement* (Québec) (les « exigences de prospectus préalable ») collectivement, les exigences de prospectus simplifié et les exigences de prospectus préalable étant désignées les « instructions »), à l'effet que les exigences d'admissibilité (les « exigences d'admissibilité ») contenues dans les instructions visant la participation au régime de prospectus simplifié (le « régime POP »), la participation au régime de prospectus préalable (« régime de prospectus préalable »), l'utilisation de la procédure de prospectus préalable tel que défini dans les exigences de prospectus préalable avec une note approuvée par une agence reconnue d'évaluation de titres (selon les définitions de ces expressions dans les exigences de prospectus simplifié) et l'utilisation de notices annuelles (une « notice annuelle »), un prospectus préalable simplifié provisoire (un « prospectus préalable provisoire ») ou un prospectus simplifié provisoire (un « prospectus simplifié provisoire »), un prospectus préalable simplifié définitif (un « prospectus préalable ») ou un prospectus simplifié définitif (un « prospectus simplifié »), des suppléments au prospectus préalable (chacun désigné un « supplément de prospectus ») et tout document additionnel nécessaire, ne s'appliqueront pas à la société relativement aux offres proposées de titres adossés à des créances (tel que défini ci-après).

**QUE**, selon le régime d'examen concerté des demandes de dispense (le «**régime**»), la Commission des valeurs mobilières du Québec est l'autorité principale pour la présente demande;

**QUE** la société a déclaré aux décideurs ce qui suit:

1. La société a été constituée sous le régime de la *Loi canadienne sur les sociétés par actions* le 30 juin 1998. Le capital-actions autorisé de la société se compose d'un nombre illimité d'actions ordinaires dont 100 actions ordinaires sont émises et en circulation. La société est une filiale en propriété exclusive de HYPOTHÈQUE CDPQ INC. et une filiale en propriété exclusive indirecte de CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC. Le siège social de la société est situé au 1981, avenue McGill College, 6ème étage, Montréal (Québec) H3A 3C7.

2. La société a déposé un prospectus daté du 25 mai 1999 dans le cadre d'un premier appel public à l'épargne visant le placement d'obligations de la série 1999-1 lesquelles constituaient des titres adossés à des créances hypothécaires commerciales et a reçu des visas à l'égard de ce prospectus de chacune des autorités en valeurs mobilières de chaque province canadienne. À la clôture, le produit net tiré par la société de l'émission des obligations a été affecté par la société à l'achat d'un portefeuille de 99 prêts garantis (les «**prêts garantis**») dont le solde en capital global s'élevait à 254 114 786 $.

   Les prêts garantis sont garantis par des hypothèques de premier rang sur des propriétés immobilières.

3. La société n'a aucun élément d'actif sauf les prêts garantis, lesquels sont visés par une hypothèque de premier rang conformément à un acte d'hypothèque collatérale intervenu entre la société et COMPAGNIE MONTRÉAL TRUST pour le bénéfice des porteurs d'obligations. Les porteurs d'obligations n'ont aucun recours contre la société ni aucune autre partie et ne peuvent exercer de recours que contre le portefeuille de prêts garantis de la société

4. La société désire procéder à des placements additionnels de titres émissibles en série dont le paiement sera principalement assuré par les flux de trésorerie générés par un fonds distinct de créances ou d'autres éléments d'actif financiers, renouvelables ou non, qui par leurs modalités sont convertis en espèces dans un délai déterminé et des droits ou autres éléments d'actif conçu pour assurer la prestation ou les distributions ponctuelles de ce produit aux porteurs de titres («titres adossés à des créances»), y compris des titres adossés à des créances hypothécaires commerciales constitués soit d'obligations, de billets ou de certificats de copropriété dont le produit servira à l'acquisition de créances ou d'autres éléments d'actifs financiers dont les flux de trésorerie assureront les versements effectués aux porteurs des titres adossés à des créances. Les détenteurs de titres adossés à des créances émis dans le cadre de chaque placement additionnel que la société se propose d'effectuer se verront consentir des droits exclusifs à l'égard du fonds distinct de créances ou d'autres éléments d'actifs financiers auquel ces titres seront adossés. Aucun droit ne sera consenti à quiconque dans le cadre de tout tel placement additionnel à l'égard des prêts garantis.

5. Les titres adossés à des créances que la société prévoit vendre au public auront reçu une note approuvée par une ou plusieurs agences reconnues d'évaluation de titres en fonction en partie du rendement et de la qualité des éléments d'actifs sous-jacents.

6. Sans l'obtention de cette décision des décideurs, la société ne serait pas admissible à participer au régime POP puisqu'elle n'a pas été un émetteur assujetti pour 12 mois et qu'elle ne satisfait pas le critère d'admissibilité ayant trait à la capitalisation boursière tel que requis par les exigences de prospectus simplifié.

7. Relativement à chaque offre proposée de la société :

   a) la société aura une notice annuelle courante;

   b) au moment du dépôt de sa notice annuelle la plus récente ou prospectus préalable provisoire ou prospectus simplifié provisoire ou prospectus préalable ou prospectus simplifié, selon le cas, la société ne sera pas en défaut relativement à une exigence de la législation en valeurs mobilières; et

   c) au moment du dépôt de sa notice annuelle la plus récente ou prospectus préalable provisoire ou prospectus simplifié provisoire ou prospectus préalable ou prospectus simplifié, selon le cas, la société aura des motifs raisonnables de croire que :

      i) tous les titres adossés à des créances qu'elle peut distribuer en vertu du régime POP ou du régime de prospectus préalable recevront une note approuvée d'au moins une agence reconnue d'évaluation de titres; et

      ii) aucun titre adossé à des créances qu'elle peut distribuer en vertu du régime POP ou du régime de prospectus préalable ne recevra une note inférieure à une note approuvée par une agence reconnue d'évaluation de titres.

8. Chaque notice annuelle de la société sera préparée conformément à l'annexe A de NP 47, avec les modifications suivantes :

   a) la divulgation contenue à la notice annuelle déposée par la société sera modifiée afin de tenir compte de la nature spéciale de ses activités; et

   b) si la société a des titres adossés à des créances en circulation, la notice doit divulguer :

      i) une description de tout événement, engagement, norme ou condition préalable qui est tributaire du rendement financier du groupe sous-jacent d'actifs financiers ou qui repose sur celui-ci et qui pourrait influer sur le montant des paiements ou distributions à faire en vertu des titres adossés à des créances ou sur le moment de leur versement;

      ii) l'information suivante au sujet du groupe sous-jacent d'actifs financiers, pour les deux derniers exercices financiers de la société ou pour une période plus courte commençant à la première

date à laquelle la société avait des titres adossés à des créances en circulation:

A) la composition du groupe à la clôture de chaque exercice financier ou fraction d'exercice financier;

B) le bénéfice et les pertes du groupe, au moins chaque trimestre;

C) les antécédents de paiement, de paiement anticipé et de recouvrement du groupe, au moins chaque trimestre; et

D) toute variation importante des éléments mentionnés aux sous-alinéas A), B) et C);

iii) si des éléments d'information présentés conformément à l'alinéa ii) de ce paragraphe 8 ont été vérifiés, mentionner ce fait ainsi que les résultats de la vérification;

iv) les paramètres d'investissement qui s'appliquent à l'investissement de tout flux de trésorerie excédentaire;

v) le montant des versements de capital et d'intérêt ou de capital et de rendement sur les titres adossés à des créances de la société qui étaient en circulation au cours du dernier exercice financier ou au cours d'une fraction d'exercice financier;

vi) tout événement qui a entraîné ou qui, avec l'évolution du temps, pourrait entraîner le remboursement accéléré du principal ou du capital des titres adossés à des créances; et

vii) l'identité de tous les principaux débiteurs des titres adossés à des créances de la société en circulation à la clôture du dernier exercice financier ou de la période intermédiaire la plus récente, le pourcentage du groupe sous-jacent d'actifs financiers que représente l'engagement de chaque débiteur principal ainsi qu'une indication à savoir si le débiteur principal a déposé une notice annuelle dans un territoire canadien ou un formulaire 10-K ou un formulaire 20-F aux États-Unis, à moins que les autorités en valeurs mobilières aient renoncé à cette divulgation lorsque les titres adossés à des créances ont été offerts au public.

9. Le prospectus préalable provisoire ou le prospectus simplifié provisoire, selon le cas, et le prospectus préalable ou le prospectus simplifié, selon le cas, de la société seront préparés conformément à l'annexe B de NP 47 et la Partie A de l'annexe IV du Règlement adopté en vertu de la *Loi sur les valeurs mobilières* (Québec) avec les modifications relativement au régime de prospectus préalable qui sont indiquées au sous-paragraphe 2.3 (b), à l'article 3 et l'annexe B de NP 44 et la section III.1 du chapitre 1 du titre II du Règlement adopté en vertu de la *Loi sur les valeurs mobilières* (Québec) sous réserve des modifications additionnelles suivantes :

a) la divulgation contenue dans le prospectus préalable provisoire ou le prospectus simplifié provisoire, selon le cas, et dans le prospectus préalable ou le prospectus simplifié, selon le cas, déposé par la société sera modifiée pour refléter la nature spéciale de ses activités;

b) le prospectus préalable provisoire ou le prospectus simplifié provisoire, selon le cas, et le prospectus préalable ou le prospectus simplifié, selon le cas, décrira ou indiquera les renseignements suivants :

i) les principaux attributs et caractéristiques des titres adossés à des créances en donnant notamment les renseignements suivants :

A) le taux d'intérêt ou le rendement stipulé et toute prime;

B) la date du remboursement du capital et toutes les circonstances où il est possible de rembourser du capital avant cette date, y compris l'obligation ou le privilège de rachat ou de remboursement préalable de la société et tout événement susceptible de déclencher la liquidation anticipée ou l'amortissement du groupe sous-jacent d'actifs financiers;

C) les dispositions relatives à l'accumulation de liquidités en prévision du remboursement du capital;

D) les dispositions permettant ou limitant l'émission de titres supplémentaires et tout autre engagement d'abstention important applicable à la société;

E) la nature, le rang et la priorité du droit des porteurs de titres adossés à des créances et de toutes autres personnes ou sociétés qui y ont droit, aux rentrées nettes de fonds provenant du groupe sous-jacent d'actifs financiers; et

F) tout événement, engagement, norme ou condition préalable qui est tributaire du rendement financier du groupe sous-jacent d'actifs financiers ou qui repose sur celui-ci et qui pourrait influer sur le montant des paiements ou des distributions à faire à vertu des titres adossés à des créances ou sur le moment de leur versement;

ii) l'information suivante sur le groupe sous-jacent d'actifs financiers pour la période allant de la date à laquelle l'information suivante a été présentée dans la notice annuelle courante de la société jusqu'à une date qui correspond au plus tard au 90e jour avant la date d'octroi du visa du prospectus simplifié provisoire ou du prospectus préalable provisoire, selon le cas :

A) la composition du groupe à la clôture de la période;

B) les bénéfices et les pertes du groupe pour la période; et

C) les antécédents de paiement, de paiement anticipé et de recouvrement du groupe pour la période;

iii) le ou les types d'actifs financiers, la manière dont les actifs financiers ont été obtenus ou le seront et, si il y a lieu, le mécanisme et les conditions de l'accord régissant le transfert à la société ou par son entremise des actifs financiers composant le groupe sous-jacent, y compris la contrepartie versée pour ceux-ci;

iv) toute personne ou société (y compris ses activités générales d'affaires et ses responsabilités importantes en vertu des titres adossés à des créances) qui :

A) a produit, vendu ou déposé une partie importante des actifs financiers composant le groupe, ou convenu de le faire;

B) exerce la fonction de fiduciaire, de dépositaire ou de représentant de la société ou de tout porteur des titres adossés à des créances, ou une fonction analogue, ou a convenu de le faire;

C) administre ou gère une partie importante des actifs financiers composant le groupe, ou fournit des services d'administration ou de gestion à la société, ou a convenu de la faire, de façon conditionnelle ou autrement, dans les cas suivants : (1) il est raisonnablement peu probable que l'on trouve un fournisseur substitut qui assure la prestation des services à un coût comparable à celui des services du fournisseur actuel, (2) le fournisseur substitué est susceptible de donner des résultats significativement pires que ceux du fournisseur actuel, (3) le fournisseur actuel est susceptible de manquer à ses obligations de prestation des services en raison de sa situation financière courante, ou (4) la présentation de l'information est par ailleurs importante;

