

The Ontario Securities Commission

# OSC Bulletin

September 8, 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 Securities Commission**

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20 Queen Street West  
Toronto, Ontario  
M5H 3S8

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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: HIW / DB / MPC

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

**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

**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.

Ottawa

Sept 18/2000  
10:00 a.m.

Glen Harvey Harper

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

Courtroom M, Provincial Offences Court  
Old City Hall, Toronto

Sep 20/2000  
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. 111, Provincial  
Offences Court  
Old City Hall, Toronto

Oct 10/2000 - **Dual Capital Management Limited,**  
Nov 3/2000 **Warren Lawrence Wall, Shirley Joan**  
Trial **Wall**

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

Court Room No. 9  
114 Worsley Street  
Barrie, Ontario

Oct 16/2000 - **John Bernard Felderhof**  
Dec 22/2000  
10:00 a.m.

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

Courtroom TBA, Provincial Offences  
Court

Old City Hall, Toronto

Dec 4/2000 **1173219 Ontario Limited c.o.b. as**  
Dec 5/2000 **TAC (The Alternate Choice), TAC**  
Dec 6/2000 **International Limited, Douglas R.**  
Dec 7/2000 **Walker, David C. Drennan, Steven**  
9:00 a.m. **Peck, Don Gutoski, Ray Ricks, Al**  
Courtroom N **Johnson and Gerald McLeod**

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

Jan 29/2001 - **Einar Bellfield**  
Feb 2/2001  
9:00 a.m.

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

Courtroom C, Provincial  
Offences Court  
Old City Hall, Toronto

---

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

1.1.2 OSC Phone list

Last Name	First Name	593 +Ext	Branch	Section	Floor
Adams	Kerry D.	8231	Commissioners' Office	Commissioners	17
Adams	Stephen N.	8231	Commissioners' Office	Commissioners	17
Adler	David	8342	Corporate Services	Commission Records	22
Aiken	John	8284	Enforcement	Case Assessment	8
Akhtar	Maqbool	8329	Corporate Finance	Continuous Disclosure	16
Alexopoulos	Tula	8084	Executive Office	Advisors to the Chair	17
Anderson	Tom	8087	Enforcement	Investigation Team	8
Andrades	Michelle	8271	Enforcement	Case Assessment	8
Andrego	Michael	8312	Enforcement	Case Assessment	8
Annibale	Joe	3663	Corporate Services	Administration	19
Antonioni	Noulla	595-8920	Capital Markets	Compliance	18
Aquino	Bessie	8181	Capital Markets	Compliance	18
Aranha	Daisy	8916	Secretary	Secretary's Office	17
Ash	Don	8184	Corporate Services	IT - Application Services	19
Asquini	Mary	8247	Enforcement	Case Assessment	8
<b>B</b>					
Baksh	Fareeza	8062	Corporate Finance	Filings Team #1	16
Barnett	Natalie	8903	Enforcement	Litigation Team	8
Battle	Kevin	8184	Corporate Services	IT - Technology Services	19
Bazavan	Alina	8082	Capital Markets	Market Regulation	18
Berry	Kim	8150	Enforcement	Case Assessment	8
Bertoia	Julie	8083	Corporate Finance	Filings Team #2	16
Bishop	Sherry-Ann	8278	Capital Markets	Registration	18
Blackburn	Lisa	595-8922	Corporate Finance	Continuous Disclosure	16
Blumberger	Erez	3662	Corporate Finance	Filings Team #1	16
Boardman	Sally	8085	Corporate Services	Commission Human Resources	20
Booker	Ken	8137	Inquiries	Correspondence Team	19
Bridge	Marriane	595-8907	Corporate Finance	Advisory Services	16
Brookes	Nancy	8327	General Counsel	General Counsel's Office	17
Brown	David	8203	Executive Office	Chair's Office	17
Brown	Derek	8231	Commissioners' Office	Commissioners	17
Brown	Edith	8276	Capital Markets	Registration	18
Brown	Karen	8104	Capital Markets	Registration	18
Buenaflor	Eric	8234	Corporate Services	Finance	20
Bulnes	Jamie	8242	Enforcement	Investigation Team	8
Bureaud	Jean-Paul	8131	Corporate Finance	Filings Team #1	16
Butler	Brian	8286	Enforcement	Investigation Team	8
Butler	Michael	3685	Corporate Services	IT - Technology Services	19
Byers	Christopher	8058	Enforcement	Case Assessment	8
Byrnes	Robert	8198	Corporate Services	Information Technology - [IT]	19
<b>C</b>					
Callender	Ursel	8343	Enforcement	Case Assessment	8
Campbell	Dolores	8232	Corporate Services	Administration	19
Capozzolo	Daniela	8164	Capital Markets	Registration	18
Captain	Nan	3672	Capital Markets	Registration	18
Carchrae	John	8221	Chief Accountant	Chief Accountant's Office	17
Carscallen	Morley	8231	Commissioners' Office	Commissioners	17
Carson	Muriel	595-8909	Enforcement	Litigation Team	8
Casiero	Vince	8293	Enforcement	Case Assessment	8
Cavaliere	Catalina	8066	Corporate Services	Administration - Office Services	19
Chambers	Joan	8287	Inquiries	Support Team	19
Chao	Lily	8318	Enforcement	Case Assessment	8
Chasson	David	2321	Executive Office	Chair's Office	17
Chatterpaul	Indira	3664	Capital Markets	Market Regulation	18
Chau	Karmen	8224	Inquiries	Telephone Team	19
Chia	Rose	8053	Corporate Relations	Manager's Office	17
Chichioco	Isabelita	8105	Capital Markets	Compliance	18
Cho	Peter	8255	Enforcement	Investigation Team	8
Choi	Wayne	8189	Corporate Services	IT - Application Services	19
Chu	Brenda	595-8910	Enforcement	Investigation Team	8
Chung	Karie	000-0000	Corporate Finance	Continuous Disclosure	16

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Last Name	First Name	593 +Ext	Branch	Section	Floor
Chung	Yu Mee	8076	Capital Markets	Investment Funds	18
Clarkin	Brian	8237	Enforcement	Investigation Team	8
Clifford	Breda	8238	Corporate Finance	Director's Office	16
Collins	Stephanie	8163	Enforcement	Investigation Team	8
Connor	Nils	3694	Capital Markets	Investment Funds	18
Corbett	Hugh	8074	Enforcement	Litigation Team	8
Cosentino	Joseph	8081	Corporate Finance	Take Over Bids	16
Cottrell	John	8289	Enforcement	Investigation Team	8
Coulis	Peter	8296	Enforcement	Investigation Team	8
Cowdery	Rebecca	8129	Capital Markets	Investment Funds	18
Cuoppolo	Rose	8323	Executive Office	Vice-Chairs' Office	17
<b>D</b>					
Da Silva	Grace	8315	Enforcement	Director's Office	8
Dafoe	Kevin	8912	Corporate Services	IT - Technology Services	19
Daley	Dianna	8107	Capital Markets	Registration	18
Daniels	Kathryn	8093	Enforcement	Litigation Team	8
Dasil	Merilyn	8064	Capital Markets	Investment Funds	18
Davis	Carolyn	8292	Enforcement	Case Assessment	8
Davis	Robert W.	8231	Commissioners' Office	Commissioners	17
Day	Robert	8179	Corporate Services	Business Planning & Reporting	20
De Leon	Joan	8246	Capital Markets	Investment Funds	18
De Souza	Geof	8926	Corporate Services	Administration - Office Services	19
De Souza	Paul	8295	Enforcement	Investigation Team	8
de Verteuil	Mike	8305	Enforcement	Investigation Team	8
Deane	Wendy	8218	Corporate Finance	Filings Team #1	16
Del Duca	Luisa	8216	Corporate Relations	Corporate Communications - Website & OSC Bulletin	17
deLint	Dirk	8090	Capital Markets	Registrant Legal Services	18
Demissie	Bethlehem	3688	Capital Markets	Market Regulation	18
Dempsey	Paul	8091	Capital Markets	Investment Funds	18
Deravi	Delora	8294	Enforcement	Litigation Team	8
Dewberry	Craig	3675	Corporate Services	Commission Records	22
Dhillon	Indi	8075	Corporate Finance	Filings Team #1	16
Di Lieto	Rossana	8106	General Counsel	General Counsel's Office	17
Dicuangco	Marina	8192	Corporate Services	IT - Application Services	19
Dizon	Dina	3660	Capital Markets	Registration	18
Dobell	Sabine	8301	Enforcement	Case Assessment	8
Donnelly	Denis	8330	Inquiries	Correspondence Team	19
Dowdall-Logie	Peggy	2320	Capital Markets	Registrant Legal Services	18
Dowden	Yvonne	8265	Corporate Services	Finance	20
Dowling	Sandra	8153	Chief Accountant	Chief Accountant's Office	17
Dublin	Julia	8103	General Counsel	General Counsel's Office	17
Dundas	Linda	595-8944	Capital Markets	Market Regulation	18
Dunphy	Charlotte	8317	Enforcement	Litigation Team	8
<b>E</b>					
Eggers	Benjamin	8051	Enforcement	Investigation Team	8
Elliott	Jennifer	8109	Capital Markets	Market Regulation	18
Enright	Lisa	3686	Corporate Finance	Continuous Disclosure	16
Erlich	Leslie	595-8947	Capital Markets	Investment Funds	18
Everest	Kelly	595-8914	Capital Markets	Compliance	18
<b>F</b>					
Fallone	Joanna	8304	Enforcement	Case Assessment	8
Ferdinand	Alicia	8307	Corporate Relations	Investor Education	17
Fergusson	Rose	8116	Corporate Finance	Continuous Disclosure	16
Ferrari	Toni	3692	Capital Markets	Compliance	18
Finlay	Kathleen	8125	Executive Director	Project Office	16
Fiorini	Louisa	8178	Inquiries	Telephone Team	19
Flash	Sonia	8121	Corporate Services	Commission Human Resources	20
Flood	Christopher	8092	Corporate Finance	Take Over Bids	16
Forster	Christina	8061	Capital Markets	Compliance	18
Franken	Heidi	8249	Corporate Finance	Continuous Disclosure	16
Friesen	Jennifer	595-8921	Enforcement	Litigation Team	8
Fromm	Nancy	8333	Corporate Finance	Filings Team #1	16

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Last Name	First Name	593 +Ext	Branch	Section	Floor
Fuller	Patricia	8113	Capital Markets	Investment Funds	18
Fung	Carlin	8226	Capital Markets	Compliance	18
Furigay	Amelita	8336	Corporate Services	Commission Records	22
Fydell	Barbara	8253	Capital Markets	Market Regulation	18
<b>G</b>					
Gaudet	Tommy	2326	Inquiries	Support Team	19
Gayle	Phillip	8275	Capital Markets	Registration	18
Gazzard	Bill	8089	Capital Markets	Director's Office	18
Geller	John	8229	Executive Office	Vice-Chairs' Office	17
Genovese	JoAnne	8071	Executive Director	Project Office	16
Georghiou	Mario	8175	Corporate Services	IT - Technology Services	19
Gerhart	Marsha	595-8918	Corporate Finance	Filings Team #2	16
Gilkes	Rachel	8148	Capital Markets	Market Regulation	18
Gleeson	Peter	8158	Corporate Finance	Continuous Disclosure	16
Goldberg	Rhonda	3682	Capital Markets	Investment Funds	18
Gomme	Rose	8213	Secretary	Secretary's Office	17
Gorelle	Krista Martin	3689	General Counsel	General Counsel's Office	17
Gorman	Kelly	8135	Corporate Finance	Continuous Disclosure	16
Gorman	William	8132	Corporate Finance	Filings Team #1	16
Graburn	Anthony	2312	Enforcement	Litigation Team	8
Graham	Heather	8299	Corporate Finance	Continuous Disclosure	16
Greenglass	Susan	8140	Capital Markets	Market Regulation	18
Gunn	George	8288	Enforcement	Investigation Team	8
Gutierrez	George	8341	Enforcement	Case Assessment	8
Gutierrez	Lucy	8277	Capital Markets	Registration	18
<b>H</b>					
Haegeman	Christine	8123	Corporate Finance	Filings Team #2	16
Hahn	Randy	595-8943	Executive Director	Project Office	16
Hauerstock	Tamara	595-8915	Capital Markets	Investment Funds	18
HelpDesk		6393	Corporate Services	IT - Technology Services	19
Henry	Elizabeth	8334	Corporate Finance	Filings Team #2	16
Heymann	Jonathan	8227	Inquiries	Telephone Team	19
Hinds	Andre	8194	Corporate Services	IT - Application Services	19
Holmes	Janet	8282	Corporate Finance	Take Over Bids	16
Holmes	Raymond	8199	Capital Markets	Director's Office	18
Howard	John F.	8231	Commissioners' Office	Commissioners	17
Hryniowski	Ellen	8186	Corporate Services	Commission Human Resources	20
Hubley	Michael	8306	Enforcement	Investigation Team	8
Hughes	John	3695	Corporate Finance	Continuous Disclosure	16
<b>I</b>					
Ilkow	Martha	2313	Capital Markets	Investment Funds	18
<b>J</b>					
Jazokas	Cathy	8139	Executive Office	Advisors to the Chair	17
Jewt	Vidya	8346	Enforcement	Investigation Team	8
Johnston	Stephen	595-8911	Corporate Services	IT - Technology Services	19
Jondahl	Sky Lara	595-8923	Capital Markets	Market Regulation	18
Jones	Carole	8235	Corporate Finance	Take Over Bids	16
<b>K</b>					
Kalkounis	Demetre	8086	Corporate Relations	Corporate Communications - Website & OSC Bulletin	17
Kalra	Ritu	8063	Corporate Finance	Continuous Disclosure	16
Kanji	Naizam	8060	Corporate Finance	Take Over Bids	16
Kaphengst	Heidi	8222	Chief Accountant	Chief Accountant's Office	17
Kelley	Dan	3674	Capital Markets	Registration	18
Khan	Nasir	595-8949	Corporate Finance	Continuous Disclosure	16
Khanna	Kamal	8204	Inquiries	Telephone Team	19
Kidder	Rosana	8114	Corporate Finance	Filings Team #1	16
Knopp	Kristina	595-8946	Capital Markets	Investment Funds	18
Kobayakawa	Dave	8173	Corporate Services	IT - Application Services	19
Kodituwakku	Druscilla	3664	Capital Markets	Market Regulation	18
Kohl	Robert	8233	Corporate Finance	Filings Team #1	16
Koor	Elle	8077	Capital Markets	Compliance	18