D) donne une garantie ou une autre facilité de crédit pour soutenir les obligations de la société prévues par les titres adossés à des créances ou les résultats de la totalité ou d'une partie des actifs financiers composant le groupe, ou a convenu de le faire; ou

E) consent un prêt à la société afin de faciliter le paiement ou le remboursement opportun des sommes exigibles aux termes des titres adossés à des créances, ou a convenu de le faire;

v) les conditions de toute relation importante entre les personnes suivantes (A) des personnes ou des sociétés dont il est question au sous-paragraphe iv) de cet article 9 ou tout membre de leur groupe respectif et (B) la société et les membres de son groupe;

vi) toutes les dispositions ayant trait à la cessation des services ou à la résolution des responsabilités de l'une des personnes ou des sociétés mentionnées au sous-paragraphe iv) de cet article 9 et les conditions de nomination d'un substitut; et

vii) tout facteur de risque associé aux titres adossés à des créances, y compris l'information sur les risques importants associés à la modification des taux d'intérêt ou au niveau de remboursement anticipé, et toute circonstance où les paiements sur les titres adossés à des créances pourraient être compromis ou interrompus par suite d'un événement suffisamment prévisible, susceptible de retarder, de détourner ou d'interrompre les rentrées de fonds destinées à l'administration des titres adossés à des créances;
en autant que si l'information précitée sera divulguée dans un supplément de prospectus elle peut être omise du prospectus préalable correspondant.

c) le prospectus préalable contiendra une déclaration à l'effet que la société s'engage à ne pas offrir des titres adossés à des créances d'un type qui au moment du placement n'ont pas été offerts auparavant par prospectus en Ontario (les « titres adossés à des créances d'un type nouveau ») à moins d'obtenir l'approbation préalable des décideurs relativement à la divulgation qui doit être insérée dans tout supplément de prospectus relatif à la distribution de titres adossés à des créances d'un type nouveau;

d) le prospectus préalable provisoire ou le prospectus simplifié provisoire et le prospectus préalable ou le prospectus simplifié, selon le cas, divulguera tout facteur ou considération identifié par l'agence reconnue d'évaluation de titres comme donnant lieu à des risques inhabituels associés aux titres devant être offerts.

10. Le supplément de prospectus sera préparé conformément aux exigences de prospectus préalable et contiendra toute information relative à l'offre de titres adossés à des créances qui a été omise du prospectus préalable.

**QUE**, selon le régime, le présent document de décision du REC confirme la décision de chaque décideur (collectivement, la « **décision** »);

**ET QUE** chacun des décideurs est d'avis que le test prévu dans la législation qui accorde le pouvoir discrétionnaire au décideur a été respecté;

**LA DÉCISION** des décideurs en vertu des instructions est que les exigences d'admissibilité indiquées dans les exigences de prospectus simplifié ne s'appliqueront pas à la société relativement aux offres de titres adossés à des créances et que la société peut participer au régime POP et au régime de

prospectus préalable pour offrir des titres adossés à des créances avec une note approuvée de temps à autre et que pour les fins d'un tel placement, elle peut utiliser des notices annuelles, un prospectus préalable provisoire ou un prospectus simplifié provisoire, selon le cas, un prospectus préalable ou un prospectus simplifié, selon le cas, des suppléments de prospectus et tout document additionnel nécessaire, avec de telles modifications aux exigences de forme des instructions, le cas échéant, tel qu'il est indiqué aux présentes pourvu que :

i) la société respecte les articles 7, 8, 9 et 10 des présentes;

ii) sauf tel qu'indiqué aux présentes, la société respecte les exigences de dépôt et les procédures indiquées dans les exigences de prospectus simplifié et les exigences de prospectus préalable;

iii) l'émetteur dépose un engagement avant ou au même moment que le dépôt du prospectus préalable provisoire, s'il est utilisé, qui indique que :

a) la société ne placera pas en vertu du prospectus préalable des titres adossés à des créances d'un type nouveau à moins d'avoir obtenu l'approbation préalable des décideurs relativement à la divulgation afférente au placement de ces titres adossés à des créances d'un type nouveau dans tout supplément de prospectus; et

b) spécifiquement, la société ne distribuera pas de titres adossés à des créances d'un type nouveau à moins :

i) qu'un projet de supplément de prospectus relatif au placement de ces titres adossés à des créances d'un type nouveau n'ait été livré aux décideurs substantiellement dans son format définitif; et

ii) soit que

A) les décideurs aient confirmé leur acceptation de chaque projet de supplément de prospectus substantiellement en forme finale ou en forme finale; ou

B) qu'une période de 21 jours ce soit écoulée depuis la date de livraison de chaque projet de supplément de prospectus substantiellement en forme finale aux décideurs et les décideurs n'ont pas formulé d'observations écrites relativement à ce projet de supplément de prospectus;

iv) la société dépose avec chaque notice annuelle un certificat d'admissibilité attestant que la société satisfait aux exigences d'admissibilité indiquées au sous-paragraphes 7 b) et 7 c) des présentes et qui fait référence à cette décision;

v) au moment du dépôt du prospectus préalable provisoire ou du prospectus simplifié provisoire, la société :

a) a obtenu confirmation d'au moins une agence reconnue d'évaluation de titres que les titres adossés à des créances qui doivent être placés en vertu de ce document recevront une note approuvée, sous réserve de la détermination finale des attributs spécifiques des titres adossés à des créances; et

b) n'a pas été informé par toute agence reconnue d'évaluation de titres de leur intention d'attribuer une note, qu'elle soit provisoire ou finale aux titres adossés à des créances qui serait inférieure à une note approuvée;

vi) la société dépose avec son prospectus préalable provisoire ou prospectus simplifié provisoire un certificat d'admissibilité attestant que la société satisfait aux exigences d'admissibilité indiquées aux sous-paragraphes 7 b) et 7 c) des présentes et qui fait référence à cette décision; et

vii) cette décision prendra fin automatiquement à la date la plus tardive à laquelle le projet de norme 44-101 et le projet de norme 44-102 entrera en vigueur et sera adopté à titre de règle dans chacune des juridictions.

Datée le 16 mai, 2000.

"Viateur Gagnon " "Guy Lemoine"

## 2.1.14 Putnam Canadian Global Trusts - MRRS Decision

**Headnote**

MRRS for Exemptive Relief Applications - trades in units of pooled funds exempt from requirement to file a report of such trades within ten days of the trade provided that reports filed and fees paid within 30 days of each financial year end of a pooled fund.

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, ss.72(3) and section 147

**Applicable Ontario Rules**

45-501 Exempt Distributions, s. 7.1 and s. 7.3, Form 45-501F1

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA, ALBERTA, MANITOBA AND ONTARIO**

**AND**

**IN THE MATTER OF**
**THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF**
**PUTNAM CANADIAN GLOBAL TRUSTS**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of British Columbia, Alberta, Manitoba and Ontario (the "Jurisdictions") has received an application from The Putnam Advisory Company, Inc. ("Putnam"), the Manager of certain pooled investment funds (the "Funds") established or to be established from time to time pursuant to an amended and restated trust agreement dated as of the 5th day of December, 1998 between Putnam and The Royal Trust Company ("Royal Trust") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement in the Legislation to file a report of an exempt trade within ten days of such trade shall not apply to the Funds in connection with certain trades of units (the "Units") of the Funds, subject to certain conditions;

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Ontario Securities Commission (the "OSC") is the principal regulator of this application;

**AND WHEREAS** Putnam has represented to the Decision Makers as follows:

1. Putnam is a corporation incorporated under the laws of the Commonwealth of Massachusetts. Putnam is registered with the OSC as an adviser in the category of international adviser. Putnam is registered with the Decision Maker in each of the other Jurisdictions (other than the Manitoba Securities Commission (the "MSC")) as an adviser subject to certain terms and conditions which limit the type of clients which Putnam may advise in the corresponding Jurisdiction. Putnam has applied to the MSC for registration as an adviser. Putnam does not have an office or any directors, officers or employees resident in Canada.

2. The Funds are separate investment trusts together comprising the Putnam Canadian Global Trusts which were created under the laws of the Province of Ontario pursuant to an amended and restated Trust Agreement dated as of the 5th day of December 1998 between Putnam and Royal Trust, a trust company incorporated under the laws of Quebec, carrying on business in the Province of Ontario.

3. The Funds' head office is in Ontario.

4. None of the Funds is, or proposes to become, a reporting issuer under the Legislation. Each Fund is or will be a mutual fund in Ontario as defined in subsection 1(1) of the Ontario Legislation.

5. Units will be offered to institutional investors, including (and in Manitoba, limited to), banks, loan or trust corporations, insurance companies, pension plans and registered charities;

6. Units will be offered in the Jurisdictions only pursuant to the prospectus and registration exemptions set out in the Legislation (the "Exemptions") . In Ontario, the Units will be sold through a registered mutual fund dealer or through a financial intermediary under OSC Rule 32-503.

7. The Legislation or the regulations or rules made thereunder (the "Regulations") of each Jurisdiction require a report to be filed within 10 days of any trade pursuant to the Exemptions, together with the applicable fee.

8. Units may be sold on a daily basis. Accordingly, if this Decision were not made, a report could have to be filed approximately every 10 days.

**AND WHEREAS** pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the requirements contained in the Legislation or the Regulations to file a report of a trade in Units pursuant to the Exemptions within 10 days of such trade shall not apply to the Funds, provided that within 30 days after each financial year end of a Fund:

(a) the Fund files with the applicable Decision Maker a report in respect of such trades in the Units of the Fund

during the previous calendar year, in the form prescribed by the applicable Legislation or Regulations; and

(b) the Fund remits the fees prescribed by the Legislation or the Regulations to the Decision Makers of the applicable Jurisdictions.

May 31st, 2000.

"Howard I. Wetston" "R. Stephen Paddon"

## 2.1.15 Stratos Global Corporation - MRRS Decision

**Headnote**

Prompt Offering Qualification System - Waiver granted pursuant to section 4.5 of National Policy Statement No. 47 to enable issuer to participate in the POP System when it did not meet the "public float" test in the last calendar month of its most recent financial year-end in respect of which its Initial Annual Information form will be filed provided that it does meet the "public float" test at a date within 60 days before the filing of its preliminary short form prospectus - Waiver reflects the revised eligibility criteria set out in proposed National Instrument 44-101.

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am.

**Rules Cited**

Proposed National Instrument 44-101 "Short Form Prospectus Distributions" (1999), 22 OSCB (POP Supp. 2), s. 2.2.

**Policies Cited**

National Policy Statement No. 47 "Prompt Offering Qualification System", ss. 4.1, 4.5.

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA, ALBERTA,**
**SASKATCHEWAN, MANITOBA, ONTARIO,**
**QUÉBEC, NEW BRUNSWICK,**
**NOVA SCOTIA, PRINCE EDWARD ISLAND**
**AND NEWFOUNDLAND**

**AND**

**IN THE MATTER OF**
**THE MUTUAL RELIANCE REVIEW SYSTEM**
**FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF**
**STRATOS GLOBAL CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (collectively, the "Jurisdictions") has received an application (the "Application") from Stratos Global Corporation (the "Applicant") for a decision under section 4.5 of National Policy 47 ("NP 47") and section 263 of the *Securities Act* (Québec) for a waiver from the provisions in subparagraph 4.1(2)(b)(i) of NP 47 and section 169 of the Regulation Respecting Securities (Québec) ("QRRS") (collectively, the "Legislation") to permit the Applicant to be

eligible to participate in the prompt offering qualification system (the "POP System");

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for the Application;

**AND WHEREAS** the Applicant has represented to the Decision Makers that:

1. The Applicant is a corporation continued under the *Canada Business Corporations Act* on May 28, 1996.

2. The Applicant's principal executive offices are located at 40 King Street West, Suite 3600, Scotia Plaza, Toronto, Ontario M5H 3Z5.

3. The Applicant has been a reporting issuer in the Province of Newfoundland since February 3, 1989, in the Province of Ontario since June 14, 1989 and in the provinces of Alberta, British Columbia, Saskatchewan, Québec and Nova Scotia since July 6, 1999 and the Applicant is not in default of any requirement of the securities legislation of such jurisdictions.

4. The Applicant's financial year end is December 31.

5. The authorized capital of the Applicant consists of an unlimited number of common shares (the "Equity Securities") and an unlimited number of preference shares issuable in series.

6. The outstanding Equity Securities of the Applicant are listed on the Toronto Stock Exchange (the "TSE") under the symbol "SGB".

7. As at December 31, 1999, the Applicant's most recent financial year end, there were 22,646,703 Equity Securities issued and outstanding as fully paid and non-assessable. Of the Equity Securities outstanding, 14,720,357 were beneficially owned by Aliant Inc. ("Aliant"), the Applicant's controlling shareholder. Aliant is the only Person who beneficially owns, directly or indirectly, or exercises control or direction over, alone or together with its affiliates or associates, more than 10% of the issued and outstanding Equity Securities.

8. The arithmetic average of the closing price of the Equity Securities on the TSE for each of the trading days in December was $4.14.

9. The aggregate market value of the Equity Securities, as calculated in accordance with the Legislation (which excludes the value of the Equity Securities beneficially owned, directly or indirectly, or subject to the control or direction of Aliant), was approximately $32,815,072, based on the arithmetic average of the closing price of the Equity Securities for each of the trading days in December 1999.

10. On April 7, 2000, the Applicant issued and sold 15,000,000 special warrants (the "Special Warrants") to purchasers resident in Ontario, British Columbia, Manitoba, Québec, New Brunswick and the United States for gross proceeds of $153,750,000. Each Special Warrant entitles the holder to receive, subject to adjustments, one Equity Security.

11. As of April 25, 2000 there were 23,322,082 Equity Securities issued and outstanding, the aggregate market value of which was approximately $98,693,340, based on the closing price of the Equity Securities on the TSE on April 24, 2000 of $11.90.

12. The arithmetic average of the closing price of the Equity Securities on the TSE for each of the trading days in April 2000 was $11.98.

13. The aggregate market value of the Equity Securities, as calculated in accordance with the Legislation, was approximately $99,336,091, based on the arithmetic average of the closing price of the Equity Securities for each of the trading days in April 2000.

14. The Applicant would be eligible to participate in the POP System but for the fact that the aggregate market value of the Equity Securities based on the month of December 1999 was less than $75,000,000.

15. Proposed National Instrument 44-101 ("proposed NI 44-101") would replace the current calculations of the market value of an issuer's equity securities under the Legislation by a calculation as of a date within 60 days before the date of the filing of an issuer's preliminary short form prospectus, as a result of which the Applicant would be qualified to file a short form prospectus upon the filing and acceptance of its initial annual information form (an "Initial AIF").

16. The Applicant intends to file a short form prospectus qualifying the distribution of the Equity Securities issuable upon conversion of the Special Warrants.

17. The Applicant proposes to file an Initial AIF pursuant to the provisions of the Legislation in respect of its financial year ended December 31, 1999 as soon as practicable after this relief is granted.

**AND WHEREAS** pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**AND WHEREAS** each Decision Maker is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers in the Jurisdictions pursuant to the Legislation is that the Decision Makers waive the requirements of subparagraph 4.1(2)(b)(i) of NP 47 and section 169 of the QRRS (as the case may be) in respect of the Applicant so that the Applicant is eligible to participate in the POP System provided that:

(a) the Applicant complies in all other respects with the requirements of NP 47 and the QRRS;

(b) the aggregate market value of the Equity Securities, calculated in accordance with the POP System is $75,000,000 or more on a date within 60 days

before the date of the filing of the Applicant's preliminary short form prospectus;

(c) the eligibility certificate to be filed in respect of the Applicant's Initial AIF shall state that the Applicant satisfies the eligibility criteria of the POP System, and shall make reference to this waiver; and

(d) this waiver terminates on the earlier of (i) 140 days after the end of the Applicant's financial year ended December 31, 2000; and (ii) the date of filing of the Renewal AIF (as defined by NP 47 and the QRRS) by the Applicant in respect of its financial year ended December 31, 2000.

May 24th, 2000.

"Margo Paul"

## 2.1.16 Synergy Asset Management Inc. and Synergy Global Growth RSP Fund - MRRS Decision

**Headnote**

Investment by mutual funds in securities of another mutual fund that is under common management for specified purpose exempted from the requirements of clause 111(2)(b), subsection 111(3), clauses 117(1)(a) and 117(1)(d) and clause 118(2)(a), subject to certain specified conditions.

**Statutes Cited**

*Securities Act* (Ontario), R.S.O. 1990 c.S.5, as am. ss. 111(2)(b), 111(3), 113, 117(1)(a), 117(1)(d), 117(2), 118(2)(a) and 121(2)(a)(ii).

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA, AND NEWFOUNDLAND**

**AND**

**IN THE MATTER OF**
**THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF**
**SYNERGY ASSET MANAGEMENT INC.**
**SYNERGY GLOBAL GROWTH RSP FUND**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application (the "Application") from Synergy Asset Management Inc. ("Synergy"), on its own behalf and on behalf of Synergy Global Growth RSP Fund (the "RSP Fund"), for a decision by each Decision Maker (collectively, the "Decision") under the securities legislation of the Jurisdictions (the "Legislation") that the following prohibitions or requirements under the Legislation (the "Applicable Requirements") do not apply to the RSP Fund, or Synergy, as the case may be, in connection with certain investments to be made by the RSP Fund:

1. the prohibition against a mutual fund knowingly making and holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder;

2. the requirement that a management company of a mutual fund file a report relating to a purchase or sale of securities between the mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is

a joint participant with one or more of its related persons or companies; and

3. the prohibition against a portfolio manager knowingly causing an investment portfolio managed by it to invest in the securities of an issuer in which a "responsible person" (as that term is defined in the Legislation) is an officer or director, unless the specific fact is disclosed to the client and, if applicable, the written consent of the client to the investment is obtained before the purchase;

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

**AND WHEREAS** Synergy made the following representations to the Decision Makers:

1. The RSP Fund will be an open-ended mutual fund trust established under the laws of the Province of Ontario and Synergy Global Growth Class (the "Underlying Fund") will be a class of a corporation (the "Underlying Corporation") incorporated under the laws of the Province of Ontario.

2. Synergy is a corporation established under the laws of the Province of Ontario. Synergy will be the manager and promoter of the RSP Fund and the Underlying Fund. In addition, Synergy will be the portfolio manager and trustee of the RSP Fund. Synergy, as portfolio manager of the RSP Fund, and the directors and officers of Synergy are responsible persons in respect of the RSP Fund. Directors and officers of Synergy are directors and officers of the Underlying Corporation.

3. The RSP Fund and the Underlying Fund will be reporting issuers. The units of the RSP Fund and the shares of the Underlying Fund will be qualified under a simplified prospectus and annual information form (collectively, the "Prospectus") to be filed shortly in all the provinces and territories of Canada.

4. The RSP Fund seeks to achieve its investment objective while ensuring that units of the RSP Fund do not constitute "foreign property" for registered retirement savings plans, registered retirement income plans and deferred profit sharing plans (the "Registered Plans") under the *Income Tax Act* (Canada) (the "Tax Act").

5. To achieve its investment objective the RSP Fund will invest its assets in securities such that its units will, in the opinion of tax counsel to the RSP Fund, be "qualified investments" for Registered Plans and will not constitute foreign property (as defined in the Tax Act) to such Registered Plans. This will primarily be achieved through the implementation of a derivative strategy. However, the RSP Fund also intends to invest a portion of its assets in securities of the Underlying Fund. This investment by the RSP Fund will at all times be below the maximum foreign property limit prescribed for Registered Plans (the "Permitted Limit").

6. The investment objective of the Underlying Fund will be achieved through investment primarily in foreign securities.

7. The direct investment by the RSP Fund in the Underlying Fund will be within the Permitted Limit (the "Permitted RSP Fund Investments"). Synergy and the RSP Fund will comply with the conditions of this Decision in respect of such investments. The amount of direct investment by the RSP Fund in the Underlying Fund will be adjusted from time to time so that, except for transitional cash, the aggregate of the derivative exposure to, and direct investment in, the Underlying Fund will equal 100% of the assets of the RSP Fund.

8. Except to the extent evidenced by this Decision Document and except for the specific exemptions or approvals granted or to be granted by the Canadian securities administrators under National Instrument 81-102 Mutual Funds ("NI 81-102"), the investment by the RSP Fund in the Underlying Fund has been or will be structured to comply with the investment restrictions of the Legislation and NI 81-102.

9. In the absence of the Decision, the RSP Fund is prohibited from

   (a) knowingly making an investment in the Underlying Fund in which the RSP Fund, alone or together with one or more related mutual funds, is a substantial securityholder; and
   (b) knowingly holding an investment referred to in subsection (a) above, and would thus be required to divest itself of such investment.

10. In the absence of the Decision, Synergy would be required to file a report on every purchase or sale of securities of the Underlying Fund by the RSP Fund.

11. In the absence of the Decision, Synergy is prohibited from causing the RSP Fund to invest in the Underlying Fund, unless the fact that certain directors of Synergy are also officers of the Underlying Fund is disclosed to the RSP Fund and, if applicable, the written consent of the RSP Fund is obtained before the purchase.

12. The investment in or redemption of securities of the Underlying Fund by the RSP Fund represents the business judgement of responsible persons, uninfluenced by considerations other than the best interests of the RSP Fund.

**AND WHEREAS** under the System, this MRRS Decision Document evidences the Decision of each Decision Maker;

**AND WHEREAS** each of the Decision Makers are satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers under the Legislation is that the Applicable Requirements do not apply to the RSP Fund or Synergy, as the case may be, in respect of investments to be made by the RSP Fund in the Underlying Fund;

**PROVIDED THAT:**

1. the Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with the matters in subsection 2.5 of NI 81-102; and

2. the Decision shall only apply in respect of investments in, or transactions with, the Underlying Fund that are made by the RSP Fund in compliance with the following conditions:

   a) the investment by the RSP Fund in the Underlying Fund is compatible with the fundamental investment objective of the RSP Fund;

   b) the RSP Fund and the Underlying Fund are under common management and the Underlying Fund's securities are offered and will continue to be offered for sale in the Jurisdiction of the Decision Maker pursuant to a prospectus which has been filed with and accepted by the Decision Maker;

   c) the RSP Fund restricts its aggregate direct investment in its Underlying Fund to a percentage of its assets that is within the Permitted Limit;

   d) the Prospectus of the RSP Fund will describe the intent of the RSP Fund to invest in the Underlying Fund;

   e) the RSP Fund may change the Permitted RSP Fund Investments if it changes its fundamental investment objective in accordance with NI 81-102;

   f) there are compatible dates for the calculation of the net asset value of the RSP Fund and the Underlying Fund for the purpose of the issue and redemption of the securities of such mutual funds;

   g) in the event of the provision of any notice to securityholders of the Underlying Fund, as required by the constating documents of the Underlying Fund or by applicable laws, such notice will also be delivered to the securityholders of the RSP Fund; all voting rights attached to the securities of the Underlying Fund which are owned by the RSP Fund will be passed through to the securityholders of the RSP Fund;

   h) in the event that a meeting of securityholders' of the Underlying Fund is called, all of the disclosure and notice material prepared in connection with such meeting will be provided to the securityholders of the RSP Fund; such securityholders will be entitled to direct a representative of the RSP Fund to vote the RSP Fund's holding in the Underlying Fund in accordance with their direction; and the representative of the RSP Fund will not be permitted to vote the RSP Fund's holdings in the Underlying Fund except to the extent the securityholders of the RSP Fund so direct;

   i) no sales charges are payable by the RSP Fund in relation to its purchases of securities of the Underlying Fund;

   j) no redemption fees or other charges are charged by the Underlying Fund in respect of the redemption by the RSP Fund of securities of the Underlying Fund owned by the RSP Fund;

   k) no fees and charges of any sort are paid by the RSP Fund, the Underlying Fund, the manager or principal distributor of the RSP Fund or the Underlying Fund, or by any affiliate or associate of any of the foregoing entities, to anyone in respect of the RSP Fund's purchase, holding or redemption of the securities of the Underlying Fund;

   l) the arrangements between or in respect of the RSP Fund and the Underlying Fund are such as to avoid the duplication of management fees;

   m) in addition to receiving the annual and, upon request, the semi-annual financial statements of the RSP Fund, securityholders of the RSP Fund will receive the annual and, upon request, the semi-annual financial statements of the Underlying Fund either in a combined report containing both the RSP Fund's and Underlying Fund's financial statements, or in a separate report containing the Underlying Fund's financial statements; and

   n) to the extent that the RSP Fund and the Underlying Fund do not use a combined simplified prospectus, annual information form and financial statements containing disclosure about the RSP Fund and the Underlying Fund, copies of the simplified prospectus, annual information form and financial statements relating to the Underlying Fund may be obtained upon request by a securityholder of the RSP Fund.