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Last Name	First Name	593 +Ext	Branch	Section	Floor
Korthals	Robin W.	8231	Commissioners' Office	Commissioners	17
Kosti-Perciasepe	Shirley	8280	Corporate Finance	Continuous Disclosure	16
Kourakos	Joanne	2314	Enforcement	Litigation Team	8
Kozinski	Theresa	595-8917	Corporate Relations	Investor Education	17
Krystie	Allan	8313	Inquiries	Correspondence Team	19
<b>L</b>					
Lackeyram	Marissa	8228	Corporate Services	Finance	20
Lalla	Diane	8320	Enforcement	Litigation Team	8
Lancia	Marina	8262	Corporate Finance	Filings Team #2	16
Law	Leo	3679	Corporate Services	IT - Application Services	19
Leader	Shiraine	8055	Corporate Services	Commission Records	22
Leitch	Donna	8263	Capital Markets	Registration	18
Leonardo	Tracey	3677	Capital Markets	Investment Funds	18
Leung	Antoinette	595-8901	Capital Markets	Compliance	18
Lihou	Gordon	8094	Corporate Services	IT - Technology Services	19
Liu	Winfield	8250	Capital Markets	Market Regulation	18
Ljubic	Greg	8141	Enforcement	Investigation Team	8
Lo	Yvonne	8196	Enforcement	Investigation Team	8
Love	Ellen	8215	Corporate Finance	Director's Office	16
Luciani	Leslie	595-8908	Enforcement	Case Assessment	8
<b>M</b>					
Macfarlane	Charlie	8208	Executive Director	Executive Director's Office	17
MacGregor	Judy	8165	Corporate Finance	Filings Team #2	16
Mackenzie	Marilyn	8193	Corporate Services	Director's Office	19
Maclaren	Tanis	8259	Executive Office	Advisors to the Chair	17
Magidson	Stan	8124	Corporate Finance	Take Over Bids	16
Magpayo	Jessica	8144	Enforcement	Director's Office	8
Mahadeo	Bibi	8274	Capital Markets	Registration	18
Maharaj	Sharda	8217	Capital Markets	Registration	18
Mail Room		8182	Corporate Services	Administration - Office Services	19
Mainville	Chantal	8168	Capital Markets	Investment Funds	18
Maisonneuve	Jean-Pierre	595-8913	Corporate Relations	Corporate Communications	17
Manarin	Karen	8088	Enforcement	Litigation Team	8
Mankikar	Ann	8281	Corporate Finance	Continuous Disclosure	16
Marshall	Natalie	8303	Capital Markets	Registration	18
Martin Sidey	Donna	8161	Inquiries	Support Team	19
Masci	Larry	8291	Enforcement	Investigation Team	8
Mattacott	David	8325	Corporate Finance	Continuous Disclosure	16
McBain	Allison	8142	Capital Markets	Investment Funds	18
McCallum	Susan	8248	Corporate Finance	Filings Team #2	16
McCann	Colin	8285	Enforcement	Investigation Team	8
McCombe	Deborah	8151	Corporate Finance	Director's Office	16
McCurdy	Dave	3669	Capital Markets	Market Regulation	18
McDougall	Rowena	8117	Corporate Relations	Corporate Communications	17
McGinnis	Helen	8155	Inquiries	Telephone Team	19
McGregor	Mark	8170	Corporate Services	IT - Technology Services	19
McKall	Darren	8118	Capital Markets	Investment Funds	18
McLeod	Mary Theresa	8231	Commissioners' Office	Commissioners	17
McManus	Mark	8130	Inquiries	Support Team	19
McNab	Greg	3680	Corporate Finance	Continuous Disclosure	16
McNamara	Chris	8171	Corporate Services	IT - Technology Services	19
McVicar	James	8154	Corporate Finance	Filings Team #2	16
Ming	Clara	8349	Capital Markets	Registration	18
Mitchell	Erica	2325	Executive Office	Chair's Office	17
Mohammed	Selina	8270	Capital Markets	Registration	18
Moore	Terry	8133	Corporate Finance	Take Over Bids	16
Moosa	Rehana	8050	Corporate Services	Commission Human Resources	20
Moseley	Tim	8128	Enforcement	Litigation Team	8
Mullin	Kimberley	595-8927	Capital Markets	Market Regulation	18
Mumby	Bill	8079	Corporate Services	Administration - Office Services	19
<b>N</b>					
Nania	Viraf	8267	Corporate Finance	Filings Team #2	16
Naster	Jay	8211	Enforcement	Litigation Team	8

Last Name	First Name	593 +Ext	Branch	Section	Floor
Nathani	Rubina	8214	Corporate Relations	Corporate Communications - Website & OSC Bulletin	17
Norman	Margaret	3698	Corporate Services	Director's Office	22
Noronha	Kipson	8258	Capital Markets	Registration	18
Nunes	Vera	2311	Capital Markets	Investment Funds	18
<b>O</b>					
O'Brien	Helen	3677	Capital Markets	Investment Funds	18
Orlando	Rita	8102	Enforcement	Litigation Team	8
Oseni	Sarah	8138	Enforcement	Litigation Team	8
Ossea	Jan	8160	Corporate Services	Commission Human Resources	20
Oyelade	Simeon	8157	Inquiries	Telephone Team	19
<b>P</b>					
Paddon	R. Stephen	8231	Commissioners' Office	Commissioners	17
Panzetta	Frank	8069	Corporate Services	Finance	20
Papageorgopoulos	John	8095	Capital Markets	Registration	18
Pare	Maxime	3650	Capital Markets	Market Regulation	18
Patel	Kim	8290	Enforcement	Investigation Team	8
Patterson	Birgitt	8260	Capital Markets	Director's Office	18
Paul	Margo	8136	Corporate Finance	Filings Team #1	16
Pavalow	Randee	8257	Capital Markets	Market Regulation	18
Pendala	Bindu	2315	Inquiries	Support Team	19
Pereira	Shelley	8110	Corporate Finance	Filings Team #2	16
Persaud	Juliet	8339	Inquiries	Telephone Team	19
Persaud	Violet	8166	Corporate Finance	Filings Team #1	16
Peters	Joanne	8134	Corporate Finance	Continuous Disclosure	16
Petroff	Tom	8340	Enforcement	Case Assessment	8
Pilipavicius	Rima	8152	Enforcement	Investigation Team	8
Pilkey	Scott	8322	Enforcement	Investigation Team	8
Pizzoli	Claudio	8316	Enforcement	Case Assessment	8
Power	Mary	8143	Corporate Services	Director's Office	19
Powley	Randall	8072	Executive Director	Executive Director's Office	17
Pozderka	Irene	8327	General Counsel	General Counsel's Office	17
Pynisky	Barbara-Anne	8187	Capital Markets	Registration	18
<b>R</b>					
Radu	Rick	8309	Enforcement	Investigation Team	8
Ramirez	Joanne	8332	Enforcement	Litigation Team	8
Rampersad	Valmiki	3671	Capital Markets	Registration	18
Ramsay	Anne	8243	Capital Markets	Investment Funds	18
Reception	ID	597-0681	Inquiries	Support Team	19
Rees-Jones	Corrie	3656	Corporate Finance	Continuous Disclosure	16
Regalado	Aida	8345	Capital Markets	Registration	18
Reinbergs	Hemingway	2316	Executive Office	Chair's Office	17
Robino	Josie	8347	Capital Markets	Registration	18
Rodriguez	Carlos	3673	Capital Markets	Registration	18
Roesslein	Margot	8169	Enforcement	Investigation Team	8
Rogers	Cynthia	8261	Corporate Finance	Filings Team #2	16
Roy	Greg	8195	Corporate Services	IT - Technology Services	19
Rubinoff	Dorothy	8220	Corporate Services	Information Technology - [IT]	19
<b>S</b>					
Sanchioni	Robert	8236	Enforcement	Case Assessment	8
Sandulescu	Ruxandra	2317	Capital Markets	Compliance	18
Sanjoto	Winnie	8119	Corporate Finance	Filings Team #2	16
Sankar	Levi	8279	Capital Markets	Registrant Legal Services	18
Sargent	Toni	8097	Capital Markets	Registration	18
Seer	Moses	3684	Corporate Finance	Filings Team #2	16
Seixas	Andrea	8310	Corporate Finance	Continuous Disclosure	16
Sequeira	Shirley	8324	Corporate Finance	Filings Team #1	16
Serrano	Edgar	8331	Corporate Services	Commission Records	22
Shahviri	Mehran	8298	Enforcement	Case Assessment	8
Shantadas	Bavani	8112	Enforcement	Investigation Team	8
Shariff	Neel	8300	Capital Markets	Registration	18
Shaw	Fazila	8338	Corporate Services	Commission Records	22



Notices / News Releases

Last Name	First Name	593 +Ext	Branch	Section	Floor
Shiwbhajan	Merle	8239	Corporate Finance	Filings Team #2	16
Short	Janet	595-8919	Corporate Finance	Filings Team #1	16
Shostack	Lisa	8092	Corporate Finance	Take Over Bids	16
Shrubb	Linda	8201	Executive Office	Chair's Office	17
Sikora	Jody	595-8948	Enforcement	Investigation Team	8
Silliphant	Nancy	8080	Corporate Services	Administration - Office Services	19
Sinclair	Donna	8268	Corporate Services	Commission Library	22
Singh	Gaitree	8056	Corporate Services	Administration - Office Services	19
Siraki	Tom	3678	Corporate Services	IT - Application Services	19
Small	Anthony	8172	Corporate Services	IT - Technology Services	19
Smith	Ian	8319	Enforcement	Litigation Team	8
Smith	Jeff	8335	Corporate Services	Commission Records	22
Smith	Robert	8183	Corporate Services	IT - Technology Services	19
Smith	Wendy	8264	Corporate Finance	Continuous Disclosure	16
Soden	Kathryn	8149	Corporate Finance	Director's Office	16
Sokolov	Darinka	3668	Capital Markets	Registration	18
Sommer	Peter	8191	Corporate Services	IT - Technology Services	19
Spencer	Mary	8185	Corporate Services	Director's Office	19
Spiers	Nicholas	8337	Capital Markets	Registration	18
Starr	Shelly	8209	Executive Director	Executive Director's Office	17
Stefanec	Rebecca	8070	Capital Markets	Registration	18
Stern	Tracey	8167	Capital Markets	Market Regulation	18
Stevenson	John	8145	Secretary	Secretary's Office	17
Stow	Nancy	8297	Corporate Relations	Investor Education	17
Suen	Oliver	3696	Corporate Services	IT - Technology Services	19
Sugden	Gina	8162	Capital Markets	Registration	18
Superina	Johanna	8210	Enforcement	Litigation Team	8
Switzer	Frank	8120	Corporate Relations	Manager's Office	17
Szorowski	Sylvia	8098	Capital Markets	Compliance	18
<b>T</b>					
Tedesco	Felicia	8273	Capital Markets	Compliance	18
Tedford	Esther	8159	Enforcement	Case Assessment	8
Tharma	Linga	8180	Enforcement	Case Assessment	8
Tillie	Marcel	8078	Corporate Finance	Filings Team #1	16
Tong	Estella	8219	Capital Markets	Compliance	18
Too	Byron	8197	Corporate Services	IT - Application Services	19
Tovell	Janice	8230	Executive Director	Project Office	16
Trotier-Tate	Helene	8146	Corporate Services	Information Technology - [IT]	19
Tsatsos	Irene	8223	Corporate Finance	Continuous Disclosure	16
Tsung	Chris	3691	Capital Markets	Compliance	18
Turchin	Laurel	3654	Capital Markets	Investment Funds	18
Turner	Paola	595-8945	Capital Markets	Investment Funds	18
<b>V</b>					
Varanaviciene	Loreta	000-0000	Corporate Finance	Continuous Disclosure	16
Varma	Neeti	8067	Capital Markets	Compliance	18
Vear	Michael	8111	Enforcement	Investigation Team	8
Vine	Julanna	8251	Corporate Services	Commission Records	22
Volpe	Susie	8052	Capital Markets	Registration	18
Vranic	Iva	8115	Corporate Finance	Filings Team #2	16
<b>W</b>					
Wagner	Heather	2326	Inquiries	Support Team	19
Walker	Marion	8102	Enforcement	Litigation Team	8
Waller	Elyot	595-8925	Capital Markets	Market Regulation	18
Walz	Trevor	3670	Capital Markets	Compliance	18
Watson	Darlene	8148	Capital Markets	Registrant Legal Services	18
Watson	Michael	8156	Enforcement	Director's Office	8
Welsh	Doug	8068	Corporate Finance	Filings Team #2	16
Wetston	Howard	8206	Executive Office	Vice-Chairs' Office	17
Whiler	Rick	8127	Corporate Finance	Filings Team #1	16
Whitehouse	Julie	8272	Capital Markets	Compliance	18
Wilson	James	8096	Inquiries	Correspondence Team	19
Wilson	Val	0	Inquiries	Telephone Team	19
Wolburgh-Jenah	Susan	8245	General Counsel	General Counsel's Office	17

Last Name	First Name	593 +Ext	Branch	Section	Floor
Wong	Raymond	8174	Corporate Services	IT - Technology Services	19
Woodall	Pamela	8225	Capital Markets	Registration	18
Wootton	Kate	8302	Enforcement	Litigation Team	8