June 1st, 2000.

"Howard I. Wetston" "R. Stephen Paddon"

### 2.1.17 Templeton Management Limited et al. - MRRS Decision

**Headnote**

Investment by RSP Fund in securities of another mutual fund that is under common management for specified purpose exempted from the reporting requirements and self-dealing prohibitions of clauses 111(2)(b), 111(3) and clauses 117(1)(a) and (d).

**Statute Cited**

*Securities Act* (Ontario), R.S.O. 1990 c.S.5, as am., ss. 111(2)(b), 111(3), 113, 117(1)(a), 117(1)(d), 117(2) and 118(2)(a).

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION**
**OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA AND NEWFOUNDLAND**

**AND**
**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM**
**FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF**
**TEMPLETON MANAGEMENT LIMITED**
**AND**
**TEMPLETON GLOBAL BALANCED RSP FUND**
**MUTUAL BEACON RSP FUND**
**FRANKLIN U.S. SMALL CAP GROWTH RSP FUND**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Makers") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application (the "Application") from Templeton Management Limited ("Templeton"), as manager of Templeton Global Balanced RSP Fund, Mutual Beacon RSP Fund and Franklin U.S. Small Cap Growth RSP Fund (collectively, the "RSP Funds"), for a decision by each Decision Maker (collectively, the "Decision") under the securities legislation of the Jurisdictions (the "Legislation") that the following provisions of the Legislation (the "Applicable Requirements") shall not apply to the RSP Funds or Templeton, as the case may be, in respect of certain investments to be made by the RSP Funds in Templeton Global Balanced Fund, Mutual Beacon Fund and Franklin U.S. Small Cap Growth Fund (collectively, the "Underlying Funds"):

i. the provisions requiring the management company of a mutual fund to file a report relating to the purchase or sale of securities between the mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies;

ii. the provisions prohibiting a mutual fund from knowingly making and holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder;

iii. the provision prohibiting a portfolio manager from knowingly causing an investment portfolio managed by it to invest in any issuer in which a "responsible person" (as that term is defined in the Legislation) is an officer or director, unless the specific fact is disclosed to the client and, if applicable, the written consent of the client to the investment is obtained before the purchase.

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

**AND WHEREAS** Templeton has represented to the Decision Makers as follows:

1. Each of the RSP Funds will be and each of the Underlying Funds is an open-ended mutual fund trust established under the laws of the Province of Ontario. Templeton is a corporation incorporated under the laws of Ontario and for each of the RSP Funds will be and for each of the Underlying Funds is the trustee, manager and promoter. Templeton is and will be the registrar and transfer agent for all of the Underlying Funds and the RSP Funds (collectively, the "Funds"). The head office of Templeton is in Toronto, Ontario.

2. The RSP Funds will be, and the Underlying Funds are, reporting issuers and the Underlying Funds are not in default of any requirements of the Legislation. The units of each of the Underlying Funds are currently qualified for distribution pursuant to simplified prospectuses and annual information forms, and the securities of the RSP Funds will be qualified under a preliminary and pro forma simplified prospectus and a preliminary and pro forma annual information form (such documents when filed in final form hereinafter referred to together as "Prospectus") which were filed for review in all of the provinces and territories of Canada (the "Prospectus Jurisdictions") under SEDAR project number 247311. The Underlying Funds are being renewed under such Prospectus.

3. The Prospectus will contain disclosure with respect to the investment objective, investment practices and restrictions of the Funds. The investment objective of the RSP Funds is generally to provide returns similar to those of the corresponding Underlying Funds through investment in forward contracts or other specified derivatives that are linked to the returns of the Underlying Funds. This will primarily be achieved through the implementation of a derivative strategy based on the portfolio securities of the Underlying Funds or the units of the Underlying Funds. However, the RSP Funds also intend to invest a portion of their assets directly in securities of the Underlying Funds.

4. To achieve its investment objective, each of the RSP Funds invests its assets in securities such that its units will, in the opinion of tax counsel to the RSP Funds, be "qualified investments" for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans and similar plans (collectively, the "Registered Plans") and will not constitute "foreign

property" under the *Income Tax Act* (Canada) (the "Tax Act").

5. The direct investment by the RSP Funds in units of the corresponding Underlying Funds will at all times be below the maximum foreign property limit prescribed for Registered Plans (the "Foreign Property Maximum").

6. The investment objectives of the Underlying Funds are achieved through investment primarily in foreign securities.

7. The direct investments by the RSP Funds in the Underlying Funds will be within the Foreign Property Maximum (the "Permitted RSP Fund Investment"). Templeton and the RSP Funds will comply with the conditions of this Decision Document in respect of such investments. The amount of direct investment by each of the RSP Funds in their corresponding Underlying Funds will be adjusted from time to time so that, except for transitional cash, the aggregate of derivative exposure to, and direct investment in, the Underlying Funds will equal 100% of the assets of the RSP Funds.

8. Except to the extent evidenced by this Decision Document and specific approvals granted by the securities regulatory authorities or regulators under National Instrument NI 81-102 Mutual Funds ("NI 81-102"), the investment by the RSP Funds in the Underlying Funds have been structured to comply with the investment restrictions of the Legislation and NI 81-102.

9. In the absence of this Decision, the RSP Funds are prohibited from knowingly making and holding an investment in units of the Underlying Funds to the extent that the RSP Funds, alone or together with one or more related mutual funds, are substantial securityholders of the Underlying Funds. As a result, in the absence of this Decision, the RSP Funds would be required to divest themselves of any such investments.

10. In the absence of this Decision, the Legislation requires Templeton to file a report on every purchase or sale of securities of the Underlying Funds by the RSP Funds.

11. By virtue of Templeton being the trustee of the RSP Funds and the Underlying Funds and, therefore, an "associate" of each such mutual fund, and because Templeton is the portfolio manager of the RSP Funds and certain of the directors and officers of Templeton are also officers of the RSP Funds and the Underlying Funds, and are as such "responsible persons" pursuant to Legislation, in the absence of this Decision, Templeton would be prohibited from causing the RSP Funds to invest in the Underlying Funds unless the specific fact is disclosed to investors and the written consent of investors is obtained before the purchase.

12. The RSP Funds' investment in or redemption of units of the Underlying Funds represents the business judgment of responsible persons, uninfluenced by considerations other than the best interests of the RSP Funds.

**AND WHEREAS** under the System, this Decision Document evidences the Decision of each Decision Maker;

**AND WHEREAS** each Decision Maker is satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision have been met;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Applicable Requirements shall not apply to the RSP Funds, Templeton, or a portfolio sub-adviser, as the case may be, in respect of the investments to be made by the RSP Funds in units of the Underlying Funds;

**PROVIDED THAT IN RESPECT OF** the investment by the RSP Funds in units of the Underlying Funds:

1. the Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with the matters in section 2.5 of National Instrument 81-102; and

2. the Decision shall apply only to investments in, or transactions with, the Underlying Funds that are made by the RSP Funds in compliance with the following conditions:

   (a) the RSP Funds and the Underlying Funds are under common management, and the units of both are offered for sale in the jurisdiction of each Decision Maker, pursuant to a prospectus that has been filed with and accepted by the Decision Maker;

   (b) the RSP Funds restrict their aggregate direct investment in units of the Underlying Funds to a percentage of their assets that is within the Foreign Property Maximum;

   (c) the investment by the RSP Funds in units of the Underlying Funds is compatible with the fundamental investment objectives of the RSP Funds;

   (d) the Prospectus discloses the intent of the RSP Funds to invest in units of the Underlying Funds;

   (e) the RSP Funds may change the Permitted RSP Fund Investment only if they change their fundamental investment objectives in accordance with the Legislation;

   (f) no sales charges are payable by the RSP Funds in relation to purchases of units of the Underlying Funds;

   (g) there are compatible dates for the calculation of the net asset values of the RSP Funds and the Underlying Funds for the purpose of the issue and redemption of units of such mutual funds.

   (h) no redemption fees or other charges are charged by the Underlying Funds in respect of the redemption by the RSP Funds of units of the Underlying Funds owned by the RSP Funds;

   (i) the arrangements between or in respect of the RSP Funds and the Underlying Funds are such as to avoid the duplication of management fees;

   (j) no fees and charges of any sort are paid by the RSP Funds, the Underlying Funds, the manager or principal distributor of the RSP Funds or the Underlying Funds, or by any affiliate or associate

of any of the foregoing entities to anyone in respect of the RSP Funds' purchases, holdings or redemptions of the units of the Underlying Funds;

(k) in the event of the provision of any notice to unitholders of the Underlying Funds, as required by applicable laws or the constating documents of the Underlying Funds, such notice will also be delivered to the unitholders of the RSP Funds; all voting rights attached to the units of the Underlying Funds that are owned by the RSP Funds will be passed through to the unitholders of the RSP Funds;

(l) in the event that a meeting of the unitholders of the Underlying Funds is called, all of the disclosure and notice material prepared in connection with such meeting and received by the RSP Funds will be provided to the unitholders of the RSP Funds; each unitholder will be entitled to direct a representative of the RSP Funds to vote that unitholder's proportion of the RSP Funds' holdings in the Underlying Funds in accordance with his or her direction; and the representative of the RSP Funds will not be permitted to vote the RSP Funds' holdings in the Underlying Funds except to the extent the unitholders of the RSP Funds so direct;

(m) in addition to receiving the annual and (upon request) the semi-annual financial statements of the RSP Fund, unitholders of the RSP Funds will receive the annual and (upon request) semi-annual financial statements of the Underlying Funds, either in a combined report containing the financial statements of both the RSP Funds and the Underlying Funds, or in a separate report containing the financial statements of the Underlying Funds;

(n) to the extent that the RSP Funds and the Underlying Funds do not use a combined simplified prospectus, annual information form and financial statements containing disclosure about the RSP Funds and the Underlying Funds, copies of the simplified prospectus, annual information form and financial statements relating to the Underlying Funds may be obtained upon request by a unitholder of the RSP Funds.

May 23rd, 2000.

"Howard I. Weston" "J. F. Howard"

## 2.2 Orders

### 2.2.1 Business Development Bank of Canada - s. 83

**Headnote**

Crown Corporation, that became a reporting issuer by virtue of the listing of its notes on the TSE, deemed to have ceased to be a reporting issuer - Except for shares held in trust for Crown, all issued and outstanding securities of issuer are securities referred to in paragraph 1(a) of subsection 35(2) of the Act.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 35(2)1(a), 73(1)(a), 83 and 83.1.

**IN THE MATTER OF THE SECURITIES ACT**
**R.S.O. 1990, CHAPTER S.5, AS AMENDED (THE "Act")**

**AND**

**IN THE MATTER OF THE**
**BUSINESS DEVELOPMENT BANK OF CANADA**

**ORDER**
**(Section 83)**

**UPON** the application (the "Application") of Business Development Bank of Canada (the "Bank") to the Ontario Securities Commission (the "Commission") for an order, pursuant to section 83 of the Act, that the Bank be deemed to have ceased to be a reporting issuer;

**AND UPON** the Bank having represented to the Commission that:

1. The Bank is a body corporate governed by the *Business Development Bank of Canada Act* (the "BDB Act").

2. The purpose of the Bank is to support Canadian entrepreneurship by providing financial and management services and by issuing securities or otherwise raising funds or capital in support of those services.

3. Subsection 3(4) of the BDB Act provides that the Bank is for all purposes an agent of Her Majesty in right of Canada (the "Federal Crown").

4. Section 23 of the BDB Act provides that the shares of the Bank may be issued only to the Designated Minister (as defined in the BDB Act) to be held in trust for the Federal Crown.

5. Section 18 of the BDB Act provides that the Bank may borrow money by issuing and selling or pledging debt obligations of the Bank.

6. The Bank has, and may, from time to time, borrow money by issuing notes ("Notes") that constitute direct unconditional obligations of the Bank which are also direct unconditional obligations of the Federal Crown.

7. The terms of any Notes issued by the Bank may provide for a return to the holder that is linked to various market indices (such as currencies, commodities, interest rates, swap rates), an equity index, or basket of securities or equity indexes or other underlying interests.

8. The Bank is a reporting issuer and is not in default of any requirements of the Act or regulations. On April 28, 2000, the Bank became a reporting issuer by virtue of the listing of International Equity Index-linked Notes, Series 1 of the Bank on The Toronto Stock Exchange.

9. Except for shares that are held in trust for the Federal Crown, all other securities (the "Outstanding Securities") of the Bank that are issued and outstanding are securities ("exempt securities") that are:

   (i) referred to in paragraph 1(a) of subsection 35(2) of the Act; and

   (ii) do not, by their terms, limit the liability of the Bank in respect to the securities to the assets of the Bank, or provide for any return that may be dependent upon the financial condition or performance of the Bank, so that the financial condition or performance of the Bank is not relevant to any holder of Outstanding Securities.

10. The Outstanding Securities were issued by the Bank in reliance upon the prospectus exemption contained in clause 73(1)(a) of the Act that refers to securities in paragraph 1(a) of subsection 35(2) of the Act.

11. The Bank may from time to time arrange for the listing of its securities on the TSE, so that upon such listing the Bank may, by virtue of the definition of "reporting issuer" in the Act become a reporting issuer; in which case, the Bank intends to apply to the Commission for an order(s), pursuant to section 83 of the Act, that it be deemed to have ceased to be a reporting issuer.

12. If the Outstanding Securities should cease to be exempt securities, the Bank will so advise the Director, so that the Director may consider whether, in the circumstances, it may be appropriate to apply to the Commission for an order, pursuant to section 83.1 of the Act, deeming the Bank to be a reporting issuer for the purposes of Ontario securities law.

**AND UPON** considering the Application and the recommendation of staff of the Commission;

**AND UPON** the Commission being satisfied that to do so would be in the public interest;

**IT IS ORDERED,** pursuant to section 83 of the Act, that the Bank is deemed to have ceased to be a reporting issuer.

June 2nd, 2000.

"Howard I Wetston" "R. Stephen Paddon"

## 2.3 Rulings

### 2.3.1 Minpro International Ltd. - ss. 74(1)

**Headnote**

Subsection 74(1) - issue of securities in satisfaction of indebtedness exempt from sections 25 and 53 of the Act - first trade in securities issued in reliance on this ruling to trade creditors not subject to section 25 or 53 of the Act if made in accordance with subsection 72(5) of the Act - first trade in securities issued in reliance on this ruling to financial consultants and lenders not subject to section 25 or 53 of the Act if made in accordance with subsection 72(4) of the Act.

**Statutes Cited**

Securities Act, R.S.O. 1990, C.S.5, as am., ss. 25, 53, 72(4), 72(5), 74(1).

**IN THE MATTER OF THE SECURITIES ACT, R.S.O. 1990, CHAPTER S. 5, AS AMENDED (the "Act")**

**AND**

**IN THE MATTER OF MINPRO INTERNATIONAL LTD.**

**RULING (Subsection 74(1))**

**UPON** the application of Minpro International Ltd. (the "Corporation") for a ruling pursuant to subsection 74(1) of the Act that the issuance of 1,968,173 common shares (the "Common Shares") in the capital of the Corporation to certain creditors of the Corporation shall not be subject to sections 25 and 53 of the Act, subject to certain conditions;

**AND UPON** considering the application and the recommendation of staff of the Commission;

**AND UPON** the Corporation having represented to the Commission as follows:

1. The Corporation was formed by Articles of Amalgamation under the laws of the Province of Ontario on March 6, 1998, is a reporting issuer under the Act and is not in default of any requirement of the Act or the regulations made thereunder (the "Regulations").

2. The authorized share capital of the Corporation consists of an unlimited number of Common Shares, of which 27,661,112 were issued and outstanding as of February 1, 2000.

3. The Common Shares are quoted for trading on the Canadian Dealing Network Inc. ("CDN").

4. The Corporation's principal business is supplying, installing and servicing customized and re-manufactured equipment to the mining and waste management business.

5. The Corporation is indebted to the sixteen arm's length creditors listed in Exhibit "A" (collectively, the "Creditors"), in the aggregate amount of $295,227.79, for services rendered or monies advanced to the Corporation.

6. The Corporation is experiencing financial difficulty and cash flow from operations is not sufficient to enable it to satisfy its indebtedness to the Creditors. As at November 30, 1999, the working capital deficit of the Corporation was $1,522, 580.

7. On June 17, 1999 the Corporation issued 928,990 Common Shares to one of the Creditors, HDL Capital Corporation, by way of private placement in full payment of a debt of $157,928.30.

8. The Creditors have agreed to accept Common Shares in partial or full satisfaction of the Corporation's indebtedness.

9. The settlement of the Corporation's indebtedness to the Creditors will help to improve the financial position of the Corporation by allowing it to conserve cash.

10. The Creditors were not induced to accept Common Shares in payment of the indebtedness by the expectation or the opportunity to render or to continue rendering services to the Corporation.

11. The services were rendered with the expectation that the cost of such services would be satisfied in cash and payment in Common Shares was not contemplated at the time the services were provided.

12. Each of the Creditors deals at arm's length with the Corporation and is a bona fide creditor of the Corporation.

13. The following of the creditors listed in Exhibit "A" and described therein as "Trade Creditor" are owed money for goods or services (other than financial or investment consulting services) provided to the Corporation:

    Fallingbrook Management Inc.
    P.R. Engineering
    Equity Transfer Services
    1040160 Ontario Ltd.
    Kraft Rothman
    Opal Management Associates
    Doron Shalman
    Joseph E. Lewis
    Forbes Conant
    (the "Trade Creditors").

14. The following of the creditors listed in Exhibit "A" and described therein as "Financial Consultant" are owed money for financial consulting services provided to the Corporation:

    Steven Mintz
    Osborne Group
    Omax Investor Services
    S. Stern Financial Corp
    (the "Financial Consultants").

15. The following of the creditors listed in Exhibit "A" and described therein as "Lender" are owed money for loans made to the Corporation:

    Strategy Capital
    HDL Capital Ltd.
    Seaforde Investments Co. Ltd
    (the "Lenders").

16. The Corporation and the Creditors in their respective agreements have agreed that the indebtedness of the Corporation to the Creditors shall be fully or partially satisfied by the issuance of one (1) Common Share of the Corporation for each $0.15 owing to each Creditor.

17. An aggregate of 1,968,173 Common Shares will be issued to the Creditors, which represents approximately 7.3% of the issued and outstanding Common Shares.

18. CDN has conditionally approved the proposed settlement with the Creditors.

**AND UPON** the Commission being satisfied that to do so would not be prejudicial to the public interest;

**IT IS RULED**, pursuant to subsection 74(1) of the Act, that the issuance by the Corporation of Common Shares to the Creditors in partial or full satisfaction of the indebtedness incurred by the Corporation in respect of services provided or monies advanced by the Creditors shall not be subject to sections 25 and 53 of the Act, provided that:

A. the first trade in Common Shares issued pursuant to this ruling by the Financial Consultants and Lenders shall be a distribution unless such first trade is made in accordance with the provisions of subsection 72(4) of the Act as modified by section 3.10 of Commission Rule 45-501 - Exempt Distributions, as if the securities have been acquired pursuant to an exemption referred to in subsection 72(4) of the Act, except that, for these purposes, it shall not be necessary to satisfy the requirements in clause 72(4)(a) of the Act that the issuer not be in default of any requirement of the Act or the Regulations made under the Act if the seller is not in a special relationship with the issuer, or, if the seller is in a special relationship with the issuer, the seller has reasonable grounds to believe that the issuer is not in default under the Act or the Regulations made under the Act, where, for these purposes, "special relationship" shall have the same meaning as in Commission Rule 14-501 - Definitions; and

B. the first trade in Common Shares issued pursuant to this ruling by the Trade Creditors shall be a distribution unless such first trade is made in accordance with the provisions of subsection 72(5) of the Act, as if such securities had been acquired pursuant to an exemption referred to in subsection 72(5) of the Act, except that, for these purposes, it shall not be necessary to satisfy the requirement in clause 72(5)(a) of the Act that the issuer not be in default of any requirement of the Act or the Regulations made under the Act if the seller is not in a special relationship with the issuer or, if the seller is in a special relationship with the issuer, the seller has reasonable grounds to believe that the issuer is not in default under the Act or the Regulations made under the Act, where, for these purposes, "special relationship" shall have the same meaning as in Commission Rule 14-501- Definitions.

May 16th, 2000.

"Howard I. Wetston" "Robert W. Korthals"

**EXHIBIT "A"**

| Name of Creditor | Amount of debt | Nature of debt | No. of Shares to be issued |
|---|---|---|---|
| Fallingbrook Management Inc. | $18,820.00 | Trade Creditor | 125,467 |
| P.R. Engineering | 10,047.30 | Trade Creditor | 66,982 |
| Equity Transfer Services | 27,732.88 | Trade Creditor | 184,886 |
| 1040160 Ontario Ltd. | 24,424.00 | Trade Creditor | 162,827 |
| Kraft Rothman | 9,844.00 | Trade Creditor | 65,627 |
| Opal Management Associates | 47,997.49 | Trade Creditor | 319,964 |
| Doron Shalman | 7,500.00 | Trade Creditor | 50,000 |
| Joseph E. Lewis | 15,000.00 | Trade Creditor | 100,000 |
| Forbes Conant | 13,354.02 | Trade Creditor | 89,027 |
| Steven Mintz | 15,000.00 | Financial Consultant | 100,000 |
| Osborne Group | 15,000.00 | Financial Consultant | 100,000 |
| Omax Investor Services | 10,700.00 | Financial Consultant | 71,333 |
| S. Stern Financial Corp. | 18,750.00 | Financial Consultant | 125,000 |
| Strategy Capital | 18,056.00 | Lender | 120,373 |
| HDL Capital Ltd. | 25,000.00 | Lender | 166,667 |
| Seaforde Investments Co. Ltd. | 18,000.00 | Lender | 120,000 |
| **TOTALS** | $295,225.79 | | 1,986,173 |

## Chapter 3

# Reasons: Decisions, Orders and Rulings

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# Chapter 4

# Cease Trading Orders

## 4.1 Cease Trading Orders

### 4.1.1 Otis-Winston Ltd., Xillix Technologies Corp., and Digital Cybernet Corporation - ss. 127(1) and 127(5)

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

**AND**

**IN THE MATTER OF**
**OTIS-WINSTON LTD., XILLIX TECHNOLOGIES CORP.,**
and **DIGITAL CYBERNET CORPORATION**

**TEMPORARY ORDER**
**(Subsection 127(1) and 127(5))**

**WHEREAS IT APPEARS** to the Commission that:

1. Otis-Winston Ltd. ("Otis-Winston") is an Ontario corporation.

2. Xillix Technologies Corp. ("Xillix") is a reporting issuer and has approximately 31,790,000 outstanding common shares.

3. Digital Cybernet Corporation ("Digital Cybernet") purports to be a reporting issuer in Ontario and its registered head office is located in Toronto. Digital Cybernet became a reporting issuer by filing a securities exchange take-over bid circular for Central America Marketing Inc. on September 27, 1999 (the date of Digital Cybernet's incorporation).

4. On May 3, 2000, Otis-Winston filed with SEDAR a Form 42 and an offer to purchase shares (the "Offering Document") announcing its intention to acquire up to 590,000 Xillix shares. This represents only 1.85% of the outstanding Xillix shares and is therefore not a take-over bid pursuant to the Act. This bid is set to expire on June 1, 2000.

5. The Offering Document states that Otis-Winston will deliver two Digital Cybernet shares for one Xillix Share.

6. The Offering Document was not mailed to all Xillix shareholders. The Offering Document was delivered to the offices of the Canadian Depository for Securities ("CDS"), which prepared a Depository Bulletin describing the Offer and delivered the Bulletin to all Xillix shareholders.

7. The Offering Document does not contain meaningful disclosure concerning Digital Cybernet shares and it is contrary to the public interest for Otis-Winston to offer Digital Cybernet shares without prospectus-level disclosure.