**Commissioners' Office**

Commissioners		593 + Ext	FAX:		
Adams	Kerry D.	8231	Commissioner		17
Adams	Stephen N.	8231	Commissioner		17
Brown	Derek	8231	Commissioner		17
Carscallen	Morley	8231	Commissioner		17
Davis	Robert W.	8231	Commissioner		17
Howard	John F.	8231	Commissioner		17
Korthals	Robin W.	8231	Commissioner		17
McLeod	Mary Theresa	8231	Commissioner		17
Paddon	R. Stephen	8231	Commissioner		17

**Executive Office**

Advisors to the Chair		593 + Ext	FAX: 593-2318		
Alexopoulos	Tula	8084	Policy Advisor; Domestic		17
Jazokas	Cathy	8139	Research Assistant		17
Maclaren	Tanis	8259	Head; International Affairs		17

Chair's Office		593 + Ext	FAX: 593-3693		
Brown	David	8203	Chair		17
Chasson	David	2321	Articling Student		17
Mitchell	Erica	2325	Administrative Assistant		17
Reinbergs	Hemingway	2316	Articling Clerk		17
Shrubb	Linda	8201	Executive Assistant		17

Vice-Chairs' Office		593 + Ext	FAX: 593-3693		
Cuoppolo	Rose	8323	Executive Assistant		17
Geller	John	8229	Vice-Chair		17
Wetston	Howard	8206	Vice-Chair		17

**Executive Director**

Executive Director's Office		593 + Ext	FAX: 593-3693		
Macfarlane	Charlie	8208	Executive Director		17
Powley	Randall	8072	Chief Economist		17
Starr	Shelly	8209	Executive Assistant		17

Project Office		593 + Ext	FAX: 593-3693		
Finlay	Kathleen	8125	Manager		16
Genovese	JoAnne	8071	Assistant		16
Hahn	Randy	595-8943	Project Coordinator		16
Tovell	Janice	8230	Administrative Assistant		16

**Chief Accountant**

Chief Accountant's Office		593 + Ext	FAX: 593-3693		
Carchrae	John	8221	Chief Accountant		17
Dowling	Sandra	8153	Sr. Accountant		17
Kaphengst	Heidi	8222	Administrative Assistant		17

**General Counsel**

<b>General Counsel's Office</b>		<b>593 + Ext</b>	<b>FAX: 593-3681</b>	
Brookes	Nancy	8327	Administrative Assistant	17
Di Lieto	Rossana	8106	Legal Counsel	17
Dublin	Julia	8103	Sr. Legal Counsel	17
Gorelle	Krista Martin	3689	Legal Counsel	17
Pozderka	Irene	8327	Administrative Assistant	17
Wolburgh-Jenah	Susan	8245	General Counsel	17

**Secretary**

<b>Secretary's Office</b>		<b>593 + Ext</b>	<b>FAX: 593-2318</b>	
Aranha	Daisy	8916	Administrative Assistant	17
Gomme	Rose	8213	Hearings Registrar	17
Stevenson	John	8145	Secretary to the Commission	17

**Capital Markets**

<b>Compliance</b>		<b>593 + Ext</b>	<b>FAX: 593-8240</b>	
Antoniou	Noulla	595-8920	Accountant	18
Aquino	Bessie	8181	Administrative Assistant	18
Chichioco	Isabelita	8105	Financial Analyst	18
Everest	Kelly	595-8914	Accountant	18
Ferrari	Toni	3692	Manager	18
Forster	Christina	8061	Sr. Accountant	18
Fung	Carlin	8226	Accountant	18
Koor	Elle	8077	Sr. Accountant	18
Leung	Antoinette	595-8901	Sr. Accountant	18
Sandulescu	Ruxandra	2317	Accountant	18
Szorowski	Sylvia	8098	Accountant	18
Tedesco	Felicia	8273	Sr. Accountant	18
Tong	Estella	8219	Accountant	18
Tsung	Chris	3691	Accountant	18
Varma	Neeti	8067	Accountant	18
Walz	Trevor	3670	Accountant	18
Whitehouse	Julie	8272	Administrative Assistant	18

<b>Director's Office</b>		<b>593 + Ext</b>	<b>FAX: 593-8240</b>	
Gazzard	Bill	8089	Director	18
Holmes	Raymond	8199	Branch Coordinator	18
Patterson	Birgitt	8260	Administrative Assistant	18

<b>Investment Funds</b>		<b>593 + Ext</b>	<b>FAX: 593-8240</b>	
Chung	Yu Mee	8076	Legal Counsel	18
Connor	Nils	3694	Legal Counsel	18
Cowdery	Rebecca	8129	Manager	18
Dasil	Merilyn	8064	Sr. Legal Counsel	18
De Leon	Joan	8246	Administrative Assistant	18
Dempsey	Paul	8091	Asst. Manager	18
Erlich	Leslie	595-8947	Legal Counsel	18
Fuller	Patricia	8113	Administrative Assistant	18
Goldberg	Rhonda	3682	Legal Counsel	18
Hauerstock	Tamara	595-8915	Legal Counsel	18
Ilkow	Martha	2313	Admin Assistant	18
Knopp	Kristina	595-8946	Legal Counsel	18
Leonardo	Tracey	3677	Administrative Assistant	18
Mainville	Chantal	8168	Legal Counsel	18
McBain	Allison	8142	Administrative Assistant	18
McKall	Darren	8118	Legal Counsel	18
Nunes	Vera	2311	Legal Counsel	18
O'Brien	Helen	3677	Administrative Assistant	18

Capital Markets

Ramsay	Anne	8243	Sr.Accountant	18
Turchin	Laurel	3654	Legal Counsel	18
Turner	Paola	595-8945	Legal Counsel	18
<b>Market Regulation</b>		<b>593 + Ext</b>	<b>FAX: 593-8240</b>	
Bazavan	Alina	8082	Project Assistant Y2K	18
Chatterpaul	Indira	3664	Administrative Assistant	18
Demissie	Bethlehem	3688	Administrative Assistant	18
Dundas	Linda	595-8944	Legal Counsel	18
Elliott	Jennifer	8109	Legal Counsel	18
Fydell	Barbara	8253	Legal Counsel	18
Gilkes	Rachel	8148	Administrative Assistant	18
Greenglass	Susan	8140	Legal Counsel	18
Jondahl	Sky Lara	595-8923	Summer Student	18
Kodituwaku	Druscilla	3664	Administrative Assistant	18
Liu	Winfield	8250	Sr. Legal Counsel	18
McCurdy	Dave	3669	Consultant	18
Mullin	Kimberley	595-8927	Summer Student	18
Pare	Maxime	3650	Sr. Legal Counsel	18
Pavalow	Randee	8257	Manager	18
Stern	Tracey	8167	Legal Counsel	18
Waller	Elyot	595-8925	Summer Student	18
<b>Registrant Legal Services</b>		<b>593 + Ext</b>	<b>FAX: 593-8240</b>	
deLint	Dirk	8090	Legal Counsel	18
Dowdall-Logie	Peggy	2320	Manager	18
Sankar	Levi	8279	Legal Counsel	18
Watson	Darlene	8148	Legal Secretary	18
<b>Registration</b>		<b>593 + Ext</b>	<b>FAX: 593-8283</b>	
Bishop	Sherry-Ann	8278	Receptionist	18
Brown	Edith	8276	Registration Officer [f-fz]	18
Brown	Karen	8104	Database Officer	18
Capozzolo	Daniela	8164	Sr. Registration Officer [r-s]	18
Captain	Nan	3672	Sr. Registration Officer [k-m]	18
Daley	Dianna	8107	Database Officer [IFIC Conditional Let]	18
Dizon	Dina	3660	Asst. General Manager	18
Gayle	Phillip	8275	Asst. General Manager	18
Gutierrez	Lucy	8277	Database Officer	18
Kelley	Dan	3674	Sr. Registration Officer [g-j]	18
Leitch	Donna	8263	Assistant General Manager [A]	18
Mahadeo	Bibi	8274	Renewal Officer [k-z]	18
Maharaj	Sharda	8217	Renewal Officer [a-j]	18
Marshall	Natalie	8303	Sr. Registration Officer [t-z]	18
Ming	Clara	8349	Information Liaison Officer	18
Mohammed	Selina	8270	Sr. Registration Officer [b-c]	18
Noronha	Kipson	8258	Sr. Registration Officer [n-q]	18
Papageorgopoulos	John	8095	Regulatory Law Student	18
Pynisky	Barbara-Anne	8187	Administrative Assistant	18
Rampersad	Valmiki	3671	Registration Officer [g-j]	18
Regalado	Aida	8345	Administrative Assistant	18
Robino	Josie	8347	Registration Officer [r-rz]	18
Rodriguez	Carlos	3673	Registration Officer [s-sz]	18
Sargent	Toni	8097	Administrative Assistant	18
Shariff	Neel	8300	Registration Officer [p-q]	18
Sokolov	Darinka	3668	Registration Officer	18
Spiers	Nicholas	8337	Registration Officer [c-cz]	18
Stefanec	Rebecca	8070	Registration Officer [t-z]	18
Sugden	Gina	8162	General Manager	18
Volpe	Susie	8052	Registration Officer [k-o]	18
Woodall	Pamela	8225	Registration Officer [d-ez]	18

Corporate Finance

<b>Advisory Services</b>		<b>593 + Ext</b>	<b>FAX: 593-8177</b>	
Bridge	Marrienne	595-8907	Sr. Accountant	16
<b>Continuous Disclosure</b>		<b>593 + Ext</b>	<b>FAX: 593-8252</b>	
Akhtar	Maqbool	8329	Financial Examiner (Temp)	16
Blackburn	Lisa	595-8922	Accountant	16
Chung	Karie	000-0000	Administrative Assistant	16
Enright	Lisa	3686	Sr. Accountant	16
Fergusson	Rose	8116	Sr. Accountant	16
Franken	Heidi	8249	Manager [A]	16
Gleeson	Peter	8158	Review Officer	16
Gorman	Kelly	8135	Sr. Accountant	16
Graham	Heather	8299	Administrative Assistant	16
Hughes	John	3695	Manager	16
Kalra	Ritu	8063	Accountant	16
Khan	Nasir	595-8949	Examiner / Review Officer	16
Kosti-Perciasepe	Shirley	8280	Administrative Assistant	16
Mankikar	Ann	8281	Examiner / Review Officer	16
Mattacott	David	8325	Continuous Disclosure Assistant	16
McNab	Greg	3680	Summer Student	16
Peters	Joanne	8134	Sr. Legal Counsel	16
Rees-Jones	Corrie	3656	Clerk	16
Seixas	Andrea	8310	Administrative Assistant	16
Smith	Wendy	8264	Accountant	16
Tsatsos	Irene	8223	Sr. Accountant	16
<b>Continuous Disclosure</b>		<b>593 + Ext</b>	<b>FAX:</b>	
Varanaviciene	Loreta	000-0000	Financial Examiner	16
<b>Director's Office</b>		<b>593 + Ext</b>	<b>FAX: 593-8177</b>	
Clifford	Breda	8238	Branch Coordinator	16
Love	Ellen	8215	Administrative Assistant	16
McCombe	Deborah	8151	Senior Geologist	16
Soden	Kathryn	8149	Director	16
<b>Filings Team #1</b>		<b>593 + Ext</b>	<b>FAX: 593-8244</b>	
Baksh	Fareeza	8062	Selective Review Officer	16
Blumberger	Erez	3662	Legal Counsel	16
Bureauud	Jean-Paul	8131	Legal Counsel	16
Deane	Wendy	8218	Administrative Assistant	16
Dhillon	Indi	8075	Accountant	16
Fromm	Nancy	8333	Administrative Assistant	16
Gorman	William	8132	Legal Counsel	16
Kidder	Rosana	8114	Administrative Assistant	16
Kohl	Robert	8233	Sr. Legal Counsel	16
Paul	Margo	8136	Manager	16
Persaud	Violet	8166	Applications Administrator	16
Sequeira	Shirley	8324	Administrative Assistant	16
Short	Janet	595-8919	Accountant	16
Tillie	Marcel	8078	Sr. Accountant	16
Whiler	Rick	8127	Sr. Accountant	16
<b>Filings Team #2</b>		<b>593 + Ext</b>	<b>FAX: 593-3683</b>	
Bertoia	Julie	8083	Sr. Accountant	16
Gerhart	Marsha	595-8918	Sr. Legal Counsel	16
Haegeman	Christine	8123	Administrative Assistant	16
Henry	Elizabeth	8334	Examiner / Review Officer	16
Lancia	Marina	8262	Administrative Assistant	16
MacGregor	Judy	8165	Administrative Assistant	16
McCallum	Susan	8248	Sr. Legal Counsel	16
McVicar	James	8154	Legal Counsel	16
Nania	Viraf	8267	Accountant	16
Pereira	Shelley	8110	Administrative Assistant	16

**Corporate Finance**

Rogers	Cynthia	8261	Sr. Legal Counsel	16
Sanjoto	Winnie	8119	Lawyer	16
Seer	Moses	3684	Administrative Support Clerk	16
Shiwbhajan	Merle	8239	Review Officer	16
Vranic	Iva	8115	Manager	16
Welsh	Doug	8068	Legal Counsel	16

**Take Over Bids**

		<b>593 + Ext</b>	<b>FAX: 593-8177</b>	
Cosentino	Joseph	8081	Summer Student	16
Flood	Christopher	8092	Articling Student	16
Holmes	Janet	8282	Sr. Legal Counsel	16
Jones	Carole	8235	Administrative Assistant	16
Kanji	Naizam	8060	Legal Counsel	16
Magidson	Stan	8124	Director	16
Moore	Terry	8133	Legal Counsel	16
Shostack	Lisa	8092	Articling Student	16

**Corporate Relations**

**Corporate Communications**

		<b>593 + Ext</b>	<b>FAX: 593-3693</b>	
Maisonneuve	Jean-Pierre	595-8913	Corporate Communications Officer	17
McDougall	Rowena	8117	Corporate Communications Officer	17

**Corporate Communications -Website & OSC Bulletin**

		<b>593 + Ext</b>	<b>FAX: 593-3693</b>	
Del Duca	Luisa	8216	Website & OSC Bulletin Coordinator	17
Kalkounis	Demetre	8086	Website Editor	17
Nathani	Rubina	8214	OSC Bulletin Assistant	17

**Investor Education**

		<b>593 + Ext</b>	<b>FAX: 593-3693</b>	
Ferdinand	Alicia	8307	Investor Education Officer	17
Kozinski	Theresa	595-8917	Administrative Assistant	17
Stow	Nancy	8297	Manager	17

**Manager's Office**

		<b>593 + Ext</b>	<b>FAX: 593-3693</b>	
Chia	Rose	8053	Administrative Assistant	17
Switzer	Frank	8120	Manager	17

**Corporate Services**

**Administration**

		<b>593 + Ext</b>	<b>FAX: 593-8348</b>	
Annibale	Joe	3663	Manager	19
Campbell	Dolores	8232	General Services Coordinator	19

**Administration - Office Services**

		<b>593 + Ext</b>	<b>FAX: 593-8348</b>	
Cavaliere	Catalina	8066	Office Services Clerk	19
De Souza	Geof	8926	Summer Student	19
Mail Room		8182	General Inquiries	19
Mumby	Bill	8079	Office Services Clerk	19
Silliphant	Nancy	8080	Office Services Clerk	19
Singh	Gaitree	8056	Office Services Clerk	19

**Business Planning & Reporting**

		<b>593 + Ext</b>	<b>FAX: 593-8348</b>	
Day	Robert	8179	Manager	20

**Commission Human Resources**

		<b>593 + Ext</b>	<b>FAX: 593-8348</b>	
Boardman	Sally	8085	Human Resources	20

Corporate Services

			Consultant	
Flash	Sonia	8121	Admin Assistant	20
Hryniowski	Ellen	8186	Manager	20
Moosa	Rehana	8050	Summer Student	20
Ossea	Jan	8160	Human Resources Coordinator	20
<b>Commission Library</b>		<b>593 + Ext</b>	<b>FAX: 593-8188</b>	
Sinclair	Donna	8268	Librarian	22
<b>Commission Records</b>		<b>593 + Ext</b>	<b>FAX: 593-8188</b>	
Adler	David	8342	Records Clerk	22
Dewberry	Craig	3675	Records Clerk	22
Furigay	Amelita	8336	Sr. Information Clerk	22
Leader	Shiraine	8055	Temp Records Clerk	22
Serrano	Edgar	8331	Records Clerk	22
Shaw	Fazila	8338	Supervisor	22
Smith	Jeff	8335	Records Clerk	22
Vine	Julanna	8251	Records Clerk	22
<b>Director's Office</b>		<b>593 + Ext</b>	<b>FAX: 593-8348</b>	
Mackenzie	Marilyn	8193	Administrative Assistant	19
Norman	Margaret	3698	Consultant	22
Power	Mary	8143	Administrative Assistant	19
Spencer	Mary	8185	Director	19
<b>Finance</b>		<b>593 + Ext</b>	<b>FAX: 593-8348</b>	
Buenaflor	Eric	8234	Sr. Accounts Clerk	20
Dowden	Yvonne	8265	Accounts Clerk	20
Lackeyram	Marissa	8228	Accounts Clerk	20
Panzetta	Frank	8069	Controller	20
<b>Information Technology - [IT]</b>		<b>593 + Ext</b>	<b>FAX: 593-8188</b>	
Byrnes	Robert	8198	Deputy Director	19
Rubinoff	Dorothy	8220	Project Manager	19
Trotier-Tate	Helene	8146	Training Administrator	19
<b>IT - Application Services</b>		<b>593 + Ext</b>	<b>FAX: 593-8188</b>	
Ash	Don	8184	Consultant	19
Choi	Wayne	8189	Applications Developer	19
Dicuangco	Marina	8192	Applications Developer	19
Hinds	Andre	8194	Database Administrator	19
Kobayakawa	Dave	8173	Consultant	19
Law	Leo	3679	Applications Architect	19
Siraki	Tom	3678	Consultant	19
Too	Byron	8197	Manager	19
<b>IT - Technology Services</b>		<b>593 + Ext</b>	<b>FAX: 593-8188</b>	
Battle	Kevin	8184	Co-op Student	19
Butler	Michael	3685	Client Support Specialist	19
Dafoe	Kevin	8912	Consultant	19
Georghiou	Mario	8175	Client Support Specialist	19
HelpDesk		6393		19
Johnston	Stephen	595-8911	Client Services Coordinator	19
Lihou	Gordon	8094	Consultant	19
McGregor	Mark	8170	Manager	19
McNamara	Chris	8171	Consultant	19
Roy	Greg	8195	Client Support Specialist	19
Small	Anthony	8172	Telecommunications Analyst	19
Smith	Robert	8183	Technical Services Analyst [Systems]	19
Sommer	Peter	8191	Lotus Notes Administrator	19
Suen	Oliver	3696	Systems Administrator	19
Wong	Raymond	8174	Consultant	19

**Enforcement**

**Case Assessment**

		<b>593 + Ext</b>	<b>FAX: 593-8321</b>	
Aiken	John	8284	Investigator	8
Andrades	Michelle	8271	Enforcement Assistant	8
Andrego	Michael	8312	Enforcement Assistant	8
Asquini	Mary	8247	Intelligence Officer	8
Berry	Kim	8150	Investigator	8
Byers	Christopher	8058	Investigation Counsel	8
Callender	Ursel	8343	Market Analyst	8
Casiero	Vince	8293	Investigation Counsel	8
Chao	Lily	8318	EIS Administrator	8
Davis	Carolyn	8292	Investigator	8
Dobell	Sabine	8301	Administrative Assistant	8
Fallone	Joanna	8304	Team Manager	8
Gutierrez	George	8341	Investigator	8
Luciani	Leslie	595-8908	Market Analyst	8
Petroff	Tom	8340	Sr. Market Analyst	8
Pizzoli	Claudio	8316	Scanning Clerk	8
Sanchioni	Robert	8236	Assistant Market Analyst	8
Shahviri	Mehran	8298	Investigator	8
Tedford	Esther	8159	Intelligence Officer	8
Tharma	Linga	8180	Document Control Officer	8

**Director's Office**

		<b>593 + Ext</b>	<b>FAX: 593-8321</b>	
Da Silva	Grace	8315	Branch Coordinator	8
Magpayo	Jessica	8144	Administrative Assistant	8
Watson	Michael	8156	Director	8

**Investigation Team**

		<b>593 + Ext</b>	<b>FAX: 593-8321</b>	
Anderson	Tom	8087	Investigator	8
Bulnes	Jamie	8242	Investigation Counsel	8
Butler	Brian	8286	Team Manager	8
Cho	Peter	8255	Sr. Forensic Accountant	8
Chu	Brenda	595-8910	Enforcement Assistant	8
Clarkin	Brian	8237	Sr. Forensic Accountant	8
Collins	Stephanie	8163	Forensic Accountant	8
Cottrell	John	8289	Forensic Accountant	8
Coulis	Peter	8296	Investigator	8
De Souza	Paul	8295	Forensic Accountant	8
de Verteuil	Mike	8305	Sr. Forensic Accountant	8
Eggers	Benjamin	8051	Investigation Counsel	8
Gunn	George	8288	Sr. Investigator	8
Hubley	Michael	8306	Sr. Investigator	8
Jewt	Vidya	8346	Administrative Assistant	8
Ljubic	Greg	8141	Sr. Investigation Counsel	8
Lo	Yvonne	8196	Forensic Accountant	8
Masci	Larry	8291	Investigator	8
McCann	Colin	8285	Investigator	8
Patel	Kim	8290	Enforcement Assistant	8
Pilipavicius	Rima	8152	Sr. Forensic Accountant	8
Pilkey	Scott	8322	Sr. Investigation Counsel	8
Radu	Rick	8309	Investigator	8
Roesslein	Margot	8169	Administrative Assistant	8
Shantadas	Bavani	8112	Administrative Assistant	8
Sikora	Jody	595-8948	Forensic Accountant	8
Vear	Michael	8111	Forensic Accountant	8

**Litigation Team**

		<b>593 + Ext</b>	<b>FAX: 593-8321</b>	
Barnett	Natalie	8903	Articling Student	8
Carson	Muriel	595-8909	Administrative Assistant	8
Corbett	Hugh	8074	Litigation Counsel	8
Daniels	Kathryn	8093	Lawyer	8
Deravi	Delora	8294	Articling Student	8
Dunphy	Charlotte	8317	Administrative Assistant	8



**Enforcement**

Friesen	Jennifer	595-8921	Articling Student	8
Graburn	Anthony	2312	Lawyer	8
Kourakos	Joanne	2314	Enforcement Assistant	8
Lalla	Diane	8320	Administrative Assistant	8
Manarin	Karen	8088	Litigation Counsel	8
Moseley	Tim	8128	Team Manager	8
Naster	Jay	8211	Sr. Litigation Counsel	8
Orlando	Rita	8102	Admin Assistant	8
Oseni	Sarah	8138	Litigation Counsel	8
Ramirez	Joanne	8332	Enforcement Assistant	8
Smith	ian	8319	Litigation Counsel	8
Superina	Johanna	8210	Sr. Litigation Counsel	8
Walker	Marion	8102	Administrative Assisstant	8
Wootton	Kate	8302	Litigation Counsel	8

**Inquiries**

**Correspondence Team**

		<b>593 + Ext</b>	<b>FAX: 593-8122</b>	
Booker	Ken	8137	Sr. Inquiries Officer	19
Donnelly	Denis	8330	Lead Inquiries Officer	19
Krystie	Allan	8313	Lead Inquiries Officer	19
Wilson	James	8096	Senior Inquiries Officer	19

**Support Team**

		<b>593 + Ext</b>	<b>FAX: 593-8122</b>	
Chambers	Joan	8287	Sr. Inquiries Officer	19
Gaudet	Tommy	2326	Quality & Performance Officer	19
Martin Sidey	Donna	8161	Legal Counsel	19
McManus	Mark	8130	Manager	19
Pendala	Bindu	2315	Inquiries Officer	19
Reception	ID	597-0681		19
Wagner	Heather	2326	Quality & Performance Officer	19

**Telephone Team**

		<b>593 + Ext</b>	<b>FAX: 593-8122</b>	
Chau	Karmen	8224	Inquiries Officer	19
Fiorini	Louisa	8178	Administrative Assistant	19
Heymann	Jonathan	8227	Inquiries Officer	19
Khanna	Kamal	8204	Inquiries Officer	19
McGinnis	Helen	8155	Inquiries Officer	19
Oyelade	Simeon	8157	Inquiries Officer	19
Persaud	Juliet	8339	Inquiries Officer	19
Wilson	Val	0	Receptionist	19

**1.1.3 TSE - Listing Policy - Proposed New Original Listing Requirements for Technology Companies Applying under the Industrial Category - Notice of Commission Approval**

**TORONTO STOCK EXCHANGE**

**LISTING POLICY - PROPOSED NEW ORIGINAL LISTING REQUIREMENTS FOR TECHNOLOGY COMPANIES APPLYING UNDER THE INDUSTRIAL CATEGORY**

**NOTICE OF COMMISSION APPROVAL**

On August 28, 2000, the Commission approved the Toronto Stock Exchange's proposed new original listing requirements for technology companies applying under the industrial category. The new listing requirements establish relevant criteria to facilitate the Exchange's assessment and listing of technology companies, ensure that the listing standards for technology companies result in the appropriate positioning of the Exchange in relation to other equity markets and foster transparency and consistency in the application of listing standards. The new listing requirements were published for comment on June 30, 2000 at (2000) 23 OSCB 4638. No comments were received in response to the request for comments.

**1.1.4 Notice of Request for Comments - Proposed Ontario Securities Commission Rule 45-501 Exempt Distributions (Revised)**

**NOTICE OF REQUEST FOR COMMENTS  
PROPOSED RULE 45-501 EXEMPT DISTRIBUTIONS (REVISED), COMPANION POLICY 45-501CP (REVISED), FORM 45-501F1 (REVISED), FORM 45-501F2 (REVISED) AND FORM 45-501F3**

**AND**

**NOTICE OF PROPOSED RESCISSION OF RULE 45-501 EXEMPT DISTRIBUTIONS AND COMPANION POLICY 45-501CP, AND RULE 45-504 PROSPECTUS EXEMPTION FOR DISTRIBUTIONS OF SECURITIES TO PORTFOLIO ADVISORS ON BEHALF OF FULLY MANAGED ACCOUNTS**

The Commission is publishing in today's Bulletin the following documents:

- (1) Notice of Proposed Rule 45-501 Exempt Distributions (Revised), Companion Policy 45-501CP(Revised), Form 45-501F1 (Revised), Form 45-501F2 (Revised) and Form 45-501F3, and Notice of Proposed Rescission of Rule 45-501 Exempt Distributions and Companion Policy 45-501CP, and Rule 45-504 Prospectus Exemption for Distributions of Securities to Portfolio Advisors on Behalf of Fully Managed Accounts;
- (2) Proposed Rule 45-501 Exempt Distributions (Revised) and Companion Policy 45-501CP (Revised); and
- (3) Proposed Form 45-501F1(Revised), Form 45-501F2 (Revised) and Form 45-501F3.

The materials are published in Chapter 6 of the Bulletin.

**1.1.5 OSC Rule 91-504 - Over-the-Counter Derivatives - Notice of Final Rule Under the Securities Act**

**ONTARIO SECURITIES COMMISSION RULE 91-504  
OVER-THE-COUNTER DERIVATIVES**

**NOTICE OF FINAL RULE UNDER THE SECURITIES ACT**

The Commission is publishing in today's Bulletin a Notice and the Over-the-Counter Derivatives Rule (the "Rule").

The Notice and the Rule are published in Chapter 5 of the Bulletin.