8. The offer is internally inconsistent as to the consideration being offered. In portions of the Offering Document, reference is made to Digital Cybernet Shares being offered in exchange for Xillix shares. In the Form 42, filed, the consideration is listed as two dollars per share of Xillix.

9. It appears that the valuation prepared of the Xillix shares, as described in the Offering Document, was prepared by a principal shareholder or former principal shareholder of Digital Cybernet or a related company and may therefore not be accurate.

10. The market price of Xillix shares is not properly disclosed in the Offering Document.

11. The Offering Document does not warn potential tenderers that the offer might be below the market value of Xillix shares or that they should consult a financial advisor.

12. The Digital Cybernet shares that Otis-Winston is offering to Xillix shareholders may not be freely tradable securities as they may have been acquired by Otis-Winston in violation of the one-year hold period required by s. 72(5) of the Act.

13. Otis-Winston is not registered to trade in securities in Ontario, and therefore the transfer of Digital Cybernet shares to Xillix shareholders may be in breach of s. 25 of the Act.

**AND WHEREAS** the Commission is of the opinion that the length of time required to conclude a hearing could be prejudicial to the public interest since the Take-Over Bid will expire before such a hearing could be concluded;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this order;

**AND WHEREAS** by Commission order made February 17, 1999, pursuant to subsection 3.5(2) of the Act, any one of David A. Brown, John A. Geller and Howard Wetston, acting alone, is authorized to make orders under section 127(5) of the Act;

**IT IS ORDERED** pursuant to subsection 127(1) of the Act that all trading in:

1. Digital Cybernet shares by Otis-Winston; and

2. Xillix shares for Digital Cybernet shares in response to the Offering Document ;

cease for a period of fifteen days from the date of this order unless extended by order of the Commission.

June 1st, 2000.

"Howard I. Wetston"

### 4.2.1 Temporary Cease Trading Orders

| Company Name | Date of Order or Temporary Order | Date of Hearing | Date of Extending Order | Date of Rescinding Order |
|---|---|---|---|---|
| Scaffold Connection Corporation | May 29, 2000 | June 9, 2000 | — | --- |

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## Chapter 5

# Rules and Policies

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## Chapter 6

# Request for Comments

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## Chapter 7

# Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

## Chapter 8

# Notice of Exempt Financings

**Exempt Financings**

The Ontario Securities Commission reminds Issuers of exempt financings that they are responsible for the completeness, accuracy and timely filing of Forms 20 and 21 pursuant to section 72 of the Securities Act and section 14 of the Regulation to the Act. The information provided is not verified by staff of the Commission and is published as received except for confidential reports filed under paragraph E of the Ontario Securities Commission Policy Statement No. 6.1.

### Reports of Trades Submitted on Form 45-501f1

| Trans. Date | | Security | Price ($) | Amount |
|---|---|---|---|---|
| 11May00 | | Acuity Pooled Global Equity Fund - Units | 534,574 | 26,896 |
| 28Apr00 | | Acuity Pooled Venture Fund - Units | 125,000 | 12,500 |
| 16May00 | | Acuity Pooled Balanced Fund - Units | 250,000 | 17,622 |
| 16May00 | | Acuity Pooled Fixed Income Fund - Units | 150,000 | 13,453 |
| 29Oct96 | | Alberta Aerospace Corp. - First Preferred Shares, Series B | 150,000 | 375,000 |
| 17Apr00 | | Alberta Aerospace Corp. - Common Shares | 150,000 | 125,000 |
| 28Apr00 | | Alis Technologies inc. - Common Shares | 300,000 | 101,695 |
| 23May00 | | Alliance Financing Group Inc. - Common Shares | 207,000 | 345,000 |
| 29Mar00 | | Alternative Fuel Systems Inc. - Special Warrants | 150,150 | 231,000 |
| 09Mar00 | | Alternative Fuel Systems Inc. - Special Warrants | 1,349,939 | 2,076,830 |
| 22May00 | | Amphenol Corporation - Shares of Class A Common Stock | 11,018,491 | 150,000 |
| 24May00 | | AutoBranch Technologies Inc. - Common Shares | 150,500 | 215,000 |
| 28Apr00 | | BPI American Opportunities Fund - Units | 3,865,641 | 24,355 |
| 10May00 | | Cambiex Exploration Inc. - Common Shares | 210,000 | 500,000 |
| 19May00 | # | Canmine Resources Corporation - Units | 255,750 | 34,100 |
| 24May00 | | CGX Energy Inc. - Units | US$506,250 | 375,000 |
| 30Apr00 | | Counsel Corporation - Common Shares | 611,200 | 160,000 |
| 19May00 | | CTL Immuno Therapies Corp. - Common Share | US$500,000 | 500,000 |
| 12May00 | | e-Leasinghub.com, Inc. - Series A Convertible Preferred Stock | 1,487,298 | 1,666,667 |
| 23May00 | | East West Resource Corporation - Common Shares | 3,000 | 12,500 |
| 15May00 | | Equity International Investment Trust - Units | 1,811 | 303 |
| 18May00 | | Excalibur Limited Partnership - Limited Partnership Units | US$813,120 | 5 |
| 18May00 | | ExtendMedia Inc. - Common Shares | 10,209,016 | 3,582,111 |
| 15May00 | | First Horizon Holdings Ltd. - Class "F", "G" and "H" Redeemable Convertible Non-Voting Shares | 25,000, 150,000, 25,000 | 2,436, 15,000, 2,434 Resp. |
| 10Apr00 | | Global Crossing Ltd. - Common Stock | US297,000 | 9,000 |
| 16May00 | | Golden Hope Mines Limited - Common Shares | 400,000 | 2,000,000 |
| 16May00 | | Greenstone Venture Partners Limited Partnership - Limited Partnership Units | 1,000,000 | 1,000 |

| Trans. Date | Security | Price ($) | Amount |
|---|---|---|---|
| 23May00 | Hall Train Entertainment Ltd. - Special Warrants | 399,999 | 7,111,111 |
| 15May00 | Halls Mill Road (Mobile) Associates Limited Partnership - Limited Partnership Units | US$1,750 | 35,0000 |
| 18May00 | Heritage Concepts International Inc. - Units | 840,000 | 8,000,000 |
| 20May00 | Heritage Concepts International Inc. - Units | 250,000 | 2,564,103 |
| 18May00 | Howard Scott ("Pete") McMaster Trust - Promissory Notes | $22,832,000 | $22,832,000. |
| 20Apr00 | InfoUtility Corporation - Common Shares | 315,000 | 630,000 |
| 02May00 | Ivernia West plc - Ordinary Shares | 2,375,154 | 2,050,000 |
| 15May00 | Kingwest Avenue Portfolio - Units | 1,200,621 | 64,714 |
| 19Apr00 | Load Resources Ltd. - Special Warrants (Amended) | 2,850,000 | 2,850,000 |
| 19May00 | Look Communications Inc. - Limited Voting Shares | 2,120,002 | 146,713 |
| 27Apr00 | Master Credit Card Trust - 5.76% Credit Card Receivable-Backed Notes | 111,834,000 | 1,140,000 |
| 27Apr00 | Master Credit Card Trust - 5.76% Credit Card Receivable-Backed Notes | 26,586,100 | 271,000 |
| 01May00 | McElvaine Investment Trust, The - Trust Units | 1,812,<br>1,000 | 160,<br>88 |
| 14Apr00 | MGI Software Corporation - Common Shares | 1,000,000 | 50,000 |
| 09May00 | Mikotel Networks Inc. - Units | 837,250 | 2,392,142 |
| 16May00 | Mustang Minerals Corp. - Special Warrants | 150,000 | 200,000 |
| 17May00 | New Focus, Inc. - Common Stock | 7,488 | 250 |
| 17May00 | Nogatech Inc. - Common Shares | US$2,073,600 | 172,800 |
| 31Mar00 | ntk.com CORPORATION - Units | 850,000 | 850,000 |
| 01May00 | PrinterOn Corporation - Convertible Preferred Shares | 26,843,098 | 8,659,064 |
| 08May00 to 12May00 | Putnam Canadian Global Trusts - Trust Units | 971 | 96 |
| 15May00 to 18May00 | Putnam Canadian Global trusts - Trust Units | 1,217 | 121 |
| 15Mar00 | Quantis Formulation Inc. - Class A Shares | 185,000 | 185,000 |
| 12May00 | Sierra Systems Group Inc. - Common Shares | 1,599,997 | 93,759 |
| 17May00 | Societe en Commandite Pro.cess - Units | 475,000 | 475,000 |
| 25May00 | Spectra Securities Software Inc. - Special Warrants | US$9,920,381 | 3,568,483 |
| 17May00 | St. Genevieve Resources Ltd. - Common Shares | 600,000 | 3,000,000 |
| 01Mar00 | Stealth Mining Corporation - Units | 300,000 | 3,000,000 |
| 03May00 | Tenke Mining Corp. - Common Shares | 520,000 | 650,000 |
| 08May00 to 12May00 | Trimark Mutual Funds - Units (See Filing Document for Individual Fund Names) | 7,685,611 | 982,122 |
| 23May00 to 26May00 | Trimark Mutual Funds - Units (See Filing Document for Individual Fund Names) | 4,204,798 | 491,264 |
| 15May00 to 19May00 | Trimark Mutual Funds - Units (See Filing Document for Individual Fund Names) | 6,822,765 | 877,742 |
| 15May00 | Vishay Intertechnology, Inc. - Shares | US$9,187,500 | 125,000 |

## Notice of Intention to Distribute Securities Pursuant to Subsection 7 of Section 72 - (Form 23)

| Seller | Security | Amount |
|---|---|---|
| Paros Enterprises Limited | Acktion Corporation - Common Shares | 2,000,000 |
| Viceroy Resource Corporation | Channel Resources Ltd. - Common Shares | 7,077,850 |
| Estill,. Glen R. | EMJ Data Systems Ltd. - Common Shares | 39,000 |
| Estill Holdings Limited | EMJ Data Systems Ltd.- Common Shares | 1,500,000 |
| Estill, James A. | EMJ Data Systems Ltd. - Common Shares | 21,900 |
| Black, Conrad M. | Hollinger Inc. - Series II Preference Shares | 1,611,039 |
| Magrill, Gordon | Interprovincial Venture Capital Corporation - Common Shares | 2,000,000 |
| Magrill, Gordon | Library Information Software Corp. - Class A | 500,000 |
| Shefsky, Alan L. | Pele Mountain Resources Inc. - Common Shares | 454,000 |

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## Chapter 9

# Legislation

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## Chapter 11

# IPOs, New Issues and Secondary Financings

**Issuer Name:**
Alternative Fuel Systems Inc.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Prospectus dated June 2nd, 2000
Mutual Reliance Review System Receipt dated June 7th, 2000
**Offering Price and Description:**
$5,750,000 - 8,846,154 Common Shares and 4,423,078 Common Shares Purchase Warrants Issuable upon Exercise of 8,846,154 Special Warrants
**Underwriter(s), Agent(s) or Distributor(s):**
Acumen Capital Finance Partners Limited
**Promoter(s):**
N\A
**Project #**275021

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**Issuer Name:**
Corriente Resources Inc.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Prospectus dated June 2nd, 2000
Mutual Reliance Review System Receipt dated June 2nd, 2000
**Offering Price and Description:**
$3,030,000 - 2,545,200 Common Shares and up to 2,545,200 Common Shares Purchase Warrants and 121,200 underwriter's Common Shares Purchase Warrants
**Underwriter(s), Agent(s) or Distributor(s):**
Haywood Securities Inc.
Loewen, Ondaatje, McCutcheon Limited
**Promoter(s):**
N\A
**Project #**274314

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**Issuer Name:**
General Motors Acceptance Corporation of Canada, Limited (NP #44 - Shelf)
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated June 1st, 2000
Mutual Reliance Review System Receipt dated June 2nd, 2000
**Offering Price and Description:**
$6,000,000,000 - Debt Securities
**Underwriter(s), Agent(s) or Distributor(s):**
N/A
**Promoter(s):**
N/A
**Project #**273994

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**Issuer Name:**
Genetronics Biomedical Ltd.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated May 29th, 2000
Mutual Reliance Review System Receipt dated May 30th, 2000
**Offering Price and Description:**
$12,562,500 - 4,164,500 Common Shares issuable upon the exercise of 4,164,500 Special Warrants
**Underwriter(s), Agent(s) or Distributor(s):**
Canaccord Capital Corporation
**Promoter(s):**
N\A
**Project #**272601

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**Issuer Name:**
Gloucester Credit Card Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated June 2nd, 2000
Mutual Reliance Review System Receipt dated June 2nd, 2000
**Offering Price and Description:**
N/A
**Underwriter(s), Agent(s) or Distributor(s):**
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Merrill Lynch Canada Inc.
TD Securities Inc.
**Promoter(s):**
MBNA Canada Bank
**Project #**274059

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**Issuer Name:**
Great Lakes Hydro Income Fund
**Type and Date:**
Preliminary Prospectus dated June 1st, 2000
Receipted June 2nd, 2000
**Offering Price and Description:**
$ * - 2,520,238 Trust Units
**Underwriter(s), Agent(s) or Distributor(s):**
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Merrill Lynch Canada Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Corp.
Trilon Securities Corp.
HSBC Securities (Canada) Inc.
**Promoter(s):**
Nexfor Inc.
**Project #**273867

**Issuer Name:**
Immune Network Research Ltd.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Prospectus dated May 31st, 2000
Mutual Reliance Review System Receipt dated June 6th, 2000
**Offering Price and Description:**
$8,499,999 - 15,454,544 Units on Exercise of Special Warrants 772,727 Agent's Compensation Options on Exercise of Agent's Special Warrants
**Underwriter(s), Agent(s) or Distributor(s):**
Groome Capital.Com Inc.
**Promoter(s):**
N\A
**Project #274645**

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**Issuer Name:**
Lifeco Split Corporation Inc.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated June 5th, 2000
Mutual Reliance Review System Receipt dated June 6th, 2000
**Offering Price and Description:**
$ * - * Captial Shares * Preferred Shares
**Underwriter(s), Agent(s) or Distributor(s):**
Scotia Capital Inc.
**Promoter(s):**
Scotia Capital Inc.
**Project #274730**

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**Issuer Name:**
National Bank/Fidelity Canadian Asset Allocation Fund
National Bank/Fidelity Global Asset Allocation Fund
National Bank/Fidelity International Portfolio Fund
National Bank/Fidelity Growth America Fund
National Bank/Fidelity Focus Financial Services Fund
Principal Regulator - Quebec
**Type and Date:**
Preliminary Simplified Prospectus dated June 1st, 2000
Mutual Reliance Review System Receipt dated June 2nd, 2000
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
National Bank Securities Inc.
**Promoter(s):**
National Bank Securities Inc.
**Project #274004**

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**Issuer Name:**
Sustainable Energy Technologies Ltd.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Prospectus dated May 30th, 2000
Mutual Reliance Review System Receipt dated May 31st, 2000
**Offering Price and Description:**
**Underwriter(s), Agent(s) or Distributor(s):**
N\A
**Promoter(s):**
N\A
**Project #272712**

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**Issuer Name:**
Tesma International Inc.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated June 5th, 2000
Mutual Reliance Review System Receipt dated June 6th, 2000
**Offering Price and Description:**
$130,414,273 - 4,977,644 Class A Subordinate Voting Shares
**Underwriter(s), Agent(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
TD Securities Inc.
**Promoter(s):**
N\A
**Project #274644**

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**Issuer Name:**
Thunder Energy Inc.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Prospectus dated May 26th, 2000
Mutual Reliance Review System Receipt dated May 31st, 2000
**Offering Price and Description:**
$ * - * Common Shares
**Underwriter(s), Agent(s) or Distributor(s):**
Canaccord Capital Corporation
Peters & Co. Limited
National Bank Financial Corp.
**Promoter(s):**
Douglas A. Dafoe
David L. Barlow
Terence S. Meek
**Project #271766**

**Issuer Name:**
Ontario Teachers' Group Investment Fund - Fixed Value Section
Ontario Teachers' Group Investment Fund - Mortgage Income Section
Ontario Teachers' Group Investment Fund - Diversified Section
Ontario Teachers' Group Investment Fund - Growth Section
Ontario Teachers' Group Investment Fund - Balanced Section
Ontario Teachers' Group Global Value Fund
**Type and Date:**
Amended Simplified Prospectus and Annual Information Form dated January 31st, 2000
Accepted 17th day of February, 2000
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Ontario Teachers' Group Inc.
**Promoter(s):**
Ontario Teachers' Group Inc.
**Project #**179169

**Issuer Name:**
Keystone C.I. Signature High Income Fund (Formerly Keystone BPI High Income Fund)
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated May 23rd, 2000 to Simplified Prospectus and Annual Information Form dated January 18th, 2000
Mutual Reliance Receipt dated 5th day of June, 2000
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Mackenzie Financial Corporation
**Promoter(s):**
Mackenzie Financial Corporation
**Project #**220529

**Issuer Name:**
Spectrum United RRSP American Growth Fund
Spectrum United RRSP Global Growth Fund
Spectrum United RRSP Global Telecommunications Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment#1 dated May 24th, 2000 to Simplified Prospectus and Annual Information Form dated December 13th, 1999
Mutual Reliance Review System Receipt 1st day of June, 2000
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Registered Dealer
**Promoter(s):**
Spectrum United Mutual Funds Inc.
**Project #**213440

**Issuer Name:**
Trimark U.S. Money Market Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated May 19th, 2000 to Simplified Prospectus and Annual Information Form dated January 20th, 2000
Mutual Reliance Review System Receipt dated 1st day of June, 2000
**Offering Price and Description:**
Mutual Fund Units - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Trimark Investment Management Inc.
**Promoter(s):**
Trimark Investment Management Inc.
**Project #**227393

**Issuer Name:**
Trimark RSP Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated May 19th, 2000 to Simplified Prospectus and Annual Information Form dated December 2nd, 1999
Mutual Reliance Review System Receipt dated 1st day of June, 2000
**Offering Price and Description:**
Mutual Fund Units - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
N\A
**Promoter(s):**
N\A
**Project #**215525

**Issuer Name:**
Trimark Fund
Trimark Canadian Fund
Trimark Income Growth Fund
Trimark Select Growth Fund
The Americas Fund
Trimark Indo-Pacfic Fund
Trimark Discovery Fund
Trimark Europlus Fund
Trimark RSP Equity Fund
Trimark Select Canadian Growth Fund
Trimark Canadian Resources Fund
Trimark Canadian Small Companies Fund
Trimark Enterprise Fund
Trimark Enterprise Small Cap Fund
Trimark Select Balanced Fund
Trimark Interest Fund
Trimark Government Income Fund
Trimark Canadian Bond Fund
Trimark Advantage Bond Fund
Principal Regulator-Ontario
**Type and Date:**
Amendment #1 dated May 19th, 2000 to Second Amended Simplified Prospectus and Annual Information Form dated January 20th, 2000
Mutual Reliance Review System Receipt dated 1st day of June, 2000
**Offering Price and Description:**
Mutual Fund Units - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
N/A
**Promoter(s):**
N/A
**Project** #167652

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**Issuer Name:**
Trimark Fund
Trimark Select Growth Fund
Trimark International Companies Fund
Trimark U.S. Companies Fund
The Americas Fund
Trimark Indo-Pacific Fund
Trimark Discovery Fund
Trimark Europlus Fund
Trimark Canadian Fund
Trimark RSP Equity Fund
Trimark Select Canadian Growth Fund
Trimark Enterprise Fund
Trimark Canadian Resources Fund
Trimark Canadian Small Companies Fund
Trimark Enterprise Small Cap Fund
Trimark Global Balanced Fund
Trimark Income Growth Fund
Trimark Select Balanced Fund
Trimark Global High Yield Bond Fund
Trimark Government Income Fund
Trimark Canadian Bond Fund
Trimark Advantage Bond Fund
Principal Ontario - Ontario
**Type and Date:**
Amendment #1 dated May 19th, 2000 to Simplified Prospectus and Annual Information Form dated February 4th, 2000 dated Mutual Reliance Review System Receipt dated 1st day of June, 2000
**Offering Price and Description:**
Mutual Fund Units - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Trimark Investment Management Inc.
**Promoter(s):**
Trimark Investment Management Inc.
**Project** #229227

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**Issuer Name:**
Trimark International Companies RSP Fund
Trimark U.S. Companies RSP Fund
Trimark Global Balanced RSP Fund
Trimark Global High Yield Bond RSP Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated May 19th, 2000 to Simplified Prospectus and Annual Information Form dated January 12th, 2000
Mutual Reliance Review System Receipt dated 1st day of June, 2000
**Offering Price and Description:**
Mutual Fund Units- Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Trimark Investment Management Inc.
**Promoter(s):**
Trimark Investment Management Inc.
**Project** #221124

**Issuer Name:**
Trimark International Companies Fund
Trimark U.S. Companies Fund
Trimark Global Balanced Fund
Trimark Global High Yield Bond Fund
Trimark Fund
Trimark Canadian Fund
Trimark Income Growth Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated May 19th, 2000 to Amended Simplified Prospectus and Annual Information Form dated January 20th, 2000
Mutual Reliance Review System Receipt dated 1st day of June, 2000
**Offering Price and Description:**
Mutual Fund Units - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Trimark Investment Management Inc.
**Promoter(s):**
Trimark Investment Management Inc.
**Project** #207220

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**Issuer Name:**
Trimark Select Growth RSP Fund
Trimark Discovery RSP Fund
The Americas RSP Fund
Trimark Indo-Pacific RSP Fund
Trimark Europlus RSP Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment # dated May 19th, 2000 to Amended Simplified Prospectus and Annual Information Form dated January 12th, 2000
Mutual Reliance Review System Receipt dated 1st day of June, 2000
**Offering Price and Description:**
Mutual Fund Units - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Trimark Investment Management Inc.
**Promoter(s):**
Trimark Investment Management Inc.
**Project** #207237

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**Issuer Name:**
Spectrum United Canadian Money Market Fund
Spectrum United U.S. Dollar Money Market Fund
Spectrum United Short-Term Bond Fund
Spectrum United Mid-Term Bond Fund
Spectrum United Long-Term Bond Fund
Spectrum United RRSP International Bond Fund
Spectrum United Global Bond Fund
Spectrum United Dividend Fund
Spectrum United Canadian Equity Fund
Spectrum United Canadian Growth Fund
Spectrum United Canadian Investment Fund
Spectrum United Canadian Resource Fund
Spectrum United Canadian Small-Mid Cap Fund
Spectrum United Canadian Stock Fund
Spectrum United American Equity Fund
Spectrum United American Growth Fund
Spectrum United Optimax USA Fund
Spectrum United Asian Dynasty Fund
Spectrum United Emerging Markets Fund
Spectrum United European Growth Fund
Spectrum United Global Equity Fund
Spectrum United Global Growth Fund
Spectrum United Global Telecommunications Fund
Spectrum United RRSP World Equity Fund
Spectrum United Asset Allocation Fund
Spectrum United Diversified Fund
Spectrum United Global Diversified Fund
Spectrum United Canadian Income Portfolio
Spectrum United Canadian Conservative Portfolio
Spectrum United Canadian Balanced Portfolio
Spectrum United Canadian Growth Portfolio
Spectrum United Canadian Maximum Growth Portfolio
Spectrum United Global Growth Portfolio
Principal Regulator - Ontario
**Type and Date:**
Amendment #2 dated May 24th, 2000 to Simplified Prospectus and Annual Information Form dated August 24th, 1999
Mutual Reliance Review System Receipt dated 2nd day of June, 2000
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Registered Dealer
**Promoter(s):**
Spectrum United Mutual Funds Inc.
**Project** #191690

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**Issuer Name:**
Barton Bay Resources Inc.
**Type and Date:**
Final Prospectus dated May 29th, 2000
Receipted 1st day of June, 2000
**Offering Price and Description:**
**Underwriter(s), Agent(s) or Distributor(s):**
Marchment & Mackay Limited
**Promoter(s):**
N/A
**Project** #157925

**Issuer Name:**
CMP 2000 Resource Limited Partnership
Dynamic CMP Fund Ltd.
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated May 31st, 2000
Mutual Reliance Review System Receipt dated 2nd day of June, 2000
**Offering Price and Description:**