**1.1.6 Multilateral Instrument 45-102 and Companion Policy 45-102CP and Forms 45-102F1, 45-102F2 and 45-102F3 - Resale of Securities**

**NOTICE OF PROPOSED MULTILATERAL INSTRUMENT  
45-102 AND COMPANION POLICY 45-102CP AND  
FORMS 45-102F1, 45-102F2 AND 45-102F3**

**RESALE OF SECURITIES**

The Commission is publishing in Chapter 6 of today's Bulletin a Notice, requesting comment on proposed Multilateral Instrument 45-102 Resale of Securities and Companion Policy 45-102CP, together with three related Forms. The Notice also refers to the proposed rescission of subsection 69(1) and section 70 of Regulation 1015 (the "Regulation"), sections 26 and 27 of Schedule 1 and Forms 22 and 23 made under the Regulation.

**1.1.7 Multilateral Instrument 72-101, Companion Policy 72-101CP and Form 72-101F1 - Distributions Outside of the Local Jurisdiction**

**NOTICE OF PROPOSED MULTILATERAL INSTRUMENT  
72-101 COMPANION POLICY 72-101CP  
AND FORM 72-101F1**

**DISTRIBUTIONS OUTSIDE OF THE LOCAL  
JURISDICTION**

The Commission is publishing in Chapter 6 of today's Bulletin a Notice, requesting comment on proposed Multilateral Instrument 72-101 Distributions Outside of the Local Jurisdiction and Companion Policy 72-101CP, together with a related Form. The Notice also refers to the proposed rescission of the Interpretation Note of the Ontario Securities Commission (formerly Ontario Securities Commission Policy 1.5).

**1.1.8 Dialogue with the OSC**

July 4, 2000

*Dialogue with the OSC*

Dear Colleague:

Each year the Ontario Securities Commission sponsors an all-day conference designed to bring the staff of the Commission together with professionals from the financial services industry.

I would like to take this opportunity to invite you to participate in this year's *Dialogue with the OSC* event, now in its sixth successful year, which will take place at the Toronto Sheraton Centre Hotel on October 31<sup>st</sup>, 2000.

This year, the agenda for Dialogue again focuses on the significant regulatory issues and events that have emerged over the past year, including the Ontario Government's plan to merge the OSC with the Financial Services Commission of Ontario. Topics will also include **A Market Regulation Update, Financial Planning, Mutual Funds and the Launch of the MFDA, Enforcement Issues and Current Financial Reporting and Auditing Issues**, among many other interesting and timely items.

The proposed agenda for *Dialogue with the OSC 2000* is attached.

The cost to attend this conference is \$400.00 and for those registering before September 11<sup>th</sup> we are offering an early bird special of \$350.00. To reserve your place, return the attached agenda with your business card and concurrent session choices by facsimile to (416) 593-0249. An invoice will follow. If you have any questions please call *Dialogue with the OSC* registration at (416) 593-7352 before October 20, 2000. Or you may register on-line through the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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***New This Year***

The 2000 edition of *Dialogue with the OSC* will introduce a new and very exciting element to the program. In order to bring our staff and this important event to a greater number of our constituents, we are offering a modified version of Dialogue through a satellite feed to the following locations:

- London
- Sudbury
- Ottawa

During the satellite broadcast, participants at each of the above locations will be able to watch and listen to the presentations as well as ask questions of the panelists in Toronto.

If you are interested in attending Dialogue at one of these locations call (416) 593-7352.

---

I hope you are able to join us either in Toronto, or at one of the other locations across Ontario, for this exciting and informative conference.

Sincerely,

David Brown Q.C.  
Chair

Encl.

# DIALOGUE WITH THE OSC

## Preliminary Agenda & Early Registration

**9:00 a.m. Welcoming Address**

Charlie F. Macfarlane, Executive Director, OSC

**9:10 a.m. Opening Remarks**

David A. Brown, Q.C., Chair of the OSC

**9:30 a.m. Executive Panel**

David Brown, Ontario Securities Commission; Dina Palozzi, Ontario Insurance Commission; Securities Market Participant and FSCO Participant

**10:00 a.m. Panel of Chairs**

Chairs of the Ontario, Alberta, British Columbia and Quebec Securities Commissions

**11:00 a.m. Break-Out Session 1**

*(Please check one (1) box only on registration form to indicate concurrent session choice)*

- **Market Regulation Update: Including ATS and the New Markets**  
A discussion of the changes in the Canadian marketplace including the OSC and the reorganization of the Canadian exchanges and regulatory approaches to advances in electronic trading technology.
- **Enforcement Issues**  
Current trends in enforcement reflecting the new approaches to enforcing Ontario Securities law.
- **Corporate Finance: An Update**  
Included in this update are a review of developments in recent filings issues and a report on small business financing.

**11:50 a.m. Break-Out Session 2**

*(Please check one (1) box only on registration form to indicate concurrent session choice)*

- **Mutual Funds: The Launch of the MFDA**  
An update on the launch of the Mutual Funds Dealers Association and the issues surrounding the question of distribution structures for the mutual fund dealer.
- **Strengthening the Secondary Market: Enhancing the Quality of Continuous Disclosure by Reporting Issuers**  
A discussion of legislative, regulatory and operational changes including the developments in Continuous and Integrated Disclosure. Also reviewed SEDI, the System for Electronic Data on Insiders.
- **International Issues: The OSC and the International Securities Regulators**  
A look at the critical issues facing regulators as electronic trading makes borders irrelevant in the age of e-trades and electronic communication. Also included will be a review of the work of the International Accounting Standards Committee.

**12:30 p.m. Lunch**

**1:30 p.m. Luncheon Address**

Dr. Sherry Cooper, Chief Economist, Nesbitt Burns

**Tuesday, October 31, 2000 • Sheraton Centre Hotel • Toronto**

**Dialogue with the OSC • Tuesday, October 31, 2000 • Sheraton Centre Hotel, Toronto**

**2:00 p.m. Break-Out Session 3**

*(Please check one (1) box only on registration form to indicate concurrent session choice)*

- **Financial Planning Update and The Re-regulation of Advice Project**  
A review of the products and services delivered to customers in view of the retail securities industry's shift in focus from stock trading to financial advice and asset management. Two regulatory initiatives that respond to this shift.
- **Current Financial Reporting and Auditing Issues at the OSC**  
A review of staff positions and current policy directions including a look at GAAP and GAAS.
- **The Latest Developments in Mergers and Acquisitions**  
The Takeover/Issuer Bids team from the OSC will highlight the issues and latest developments under discussion at the OSC.

**3:30 p.m. Break-Out Session 4**

*(Please check one (1) box only on registration form to indicate concurrent session choice)*

- **Latest Developments in Regulating Mutual Funds**  
Highlights of the present focus of the OSC in regulating mutual funds and their management, as well as a discussion of the regulatory issues raised by current trends in the industry. Includes a look at the OSC's work regarding the recently released report on fund governance.
- **SRO Oversight**  
A review of the Commission's efforts to strengthen protocols for SRO oversight through the development of oversight agreements and the planned national compliance review.
- **Investor Education**  
A look at the products developed by the OSC to enhance investor understanding of the securities industry.

**4:45 p.m. Closing Remarks**

**5:00 p.m. Conference Conclusion**

**DIALOGUE WITH THE OSC • REGISTRATION FORM**

**DIALOGUE BREAKOUT SESSIONS**

You will be able to attend one breakout session for each time slot (Please check one (1) box for each Breakout Session)

<p><b>11:00 - 11:40 Break Out Session 1</b></p> <p><input type="checkbox"/> Market Regulation Update</p> <p><input type="checkbox"/> Enforcement Issues</p> <p><input type="checkbox"/> Corporate Finance: An Update</p>	<p><b>2:00 - 3:15 Break-Out Session 3</b></p> <p><input type="checkbox"/> Financial Planning Update</p> <p><input type="checkbox"/> Current Financial Reporting/Auditing</p> <p><input type="checkbox"/> Latest Developments in Mergers/Acquisitions</p>
<p><b>11:50 - 12:30 Break Out Session 2</b></p> <p><input type="checkbox"/> Mutual Funds: The Launch of the MFDA</p> <p><input type="checkbox"/> Strengthening the Secondary Market</p> <p><input type="checkbox"/> International Issues</p>	<p><b>3:30 - 4:45 Break Out Session 4</b></p> <p><input type="checkbox"/> Regulating Mutual Funds</p> <p><input type="checkbox"/> SRO Oversight</p> <p><input type="checkbox"/> Investor Education</p>

**Registration Fee: \$400** (after September 11, 2000)

**Earlybird Fee: \$350** (before September 11, 2000)

To register, please attach your business card to this form and Fax to: "Dialogue with the OSC" at (416) 593-0249 An invoice for the registration fee will follow in the mail.

**For a Detailed Program or Further Information:**

Call (416) 593-7352 or visit our website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

Please Place your Business Card Here

# DIALOGUE WITH THE OSC - LONDON

## Preliminary Agenda & Early Registration

All morning sessions and the Luncheon Address will be broadcast from Toronto to London by satellite link followed by a live panel entitled, **Financial Planning - A Review of OSC/CSA Initiatives**. This panel will look at the current regulatory model governing advice. During the morning program, participants will be able to watch and listen to the presentations as well as ask questions of the panelists in Toronto.

- 9:00 a.m. Welcoming Address**  
Charlie F. Macfarlane, Executive Director, OSC
- 9:10 a.m. Opening Remarks**  
David A. Brown, Q.C., Chair of the OSC
- 9:30 a.m. Executive Panel**  
David Brown, Ontario Securities Commission; Dina Palozzi, Financial Services Commission of Ontario; Securities Market Participant and FSCO Participant
- 10:00 a.m. Panel of Chairs**  
Chairs of the Ontario, Alberta, British Columbia and Quebec Securities Commissions
- 11:00 a.m. Market Regulation Update: Including ATS and the New Markets**  
A discussion of the changes in the Canadian marketplace including the OSC and the reorganization of the Canadian exchanges and regulatory approaches to advances in electronic trading technology.
- 11:50 a.m. Mutual Funds: The Launch of the MFDA**  
An update on the launch of the Mutual Funds Dealers Association and the issues surrounding the question of distribution structures for the mutual fund dealer.
- 12:30 p.m. Lunch and Luncheon Address**  
Dr. Sherry Cooper, Chief Economist, Nesbitt Burns
- 2:00 p.m. Live Panel in London**  
**Financial Planning - A Review of OSC/CSA Initiatives**  
Julia Dublin, Chair, CSA Financial Planning Committee  
A look at the current regulatory model governing advice.
- 3:00 p.m. Closing Remarks**

### DIALOGUE WITH THE OSC • REGISTRATION FORM

**Registration Fee: \$300** (after September 11, 2000)

**Earlybird Fee: \$250** (before September 11, 2000)

To register, please attach your business card to this form and  
Fax to: "Dialogue with the OSC" at  
(416) 593-0249

An invoice for the registration fee will follow in the mail.

**For a Detailed Program or Further Information:**

Call (416) 593-7352 or visit our website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

Please Place your  
Business Card Here

**Tuesday, October 31, 2000 • London**



# DIALOGUE WITH THE OSC - OTTAWA

## Preliminary Agenda & Early Registration

All morning sessions and the Luncheon Address will be broadcast from Toronto to Ottawa by satellite link followed by a live panel entitled, **Small Business Financing - A Progress Report**. This panel will give a progress report on the regulatory issues surrounding small business financing. During the morning program, participants will be able to watch and listen to the presentations as well as ask questions of the panelists in Toronto.

- 9:00 a.m. Welcoming Address**  
Charlie F. Macfarlane, Executive Director, OSC
- 9:10 a.m. Opening Remarks**  
David A. Brown, Q.C., Chair of the OSC
- 9:30 a.m. Executive Panel**  
David Brown, Ontario Securities Commission; Dina Palozzi, Financial Services Commission of Ontario; Securities Market Participant and FSCO Participant
- 10:00 a.m. Panel of Chairs**  
Chairs of the Ontario, Alberta, British Columbia and Quebec Securities Commissions
- 11:00 a.m. Market Regulation Update: Including ATS and the New Markets**  
A discussion of the changes in the Canadian marketplace including the OSC and the reorganization of the Canadian exchanges and regulatory approaches to advances in electronic trading technology.
- 11:50 a.m. Mutual Funds: The Launch of the MFDA**  
An update on the launch of the Mutual Funds Dealers Association and the issues surrounding the question of distribution structures for the mutual fund dealer.
- 12:30 p.m. Lunch and Luncheon Address**  
Dr. Sherry Cooper, Chief Economist, Nesbitt Burns
- 2:00 p.m. Live Panel in Ottawa**  
**Small Business Financing - A Progress Report**  
This panel will provide a progress report on the regulatory issues surrounding small business financing.
- 3:00 p.m. Closing Remarks**

### DIALOGUE WITH THE OSC • REGISTRATION FORM

**Registration Fee: \$300** (after September 11, 2000)

**Earlybird Fee: \$250** (before September 11, 2000)

To register, please attach your business card to this form and  
Fax to: "Dialogue with the OSC" at  
(416) 593-0249

An invoice for the registration fee will follow in the mail.

**For a Detailed Program or Further Information:**

Call (416) 593-7352 or visit our website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

Please Place your  
Business Card Here

**Tuesday, October 31, 2000 • Ottawa**

# DIALOGUE WITH THE OSC - SUDBURY

## Preliminary Agenda & Early Registration

All morning sessions and the Luncheon Address will be broadcast from Toronto to Sudbury by satellite link followed by a live panel entitled, **Mining Regulations - After the Mining Standards Task Force Report**. This panel will look at the effect of the report on the mining industry. During the morning program, participants will be able to watch and listen to the presentations as well as ask questions of the panelists in Toronto.

- 9:00 a.m. Welcoming Address**  
Charlie F. Macfarlane, Executive Director, OSC
- 9:10 a.m. Opening Remarks**  
David A. Brown, Q.C., Chair of the OSC
- 9:30 a.m. Executive Panel**  
David Brown, Ontario Securities Commission; Dina Palozzi, Financial Services Commission of Ontario; Securities Market Participant and FSCO Participant
- 10:00 a.m. Panel of Chairs**  
Chairs of the Ontario, Alberta, British Columbia and Quebec Securities Commissions
- 11:00 a.m. Market Regulation Update: Including ATS and the New Markets**  
A discussion of the changes in the Canadian marketplace including the OSC and the reorganization of the Canadian exchanges and regulatory approaches to advances in electronic trading technology.
- 11:50 a.m. Mutual Funds: The Launch of the MFDA**  
An update on the launch of the Mutual Funds Dealers Association and the issues surrounding the question of distribution structures for the mutual fund dealer.
- 12:30 p.m. Lunch and Luncheon Address**  
Dr. Sherry Cooper, Chief Economist, Nesbitt Burns
- 2:00 p.m. Live Panel in Sudbury**  
**Mining Regulations - After the Mining Standards Task Force Report**  
Deborah McCombe, Senior Mining Consultant, OSC  
This panel will look at what the Mining Standards Task Force Report means to the mining industry.
- 3:00 p.m. Closing Remarks**

### DIALOGUE WITH THE OSC • REGISTRATION FORM

**Registration Fee: \$300** (after September 11, 2000)

**Earlybird Fee: \$250** (before September 11, 2000)

To register, please attach your business card to this form and  
Fax to: "Dialogue with the OSC" at  
(416) 593-0249

An invoice for the registration fee will follow in the mail.

**For a Detailed Program or Further Information:**

Call (416) 593-7352 or visit our website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

Please Place your  
Business Card Here

**Tuesday, October 31, 2000 • Sudbury**

**1.2 News Releases**

**1.2.1 RCMP/OSC Announce New Collaboration in the Fight Against Organized Crime**

August 31, 2000

**RCMP/OSC ANNOUNCE NEW COLLABORATION IN THE FIGHT AGAINST ORGANIZED CRIME**

Today the Ontario Securities Commission and the Royal Canadian Mounted Police signed "Terms of Reference" to establish a joint RCMP/OSC Securities Fraud Unit. The newly established unit will target criminal activity in the capital markets and in particular, organized crime activity in the stock market. This will be done through reliance on the gathering of intelligence and taking a pro-active stance against any fraudulent activity discovered within the Canadian capital markets.

The Royal Canadian Mounted Police and Ontario Securities Commission mutually identified a need for an enhanced profile in Canada's capital markets. This includes developing information and intelligence from enhanced partnerships with the securities industry. Information and intelligence developed by the unit will be used to permit pro-active investigations of any fraudulent activity. This includes the involvement of organized crime and money laundering in Canada's capital markets. A partnership with the Ontario Securities Commission to form a strong intelligence gathering and enforcement unit is a natural fit to best address the challenges faced in dealing with what are often long, complex and difficult investigations.

The Ontario Securities Commission has the dual mandate: to protect consumers and equally important, to foster confidence in our capital markets. Today's announcement will help both the RCMP and the Ontario Securities Commission to accomplish both of these goals.

This initiative is also meant to send a strong signal that the presence of organized crime, and criminal activity in general, in the Canadian capital markets will not be tolerated. This message will promote confidence among investors, both here in Canada and among international investors.

For further information please contact:

Frank Switzer  
Ontario Securities Commission  
416-593-8120

Michele Paradis  
Royal Canadian Mounted Police  
416-952-4619 Office  
416-715-2375 Pager

**1.2.2 Clifford Paul Tindall - OSC Applies Sanctions**

September 1, 2000

**ONTARIO SECURITIES COMMISSION APPLIES SANCTIONS AGAINST CLIFFORD PAUL TINDALL**

Toronto - On August 30<sup>th</sup>, 2000, the Ontario Securities Commission terminated the registration of Clifford Paul Tindall, former Vice-President, and salesperson of the now defunct Fortune Financial. The Commission further ordered that Mr. Tindall cease trading in securities in Ontario for a period of seven years, except for trading in certain specified securities for his own account. The sanctions were the result of a hearing held before a three-member panel of the Commission on July 31<sup>st</sup>, August 1, 2, and 8<sup>th</sup>, 2000.

**Reference:**

Frank Switzer  
Manager, Corporate Relations  
(416) 593-8210

Michael Watson  
Director, Enforcement  
(416) 593-8156

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## Chapter 2

# Decisions, Orders and Rulings

### 2.1 Decisions

#### 2.1.1 Clifford Paul Tindall - ss. 127(1) and s. 127.1

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

AND

IN THE MATTER OF  
CLIFFORD PAUL TINDALL

ORDER

(Subsection 127(1) and Section 127.1)

**WHEREAS** on October 14th, 1999, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsection 127(1) of the Securities Act (the " Act") in respect of Clifford Paul Tindall ("Tindall") and David Deonarine Singh;

**AND WHEREAS** David Deonarine Singh entered into a settlement agreement dated July 25th, 2000 which was subsequently approved by the Commission on July 31st, 2000;

**AND WHEREAS** on August 8th, 2000, the Commission heard the submissions of counsel for the Respondent and the submissions of counsel for staff of the Commission with respect to any orders to be issued;

**AND WHEREAS** the Commission received written submissions on August 14th and 16<sup>th</sup> with respect to the Commission's jurisdiction to make an order for costs;

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

**IT IS HEREBY ORDERED** pursuant to subsection 127(1) and section 127.1 of the Act that:

- (1) pursuant to clause 6 of subsection 127(1) of the Act, Tindall is hereby reprimanded;
- (2) pursuant to clause 1 of subsection 127(1) of the Act, the registration of Tindall is terminated;
- (3) pursuant to clause 2 of subsection 127(1) of the Act, Tindall, will cease trading in securities for a period of seven (7) years effective the date of this Order; provided, however, that Tindall may trade in securities for his own account or for the account of his registered retirement savings plan

(as defined in the Income Tax Act (Canada) if:

- (a) the securities are securities referred to in clause 1 of subsection 35(2) of the Act; or
  - (b) in the case of securities other than those referred to in (a),
    - (i) the securities are listed and posted for trading on a stock exchange in Canada;
    - (ii) neither he nor any member of his family is an insider, partner or promoter of the issuer of the securities; and
    - (iii) he does not own directly, or indirectly through another person or company or through any person or company acting on his behalf, more than five (5) percent of the outstanding securities of the class or series of the class in question; or
  - (c) in the case of securities other than those referred to in (a) or (b ), all securities currently owned by Tindall as at the date of this Order; and
- (4) pursuant to section 127.1 the Commission has determined that it has the jurisdiction to grant an award for costs; the quantum of which is to be determined in a future proceeding.

August 30<sup>th</sup>, 2000.

"Howard I. Wetston"

"Morley P. Carscallen"

"J. F. Howard"

## 2.1.2 Alcan Aluminium Limited - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - securities exchange take-over bid made by CBCA company for non-reporting issuer pursuant to the laws of Switzerland - offeror unable to determine the number of Ontario holders or percentage of securities held by Ontario holders - number of Ontario holders and percentage of securities held believed to be *de minimis* - offering documents subject to substantive review by Swiss regulatory authorities - bid exempted from requirements of Part XX, subject to certain conditions. Prospectus and registration relief, while unnecessary in Ontario, granted in order to conform to Mutual Reliance System.

### Applicable Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 25, 53, 35(1)16, 72(1)(j), 74(1), 93(1)(e), 95-100 and 104(2)(c).

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

AND

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

AND

IN THE MATTER OF  
ALCAN ALUMINIUM LIMITED  
MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Quebec, British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from Alcan Aluminium Limited (the "Applicant") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Applicant is exempt from the following: (i) prospectus and registration requirements of the Legislation and (ii) take-over bid requirements of the Legislation in connection with a proposed share exchange offer (the "Share Exchange Offer") by the Applicant to purchase all of the outstanding registered shares (the "Algroup Shares") of Alusuisse Lonza Group AG ("Algroup").

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 Applicant has represented to the Decision Makers that:

### Alcan Aluminium Limited

1. The Applicant is a company incorporated under the laws of Canada.
2. The Applicant is a reporting issuer or has the equivalent status under the Legislation in each of the Jurisdictions and is not in default of any requirements of the Legislation.
3. The authorized capital of the Applicant consists of an unlimited number of common shares (the "Alcan Common Shares") and an unlimited number of preference shares issuable in series (the "Alcan Preference Shares"), of which 218,314,946 Alcan Common Shares were outstanding and 5,700,000 series C and 3,000,000 series E, redeemable non-retractable preference shares were outstanding as of the close of business on December 31, 1999.
4. The Alcan Common Shares and the Alcan Preference Shares are listed on The Toronto Stock Exchange. The Alcan Common Shares are also listed on the New York, Chicago, Pacific, London, Paris, Brussels, Amsterdam, Frankfurt and Swiss stock exchanges.

### The Share Exchange Offer

5. Algroup is a company incorporated under the laws of Switzerland and does not have reporting issuer or equivalent status under the Legislation in any of the Jurisdictions. The Algroup Shares are listed on the Swiss and London stock exchanges. As of the close of business on December 31, 1999, there were 6,424,345 Algroup Shares outstanding.
6. Under the terms of a combination agreement dated September 15, 1999 between the Applicant, Algroup and Pechiney, as amended by an amending agreement dated June 1, 2000 between the Applicant and Algroup, the Applicant will offer to purchase all of the outstanding Algroup Shares on the basis of 17.1 Alcan Common Shares for each Algroup Share tendered to the Share Exchange Offer.
7. The Share Exchange Offer will be made in accordance with the laws of Switzerland, in particular the Federal Law on Stock Exchanges and Securities Trading and the Ordinance of the Swiss Takeover Board on Public Takeover Offers. The Share Exchange Offer will be open for acceptance for a period of 20 trading days. The Applicant may extend the period for acceptance for up to an additional 20 trading days and shall be obliged to so extend upon a request for extension by Algroup. If all of the conditions of the Share Exchange Offer are satisfied or waived at the expiry of the period for acceptance, the Share Exchange Offer will be open for an additional 10 trading days to permit additional acceptances only.
8. The Applicant will file a Share Exchange Offer prospectus (the "Exchange Offer Prospectus") with the Swiss Takeover Board no later than the date of publication and the Swiss Takeover Board will review and issue a recommendation as to the compliance of

the Share Exchange Offer with the Federal Law on Stock Exchanges and Securities Trading. The Exchange Offer Prospectus will disclose certain information with respect to (i) the Applicant, (ii) the means of financing of the Share Exchange Offer, (iii) the object of the Share Exchange Offer, (iv) the Alcan Common Shares offered in exchange for the Algroup Shares and the rights relating thereto, and (v) Algroup and the Applicant's intentions as to the future of Algroup's business.

9. The Algroup Shares are held by shareholders in a safekeeping account with a custodian bank or kept by shareholders personally, and are transferable only through an entry to Algroup's share register. Algroup Shares may be registered in the name of the holder or in the name of a nominee. As information regarding a Swiss company's shareholders is non-public (except for disclosure obligations in connection with shareholders holding more than 5% of the voting rights in a company listed on an exchange), only Algroup has access to information regarding the holders of Algroup Shares. As a result, the Applicant is not in a position to determine the identities or geographic locations of any of the holders of Algroup Shares.
10. To the knowledge of the Applicant, Algroup has never issued securities in the Jurisdictions through a prospectus or pursuant to any exemption provided by the securities legislation of any of the Jurisdictions.
11. Since the system described above makes mailings by the Applicant to holders of Algroup Shares infeasible, the Exchange Offer Prospectus is not required to be sent to Algroup's shareholders. Instead, the Exchange Offer Prospectus will be published in the financial press in Switzerland and will be available on at least one electronic online exchange information system. Shareholders whose Algroup Shares are held in a safekeeping account will be informed of the exchange offer by the custodian bank and will be asked to proceed according to its instructions. Shareholders who keep their Algroup Shares personally will be informed of the exchange offer by the share registrar of Algroup.
12. The Share Exchange Offer constitutes a take-over bid as defined in the Legislation and is therefore subject to the take-over bid requirements set out in the Legislation (the "Take-Over Bid Requirements") unless otherwise exempt from those requirements pursuant to (i) specific provisions of the Legislation or (ii) discretionary relief from statutory requirements granted by the Regulatory Authority in each Jurisdiction. The Legislation provides that a take-over bid is exempt from the requirements of the Legislation (the "De Minimis Exemption") where:
  - (a) the number of holders in the Jurisdiction of securities of the class subject to the bid is fewer than 50;
  - (b) the securities held by such holders constitute, in the aggregate, less than 2% of the outstanding securities of that class;

- (c) the bid is made in compliance with the laws of a jurisdiction recognized by the securities regulatory authority in the Jurisdiction; and
- (d) all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders in the Jurisdiction of such securities and filed with the securities regulatory authority in the Jurisdiction.

13. The Applicant cannot rely on the De Minimis Exemption because (i) Switzerland is not a jurisdiction recognized by the securities regulatory authorities in the Jurisdictions and (ii) the Applicant cannot determine the number of holders of Algroup Shares resident in the Jurisdictions or the percentage of Algroup Shares held by residents of the Jurisdictions.
14. Holders of Algroup Shares resident in the Jurisdictions will be treated equally with other holders of Algroup Shares.
15. The Applicant will issue a press release and place an advertisement in an English newspaper and a French newspaper of general circulation in Canada advising of the Share Exchange Offer, describing its principal terms and conditions and describing how holders of Algroup Shares can obtain copies of the Exchange Offer 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 under the Legislation is that the Applicant is exempt from: (a) in the applicable Jurisdictions, the prospectus and registration requirements and (b) the take-over bid requirements of the Legislation in connection with the Share Exchange Offer, provided that the Applicant complies with the following: (i) issues a press release and places an advertisement in an English newspaper and a French newspaper of general circulation in Canada advising of the Share Exchange Offer, describing its principal terms and conditions and describing how holders of Algroup Shares can obtain copies of the Exchange Offer Prospectus, (ii) sends a copy of the Exchange Offer Prospectus to the Decision Makers and (iii) the Share Exchange Offer and any amendments there to are made in compliance with the requirements of the applicable laws of Switzerland.