**Underwriter(s), Agent(s) or Distributor(s):**
Dundee Securities Corporation
National Bank Financial Corp.
**Promoter(s):**
CMP Funds II Management Inc.
**Project** #250023 & 250028

---

**Issuer Name:**
Cymat Corp.
**Type and Date:**
Final Prospectus dated May 31st, 2000
Receipted 1st day of June, 2000
**Offering Price and Description:**

**Underwriter(s), Agent(s) or Distributor(s):**
First Associates Investments Inc.
Robert Caldwell Capital Corporation
**Promoter(s):**
Richard J. Rusiniak
Paul B. Ramsay
**Project** #259676

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**Issuer Name:**
Linmor Inc.
**Type and Date:**
Final Prospectus dated May 30th, 2000
Receipted 31st day of May, 2000
**Offering Price and Description:**

**Underwriter(s), Agent(s) or Distributor(s):**
Yorkton Securities Inc.
**Promoter(s):**
N/A
**Project** #252620

---

**Issuer Name:**
Union Gas Limited (NP#44 - Shelf)
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated May 30th, 2000
Mutual Reliance Review System Receipt dated 30th day of May, 2000
**Offering Price and Description:**
$ * - Debt Securities (unsecured)
**Underwriter(s), Agent(s) or Distributor(s):**
N/A
**Promoter(s):**
N\A
**Project** #266247

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**Issuer Name:**
Bema Gold Corporation
Principal Regulator - British Columbia
**Type and Date:**
Final Short Form Prospectus dated May 23rd, 2000
Mutual Reliance Review System Receipt dated 24th day of May, 2000
**Offering Price and Description:**

**Underwriter(s), Agent(s) or Distributor(s):**
N\A
**Promoter(s):**
N\A
**Project** #261826

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**Issuer Name:**
Union Gas Limited (NP#44 - Shelf)
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus (NP #44 - SHELF) dated May 30th, 2000
Mutual Reliance Review System Receipt dated 30th day of May, 2000
**Offering Price and Description:**
$ * - Debt Securities (unsecured)
**Underwriter(s), Agent(s) or Distributor(s):**
N/A
**Promoter(s):**
N\A
**Project** #266247

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**Issuer Name:**
AIC U.S. Equity Fund
(formerly, AIC U.S. Equity Fund)
AIC RSP U.S. Equity Fund
(formerly, AIC RSP U.S Equity Fund)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus dated June 1st, 2000
Mutual Reliance Review System Receipt dated 6th day of June, 2000
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Registered Dealers
**Promoter(s):**
AIC Limited
**Project** #235300

**Issuer Name:**
Fidelity Managed Income Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated March 16th, 2000
Mutual Reliance Review System Receipt dated 17th day of March, 2000
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Fidelity Investments Canada Limited
**Promoter(s):**
Fidelity Investments Canada Limited
**Project #**235123

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**Issuer Name:**
Mulvihill Canadian Money Market Fund
Mulvihill Canadian Equity Fund
Mulvihill Canadian Bond Fund
Mulvihill Global Equity Fund
Mulvihill U.S. Equity Index Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus dated June 2nd, 2000
Mutual Reliance Review System Receipt dated 6th day of June, 2000
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Mulvhill Capital Management Inc.
**Promoter(s):**
Mulvihill Capital Management Inc.
**Project #**258391

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**Issuer Name:**
Spectrum United Savings Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated May 29th, 2000
Mutual Reliance Review System Receipt 31st day of May, 2000
**Offering Price and Description:**
Mutual Fund Securities Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Registered Dealers
**Promoter(s):**
N/A
**Project #**257518

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**Issuer Name:**
MedcomSoft Inc.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated March 29, 2000
Withdrawn on the 5th day of June, 2000
**Offering Price and Description:**

**Underwriter(s), Agent(s) or Distributor(s):**
RBC Dominion Securities Inc.
Bunting Warburg Dillon Read Inc.
**Promoter(s):**
N/A
**Project #**250535

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# Chapter 12

# Registrations

## 12.1.1 Securities

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| New Registration | Norshield Asset Management (Canada) Ltd<br>Attention: Vassilios (Bill) Kanopoulos<br>c/o Norshield Fund Management Ltd<br>181 Bay Street, Suite 2810<br>PO Box 823, Bay Wellington Tower<br>Toronto, Ontario M5J 2T3 | Extra Provincial Adviser<br>Investment Counsel & Portfolio Manager | May 31/00 |
| Change of Name | Assante Capital Management Inc.<br>Attention: William Samuel Best<br>Stikeman, Elliott<br>320 Bay Street, Suite 1100<br>PO Box 15<br>Toronto, Ontario M5H 4A6 | From:<br>RWB Securities Inc.<br><br>To:<br>Assante Capital Management Inc. | April 17/00 |
| New Recognition | Mr. Charles Powis<br>c/o David McIntyre<br>Bennett Jones<br>3400 One First Canadian Place<br>P.O. Box 130<br>Toronto, Ontario M5X 1A4 | Exempt Purchaser | May 16/00 |
| New Recognition | Mr. John Fitzgerald<br>c/o David McIntyre<br>Bennett Jones<br>3400 One First Canadian Place<br>P.O. Box 130<br>Toronto, Ontario M5X 1A4 | Exempt Purchaser | May 16/00 |
| New Recognition | Mr. David Wright<br>c/o David McIntyre<br>Bennett Jones<br>3400 One First Canadian Place<br>P.O. Box 130<br>Toronto, Ontario M5X 1A4 | Exempt Purchaser | May 16/00 |
| New Recognition | CMP 2000 Resource Limited Partnership<br>c/o CMP Funds II Management Inc.<br>40 King Street West, Suite 5500<br>Toronto, Ontario M5H 4A9 | Exempt Purchaser | June 6/00 |

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# Chapter 13

# SRO Notices and Disciplinary Proceedings

## 13.1 SRO Notices and Disciplinary Decisions

### 13.1.1 Christos Fimis

**NOTICE TO PARTICIPATING ORGANIZATIONS**
**No. 2000-194**
June 6, 2000

**APPROVED PERSON DISCIPLINED**

**Person Disciplined**

Disciplinary proceedings initiated by The Toronto Stock Exchange Inc. (the "Exchange") against Christos Fimis have been resolved by the acceptance of an Offer of Settlement by a Panel of the Exchange's Hearing Committee. Mr. Fimis is an Approved Person who was at all material times employed as a Registered Trader with a Member of the Exchange, Levesque Beaubien Geoffrion Inc. (now known as National Bank Financial Inc., a Participating Organization of the Exchange).

**Rules Violated**

Mr. Fimis admitted that on September 15 and 17, 1998, he entered four short sales of two Exchange listed securities below the price of the last board lot sale of those securities contrary to section 11.27(3) of the Exchange's General By-law ("General By-law").

Mr. Fimis also admitted that between September 14 and 30, 1998, he failed to designate 13 short sales as such at the time the orders were entered in the Book contrary to section 11.27(9) of the General By-law.

**Penalty Assessed**

Pursuant to the terms of the Offer of Settlement, Mr. Fimis is required to:

(a) pay a fine of $7,000;
(b) pay $3,000 towards the cost of the Exchange's investigation.

**Summary of Facts**

On September 15, 1998, Mr. Fimis made two short sales of Exchange listed securities at prices below the price of the last board lot sale of the security. One of these orders was executed on a $0.15 downtick and the other was executed on a $0.05 downtick. On September 17, 1998, Mr. Fimis made two further short sales of an Exchange listed security, both executed on $0.05 downticks. These sales contravened section 11.27(3) of the General By-law which is intended to prevent the manipulative lowering of the trading price of a security by short selling on a downtick. The Exchange permits short sales to occur only at or above the price of the last sale of a board lot of that security.

Between September 14 and 30, 1998, Mr. Fimis made a total of 13 short sales of Exchange listed securities without designating the orders as short sales, contrary to section 11.27(9) of the General By-law. Four of these orders were executed on a downtick contrary to section 11.27(3) of the General By-law.

The intent of section 11.27(9) of the General By-law is to ensure that a short-sale of a security does not occur on a downtick in violation of.11.27(3). Members who fail to properly designate short sale orders contravene section 11.27(9) whether or not the short sale is completed on a downtick.

Following a review of the findings of the Exchange's investigation, the Department of Market Regulation has concluded that there are no grounds for any disciplinary action against the Participating Organization.

*Participating Organizations who require additional information should direct their questions to Tom Atkinson, Director of Investigations and Enforcement at 416-947-4310.*

LEONARD PETRILLO
VICE PRESIDENT,
GENERAL COUNSEL & SECRETARY

### 13.1.2 Michael Schlichting

**NOTICE TO PARTICIPATING ORGANIZATIONS**
**No. 2000-198**
June 6, 2000

**APPROVED PERSON DISCIPLINED**

**Person Disciplined**

Disciplinary proceedings initiated by The Toronto Stock Exchange Inc. (the "Exchange") against Michael Schlichting have been resolved by the acceptance of an Offer of Settlement by a Panel of the Exchange's Hearing Committee. Mr. Schlichting is an Approved Person who was at all material times employed as a Registered Trader with a Member of the Exchange, Levesque Beaubien Geoffrion Inc. (now known as National Bank Financial Inc., a Participating Organization of the Exchange).

**Rules Violated**

Mr. Schlichting admitted that on September 15, 1998, he failed to designate a short-sale as such at the time the order was entered contrary to section 11.27(9) of the Exchange's General By-law (the "General By-law") and that he entered a short sale of a security on the Exchange below the price of the last board lot sale of the security on the Exchange contrary to section 11.27(3) of the General By-law.

**Penalty Assessed**

Pursuant to the terms of the Offer of Settlement, Mr. Schlichting is required to:

(a) pay a fine of $5,000;

(b) pay $2,500 towards the cost of the Exchange's investigation.

**Summary of Facts**

On September 15, 1998, at 9:35:16, Mr. Schlichting made a short sale on the Exchange from his inventory account of 2,000 shares of an Exchange listed security at $69.50 per share. The last board lot trade for this security occurred at 9:35:13 at a price of $69.85 per share. The sale by Mr. Schlichting thereby contravened section 11.27(3) of the General By-law. Section 11.27(3) is intended to prevent the manipulative lowering of the trading price of a security by short selling on a downtick. The Exchange permits short sales to occur only at or above the price of the last sale of a board lot of that security.

Mr. Schlichting did not designate the above order as a short sale contrary to section 11.27(9) of the General By-law. The intent of section 11.27(9) of the General By-law is to ensure that a short-sale of a security does not occur on a downtick in violation of 11.27(3). Members who fail to properly designate short sale orders contravene section 11.27(9) whether or not the short sale is completed on a downtick.

Following a review of the findings of the Exchange's investigation, the Department of Market Regulation has concluded that there are no grounds for any disciplinary action against the Participating Organization.

*Participating Organizations who require additional information should direct their questions to Tom Atkinson, Director of Investigations and Enforcement at 416-947-4310.*

LEONARD PETRILLO
VICE PRESIDENT,
GENERAL COUNSEL & SECRETARY

# Chapter 25

# Other Information

## 25.1.1 Securities

**TRANSFER WITHIN ESCROW**

| COMPANY NAME | DATE | FROM | TO | NO. AND TYPE OF SHARES |
|---|---|---|---|---|
| Paladin Labs Inc. | May 31, 2000 | Pharmascience Inc. | 3766756 Canada Inc. | 5,072,997 Common Shares |
| Paladin Labs Inc. | May 31, 2000 | 3766756 Canada Inc. | Joddes Limited | 5,072,997 Common Shares |
| Strategic Value Corporation | May 30, 2000 | Hambros Tower Hill Holdings Limited | Investec 1 Limited (formerly Hambros PLC) | 37,823 Class A Common Shares |
| Strategic Value Corporation | May 30, 2000 | Mark Bonham | 1418272 Ontario Inc. | 4,732,790 Class A Common Shares |

**RELEASE FROM ESCROW**

| COMPANY NAME | DATE | NUMBER AND TYPE OF SHARES | ADDITIONAL INFORMATION |
|---|---|---|---|
| Strategic Value Corporation | May 30, 2000 | 734,291 Class A Common Shares<br>1,520,721 Class B Common Shares | Pursuant to Plan of Arrangement |
| Strategic Value Corporation | May 30, 2000 | 4,732,790 Class A Common Shares | Pursuant to Plan of Arrangement |

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