August 28<sup>th</sup>, 2000.

Me Claire Richer (s)

Jean-Marie Gagnon (s)

**AFFAIRE INTÉRESSANT  
LA LÉGISLATION EN VALEURS MOBILIÈRES DU  
QUÉBEC, DE L'ONTARIO, DE LA COLOMBIE-  
BRITANNIQUE, DE LA SASKATCHEWAN, DU  
MANITOBA, DE LA NOUVELLE-ÉCOSSE ET  
DE TERRE-NEUVE ET DU LABRADOR**

**ET**

**LE RÉGIME D'EXAMEN CONCERTÉ DES DEMANDES DE  
DISPENSE**

**ET**

**ALCAN ALUMINIUM LIMITÉE**

**DOCUMENT DE DÉCISION DU REC**

**ATTENDU QUE** les autorités en valeurs mobilières ou les agents responsables (le « décideur ») respectifs du Québec, de la Colombie-Britannique, de la Saskatchewan, du Manitoba, de l'Ontario, de la Nouvelle Écosse, de Terre-Neuve et du Labrador (les « territoires ») ont reçu d'Alcan Aluminium Limitée (le « déposant ») une demande de décision en vertu de la législation en valeurs mobilières des territoires (la « législation ») visant à dispenser le déposant i) des exigences de prospectus et d'inscription, ainsi que ii) des règles applicables aux offres publiques d'achat prévues dans la législation dans le cadre d'une offre d'échange d'actions (« l'offre d'échange d'actions ») faite par le déposant en vue d'acheter toutes les actions nominatives en circulation (les « actions d'Algroup ») d'Alussuisse Lonza Group AG (« Algroup »).

**ATTENDU 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;

**ATTENDU QUE** le déposant a déclaré aux décideurs ce qui suit :

***Alcan Aluminium Limitée***

1. Le déposant est une société constituée en vertu des lois du Canada.
2. Le déposant est un émetteur assujéti ou a un statut équivalent aux termes de la législation de chaque territoire et il n'a manqué à aucune exigence de la législation.
3. Le capital autorisé du déposant se compose d'un nombre illimité d'actions ordinaires (les « actions ordinaires d'Alcan ») et d'un nombre illimité d'actions privilégiées pouvant être émises en série (les « actions privilégiées d'Alcan »). À la fermeture des bureaux le 31 décembre 1999, 218 314 946 actions ordinaires d'Alcan étaient en circulation, ainsi que 5 700 000 actions privilégiées de série C rachetables au gré de la société et 3 000 000 d'actions privilégiées de série F rachetables au gré de la société.

4. Les actions ordinaires d'Alcan et les actions privilégiées d'Alcan sont cotées à la Bourse de Toronto. Les actions ordinaires d'Alcan sont cotées aux bourses de New York, Chicago, Londres, Paris, Bruxelles, Amsterdam et Francfort, ainsi qu'au *Pacific Stock Exchange* et au *Swiss Exchange*.

***L'offre d'échange d'actions***

5. Algroup est une société constituée en vertu des lois suisses; elle n'est pas émetteur assujéti et n'a pas de statut équivalent aux termes de la législation des territoires. Les actions d'Algroup sont cotées au *Swiss Exchange* et à la bourse de Londres. À la fermeture des bureaux le 31 décembre 1999, il y avait 6 424 345 actions d'Algroup en circulation.
6. En vertu de l'entente de regroupement intervenue entre le déposant, Algroup et Péchiney le 15 septembre 1999 et modifiée par l'entente modificatrice intervenue le 1<sup>er</sup> juin 2000 entre le déposant et Algroup, le déposant s'engage à acheter la totalité des actions d'Algroup en circulation à raison de 17,1 actions ordinaires d'Alcan par action d'Algroup visée par l'offre d'échange d'actions.
7. L'offre d'échange d'actions sera effectuée en conformité avec les lois suisses, notamment la *Loi fédérale sur les bourses et le commerce des valeurs mobilières* et l'*Ordonnance de la Commission des OPA sur les offres publiques d'acquisition*. L'offre d'échange d'actions sera valide pour une période de 20 jours de bourse. Le déposant pourra prolonger la période de validité de 20 jours de bourse au maximum et sera tenu de le faire à la demande d'Algroup. Si toutes les conditions de l'offre d'échange d'actions ont été remplies ou si l'on y a renoncé à l'expiration de la période de validité, l'offre d'échange d'actions restera valide pendant 10 jours de bourse supplémentaires, à la seule fin de permettre des acceptations.
8. Le déposant déposera le prospectus d'offre d'échange d'actions (le « prospectus d'offre d'échange d'actions ») auprès de la Commission des OPA de Suisse au plus tard à la date de publication. La Commission des OPA de Suisse examinera le prospectus et émettra une recommandation quant à la conformité de l'offre d'échange d'actions avec la *Loi fédérale sur les bourses et le commerce des valeurs mobilières*. Le prospectus d'offre d'échange d'actions contiendra de l'information sur i) le déposant, ii) les mesures de financement de l'offre d'échange d'actions, iii) le but de l'offre d'échange d'actions, iv) les actions ordinaires d'Alcan offertes en échange des actions d'Algroup et les droits y afférents, et v) les intentions d'Algroup et du déposant au sujet des activités futures d'Algroup.
9. Les actions d'Algroup sont détenues par les actionnaires, soit dans un compte auprès d'une banque offrant des services de garde, soit personnellement, et elles ne sont transférables que moyennant une inscription au registre des valeurs mobilières d'Algroup. Les actions d'Algroup peuvent être enregistrées au nom du porteur ou d'un prête-nom. L'information sur les actionnaires des sociétés suisses étant



confidentielle (sauf pour ce qui est des obligations d'information à remplir lorsque certains actionnaires détiennent plus de cinq pour cent des droits de vote afférents aux titres d'une société inscrite à la cote d'une bourse), seule Algroup a accès à l'information concernant les porteurs d'actions d'Algroup. Par conséquent, le déposant ne peut déterminer l'identité ni l'emplacement géographique des porteurs d'actions d'Algroup.

10. À la connaissance du déposant, Algroup n'a jamais émis des titres dans les territoires, que ce soit au moyen d'un prospectus ou aux termes d'une dispense prévue par la législation en valeurs mobilières d'un territoire.
11. Comme le régime décrit ci-dessus empêche le déposant de faire des envois postaux aux porteurs des actions d'Algroup, l'envoi du prospectus d'offre d'échange d'actions à ces personnes n'est pas requis. En revanche, ce prospectus sera publié dans les journaux financiers de Suisse et sera disponible sur au moins un système électronique d'échange d'information en ligne. Les actionnaires d'Algroup dont les actions sont déposées dans un compte seront avisés de l'offre d'échange d'actions par leur banque, et seront avisés de suivre les instructions. Les actionnaires qui détiennent personnellement des actions d'Algroup seront avisés de l'offre d'échange d'actions par l'agent chargé de la tenue des registres d'Algroup.
12. L'offre d'échange d'actions est une offre publique d'achat au sens de la législation et est donc assujettie aux règles de celle-ci (les « règles applicables aux OPA ») sauf (i) dispense prévue par des dispositions précises de la législation ou (ii) dispense discrétionnaire de l'application de la législation accordée par l'autorité de réglementation de chaque territoire. La législation porte que les offres publiques d'achat sont dispensées des exigences de la législation (« exemption de *minimis* ») lorsque :
  - a) le nombre de porteurs de titres de la catégorie visée par l'offre dans le territoire est inférieur à 50;
  - b) les titres détenus par ces porteurs représentent au total moins de deux pour cent des titres en circulation de cette catégorie;
  - c) l'offre est faite en conformité avec les lois d'un territoire reconnu par l'autorité en valeurs mobilières du territoire;
  - d) tous les documents relatifs à l'offre qui sont envoyés par l'initiateur aux porteurs de titres de la catégorie visée par l'offre sont aussi envoyés à tous les porteurs de ces titres dans le territoire et sont déposés auprès des autorités en valeurs mobilières du territoire.
13. Le déposant ne peut bénéficier de l'exemption de *minimis* parce que i) la Suisse n'est pas un territoire reconnu par les autorités en valeurs mobilières des territoires et que ii) le déposant ne peut déterminer le

nombre de porteurs d'actions d'Algroup résidant dans les territoires ni le pourcentage d'actions d'Algroup détenues par des résidents des territoires.

14. Les porteurs d'actions d'Algroup qui résident dans les territoires seront traités de la même façon que les autres porteurs d'actions d'Algroup.
15. Le déposant publiera un communiqué de presse et une annonce dans un journal anglophone et dans un journal francophone à grand tirage au Canada pour annoncer l'offre d'échange d'actions, en décrire les principales modalités et indiquer comment les actionnaires d'Algroup peuvent se procurer un exemplaire du prospectus d'offre d'échange d'actions.

**ATTENDU QUE**, selon le régime, le présent document de décision du REC confirme la décision de chaque décideur (collectivement, « la décision »);

**ATTENDU QUE** chacun des décideurs est d'avis que les critères prévus par la législation qui lui confèrent le pouvoir discrétionnaire de prendre la décision ont été respectés;

**LA DÉCISION** des décideurs en vertu de la législation est de dispenser le déposant, à l'égard de l'offre d'échange d'actions, a) des exigences de prospectus et d'inscription (dans les territoires pertinents) et b) des règles applicables aux offres publiques d'achat prévues dans la législation. Toutefois, le déposant devra respecter les conditions suivantes : i) publier un communiqué de presse et une annonce dans un journal anglophone et dans un journal francophone à grand tirage au Canada pour annoncer l'offre d'échange d'actions, en décrire les principales modalités et indiquer comment les actionnaires d'Algroup peuvent se procurer un exemplaire du prospectus d'offre d'échange d'actions, ii) transmettre une copie du prospectus d'offre d'échange d'actions aux décideurs et iii) effectuer l'offre d'échange d'actions et les modifications conformément aux exigences des lois suisses applicables.

FAIT à Montréal, le 28 août 2000

M<sup>e</sup> Claire Richer (s)

Jean-Marie Gagnon (s)

**2.1.3 Canadian Association of Insurance and Financial Advisors and Fidelity Investments Canada Limited - MRRS Decision**

**Headnote**

Exemption granted to mutual fund management companies from prohibition contained in subsection 5.4(1) of National Instrument 81-105 Mutual Fund Sales Practices to permit the managers to pay a portion of the costs incurred by a financial planners industry association in organizing educational conferences, provided certain conditions are met.

**Rules Cited**

National Instrument 81 -105 Mutual Fund Sales Practices.

**IN THE MATTER OF NATIONAL INSTRUMENT 81-105  
MUTUAL FUND SALES PRACTICES**

**AND**

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

**AND**

**IN THE MATTER OF  
THE CANADIAN ASSOCIATION OF INSURANCE  
AND FINANCIAL ADVISORS**

**AND**

**IN THE MATTER OF  
FIDELITY INVESTMENTS CANADA LIMITED**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan (the "Jurisdictions") have received an application from the Canadian Association of Insurance and Financial Advisors (the "Association") on behalf of Fidelity Investments Canada Limited ("Fidelity") and on behalf a member of the organization (as defined the National Instrument) of any other mutual fund (collectively with Fidelity, the "Mutual Fund Organizations") for a decision pursuant to section 9.1 of National Instrument 81-105 Mutual Fund Sales Practices (the "National Instrument") for an exemption from subsection 5.4(1) of the National Instrument to permit the Mutual Fund Organizations to pay a portion of the cost incurred by the Association in organizing its four regional conferences to be held in July and August 2000, its annual national conference to be held in September 2000 and other conferences and seminars organized and presented by the Association or its affiliates in the future (collectively "Association Educational Events");

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Application (the

"System"), the Ontario Securities Commission is the principal regulator for this application;

**AND WHEREAS** the Association has on its own behalf and on behalf of the Mutual Fund Organizations represented to the Decision Makers that:

1. The Association is Canada's national trade association for financial intermediaries and advisors who sell life insurance and related financial products and services such as investment funds. The head office of the Association is located in Toronto, Ontario. The Association serves its members and their individual, family and business clients primarily by providing specialized and comprehensive programs of professional development in financial services and also by advocating policy and legislation before government, legislators and regulators at all levels; collaborating with trade and industry associations in Canada and abroad; and administering a code of ethics that is binding on its 16,200 members.
2. Full members of the Association are required to hold a licence to sell life insurance or certain other financial products that are ordinarily provided by life insurance companies. Approximately 63% of Association members are registered to sell mutual funds and other securities. A small minority occupy non-sales positions with financial institutions. The common activity of the Association's members may be described as providing financial advice to Canadians, using life and health insurance and other financial products to achieve financial objectives.
3. The Association proposes to hold four residential regional educational conferences in July and August 2000 (the "Association's Schools").
4. The Okanagan School will be held at Okanagan University College, Kelowna, British Columbia, from July 23 to 26, 2000. Approximately 100 students are expected to attend, 90 percent of whom will be residents of British Columbia. Attendees will be able to earn 18.75 credit hours towards the annual continuing education credits required for holders of certain designations administered by the Association and by several provincial life insurance regulators.
5. The Atlantic School will be held at Rodd Mill River Resort, Woodstock, Prince Edward Island, from August 13 to 15, 2000. Approximately 100 students are expected to attend, 80 percent of whom will be residents of New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island. Attendees will be able to earn 11.25 continuing education credit hours
6. The Ontario School will be held at the University of Waterloo, Waterloo, Ontario, from August 20 to 23, 2000. Approximately 300 students are expected to attend, 90 percent of whom will be residents of Ontario. Attendees will be able to earn 17.5 continuing education credit hours.
7. The Banff School will be held at the Banff Centre, Banff, Alberta, from August 20 to 24, 2000. Approximately 250 students will attend, 75 percent of whom will be

residents of Alberta and 10 to 15 percent of whom will be residents of British Columbia. Attendees will be able to earn 22.5 continuing education credit hours.

8. The Association also proposes to hold a national educational conference in conjunction with its annual general meeting for 2000.
9. The Association's national conference (the "2000 Conference") is to take place in Saskatoon, Saskatchewan from September 23 to 26, 2000. Approximately 1000 to 1200 members of the Association are expected to attend. The 2000 Conference will be an educational event. Attendees will be able to earn 15 credit hours towards the annual continuing education credits required for holders of certain designations administered by the Association and by several provincial life insurance regulators.
10. Fidelity is a member of the organization of a mutual fund family within the meaning of the National Instrument and is registered in or may otherwise distribute mutual funds in each of the Jurisdictions. Fidelity has agreed to pay a portion of the costs of the Association's Schools and the 2000 Conference and wishes to sponsor certain educational or social events at the Association's Schools, 2000 Conference and other Association Educational Events.
11. The Association anticipates that other members of the organization of a mutual fund will similarly offer to pay part of the costs of the Association in organizing and presenting the 2000 Conference and other Association Educational Events.
12. Subsection 5.4(1) of the National Instrument prohibits a member of the organization of a mutual fund from sponsoring the costs or expenses relating to a conference, seminar or course that is organized and presented by The Investment Funds Institute of Canada ("IFIC"), the Investment Dealers Association of Canada (the "IDA") or another trade or industry association. Subsection 5.4(2) of the National Instrument provides an exemption to permit members of the organization of a mutual fund to sponsor conferences, seminars or courses organized and presented by IFIC, the IDA or their respective affiliates in accordance with the conditions set out therein.
13. Fidelity proposes to sponsor a portion of the costs of the Association's Schools and 2000 Conference in accordance with the conditions set out in subsection 5.4(2) of the National Instrument that are applicable to a conference organized and presented by IFIC or the IDA. The Association anticipates that other members of the organization of a mutual fund will similarly propose to sponsor a portion of the costs of the 2000 Conference and other Association Educational Events in accordance with those conditions. In particular:
  - a. the primary purpose of the Association's Schools, 2000 Conference and other Association Educational Events will be the provision of educational information about

financial planning and matters relating to mutual funds and related products;

- b. none of the Mutual Fund Organizations in a mutual fund family will pay in the aggregate more than ten percent of the total direct costs incurred by the Association for the organization and presentation of the Association's Schools, 2000 Conference or other Association Educational Events;
- c. the selection of a representative of a participating dealer to attend the Association's schools, 2000 Conference or other Association Educational Events will be made exclusively by the participating dealer, uninfluenced by the Mutual Fund Organizations; and
- d. the Association's Schools, 2000 Conference and other Association Educational Events will be held in Canada;

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

**AND WHEREAS** the Decision Makers are satisfied that the test contained in the National Instrument that provides the Decision Makers with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers pursuant to the National Instrument is that the prohibition contained in subsection 5.4(1) prohibiting members of the organization of a mutual fund from sponsoring the costs or expenses relating to a conference, seminar or course that is organized and presented by IFIC, the IDA or another trade or industry association, shall not apply to each Mutual Fund Organization in paying a portion of the direct costs (as defined in the National Instrument) incurred by the Association relating to the Association's Schools, 2000 Conference or other Association Educational Events, provided that the Mutual Fund Organization and the Association comply with the conditions set out in subsection 5.4(2) of the National Instrument in respect of the Association's Schools, 2000 Conference and other Association Educational Events.

**PROVIDED** that 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 matters in section 5.4 of the National Instrument.

July 21st, 2000.

"J. A. Geller"

"Robert W. Davis"

**2.1.4 Elliott & Page American Growth Fund,  
Elliott & Page U.S. Mid-Cap Fund, Elliott &  
Page Global Equity Fund - 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)(a), 111(3) and clauses 117(a) and (d).

Investment by the RSP Fund in forward contracts issued by related counterparties or its affiliates exempted from the requirements of clause 111(2)(c) and 118(2)(a), subject to specified conditions.

**Statutes Cited**

*Securities Act* (Ontario), R.S.O. 1990 c.S.5, as am., 111(2)(a), 111(2)(c), 111(3), 117(1)(a), 117(1)(d), 117(2), 118(2)(a) and 121(2)(a).

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

**AND**

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

**AND**

**IN THE MATTER OF  
ELLIOTT & PAGE LIMITED  
ELLIOTT & PAGE RSP GLOBAL EQUITY FUND**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from Elliott & Page Limited ("EPL"), as manager and trustee of Elliott & Page RSP Global Equity Fund (the "RSP Global Equity Fund") and other mutual funds managed by EPL after the date of this Decision having an investment objective or strategy that is linked to the returns or portfolio of another specified Elliott & Page mutual fund while remaining 100% eligible for registered plans (together with the RSP Global Equity Fund, 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 in the Legislation (the "Applicable Requirements") shall not apply to the RSP Funds or EPL, as the case may be, in respect of certain investments to be made by RSP Global Equity Fund in Elliott & Page Global Equity Fund (the "Global Equity Fund") and by other RSP Funds in their applicable corresponding Elliott & Page mutual fund from

time to time (together with the Global Equity Fund, 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 provisions prohibiting a mutual fund from knowingly making and holding an investment in an issuer in which any person or company who is a substantial security holder of the mutual fund, its management company or distribution company has a significant interest;
- iv. the provisions 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** EPL has represented to the Decision Makers as follows:

1. EPL is a corporation established under the laws of Ontario and its head office and registered office are located in the Province of Ontario. EPL is or will be the manager, trustee and promoter of the RSP Funds and the Underlying Funds (collectively, the "Funds").
2. The Funds are or will be open-end mutual fund trusts established under the laws of Ontario. The Advisor Class units, the Class F units and the Class T units of the Funds are or will be qualified in all of the provinces and territories of Canada (the "Prospectus Jurisdictions") pursuant to prospectus(es) and annual information form(s) and each renewal prospectus(es) and annual information form(s) (in each case, together the "Prospectus").
3. Each of the Funds is or will be a reporting issuer under the Legislation of each of the Prospectus Jurisdictions (other than those jurisdictions which do not recognize reporting issuers).
4. EPL has retained ABN AMRO Asset Management Canada Limited as the portfolio sub-advisor of the Global Equity Fund.

5. The Prospectus will contain disclosure with respect to the respective investment objectives, investment practices and restrictions of the Funds.
6. The investment objectives of the RSP Funds are or will be to provide long-term growth of capital, primarily through investment in derivatives that provide a return linked to the return of the applicable Underlying Fund. The RSP Funds will seek to achieve their investment objective by primarily investing in:
  - (a) forward contracts or other derivatives that are linked to the returns earned by the applicable Underlying Fund;
  - (b) bank deposits and/or money market instruments to support their obligations under the forward contracts; and
  - (c) units of the applicable Underlying Fund and/or other securities which constitute foreign property under applicable tax legislation up to the maximum permitted amount (the "Foreign Property Maximum") which may be invested in foreign property under the *Income Tax Act* (Canada) (the "Tax Act") for registered retirement savings plans and other registered plans ("Registered Plans").All purchases by an RSP Fund of units of the applicable Underlying Fund will be made through EPL.
7. The investment objectives of each of the Underlying Funds is or will be achieved through investment primarily in foreign securities.
8. Each of the RSP Funds will make investments such that its securities will be "qualified investments" for Registered Plans under the Tax Act.
9. The direct investment by an RSP Fund in the applicable Underlying Fund (the "Permitted RSP Fund Investments") will be within the Foreign Property Maximum. The amount of direct investment by an RSP Fund in the applicable 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 applicable Underlying Fund will equal 100% of the net assets of the RSP Fund.
10. The RSP Funds will enter into forward contracts with one or more financial institutions (each a "Counterparty").
11. In order to hedge their obligations under the forward contracts, the Counterparties will likely, but are not required to, purchase Class T Units of the applicable Underlying Fund (or another class of units that has no management fee). In addition, any direct investment of securities in the Underlying Funds will be in Class T Units (or another class of units that has no management fee). The Class T Units have no management fee, ensuring that there is no duplication of management fees as between the RSP Funds and the applicable Underlying Funds. Class T Units will be

offered pursuant to the Prospectus. If the Counterparties do not purchase Class T Units of the Underlying Funds (or another class of units that has no management fee), management fees will be charged at the RSP Fund level, but the amount payable to the applicable RSP Fund under the forward contract will be adjusted to eliminate the duplication of management fees.

12. Manulife Financial, a financial institution which owns 100% of EPL, or an affiliate of Manulife Financial, (Manulife Financial and/or its affiliates being hereinafter referred to as "Manulife"), may be a Counterparty.
13. Except for the transaction costs payable to Manulife in relation to any forward contracts with Manulife, none of the RSP Funds, the Underlying Funds, EPL or any affiliate or associate of any of the foregoing will pay any fees or charges of any kind to any other related party in respect of a trade in such forward contracts.
14. The Prospectus will disclose the involvement of Manulife in acting as a Counterparty as well as all applicable charges in connection with any forward contracts with Manulife.
15. Except as otherwise described herein, to the extent evidenced by a Decision granted pursuant to this application, as well as specific approval granted by the Canadian Securities Authorities pursuant to National Instrument NI 81-102 (the "NI 81-102"), any investment by the RSP Funds in forward contracts with Manulife have been or will be structured to comply with the investment restrictions of the Legislation and NI 81-102.
16. In the absence of this Decision, an RSP Fund is prohibited from knowingly making and holding an investment in the applicable Underlying Fund in which the RSP Fund alone or together with one or more related mutual funds is a substantial securityholder.
17. In the absence of this Decision, an RSP Fund is prohibited from knowingly making and holding an investment in securities of Manulife.
18. In the absence of this decision, EPL is required to file a report on every purchase or sale of securities of Manulife.
19. In the absence of this Decision, EPL, as portfolio manager, is prohibited from causing an RSP Fund to invest their assets in securities of Manulife unless the specific fact is disclosed to investors and, if applicable, the written consent of investors is obtained before the purchase.
20. The investment in, or redemption of, securities of an Underlying Fund by an RSP Fund will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the RSP Fund.

**AND WHEREAS** pursuant to the System, this Decision Document evidences 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 pursuant to the Legislation is that the Applicable Requirements shall not apply to EPL, the RSP Funds or a portfolio sub-advisor, as the case may be, in respect of investments to be made by the RSP Funds in units of the Underlying Funds, or in forward contracts issued by Manulife;

**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 the 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 NI 81-102;
2. the Decision shall apply only to investments in, or transactions with, the applicable Underlying Fund that are made by an RSP Fund in compliance with the following conditions:
  - (a) the RSP Fund and the Underlying Fund are under common management and the Advisor Class units and Class F units of both are offered for sale in the jurisdiction of each Decision Maker pursuant to the Prospectus which has been filed with and accepted by the Decision Maker, and the Class T units of the Underlying Fund are offered for sale in the jurisdiction of each Decision Maker pursuant to the Prospectus which has been filed with and accepted by the Decision Maker;
  - (b) the RSP Fund restricts its aggregate direct investment in securities of the applicable Underlying Fund to a percentage of its assets that is within the Foreign Property Maximum;
  - (c) the investment by the RSP Fund in its applicable Underlying Fund is compatible with the fundamental investment objectives of the RSP Fund;
  - (d) the Prospectus discloses the intent of the RSP Fund to invest in securities of the Underlying Fund;
  - (e) the RSP Fund may change the Permitted RSP Fund Investments if it changes its fundamental investment objective in accordance with the Legislation;
  - (f) no sales charges are payable by the RSP Fund in relation to its purchases of securities of the Underlying Fund;
  - (g) there are compatible dates for the calculation of the net asset value of the RSP Fund and the Underlying Fund for the purpose of issuing and redeeming securities of both mutual funds;

- (h) 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;
- (i) the arrangements between or in respect of the RSP Fund and the Underlying Fund are such as to avoid the duplication of management fees;
- (j) 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;
- (k) in the event of the provision of any notice to securityholders of the Underlying Fund, as required by the applicable laws or the constating documents of the Underlying Fund, the notice will also be delivered to the securityholders of the RSP Fund; all voting rights attached to the securities of the Underlying Fund that are owned by the RSP Fund will be passed through to the securityholders of the RSP Fund;
- (l) in the event that a meeting of the securityholders of the Underlying Fund is called, all of the disclosure and notice material prepared in connection with such meeting and received by the RSP Fund will be provided to the securityholders of the RSP Fund; and each securityholder will be entitled to direct a representative of the RSP Fund to vote that securityholder's proportion of the RSP Fund's holding in the Underlying Fund in accordance with his or her 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;
- (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 in either a combined report, containing both the RSP Fund's and the 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 Prospectus and financial statements containing disclosure about the RSP Fund and the Underlying Fund, copies of the simplified prospectus, and annual information form and financial statements relating to the Underlying Fund may be obtained upon request by a securityholder of the RSP Fund.

AND PROVIDED THAT IN RESPECT OF investments by an RSP Fund in forward contracts, the Decision applies to investments in forward contracts of Manulife, as Counterparty, that are made in compliance with the following conditions:

- (a) the pricing terms offered by Manulife to the RSP Fund under the forward contracts are at least as favourable as the terms committed by Manulife to other third parties, which are of similar size as the RSP Fund;
- (b) prior to the RSP Fund entering into a forward contract transaction with Manulife, the independent auditors of the RSP Fund will review the pricing offered by Manulife to the RSP Fund against the pricing offered by Manulife to other fund groups offering RSP funds of similar size, to ensure that the pricing is at least as favourable;
- (c) the review by the independent auditors will be undertaken not less frequently than on a quarterly basis and, in addition, on every renewal or pricing amendment to each forward contract, during the term of such contract;
- (d) the RSP Fund's Prospectus discloses the independent auditors' role and their review of the forward contracts, as well as the involvement of Manulife; and
- (e) the RSP Fund will enter into forward contracts with Manulife only once confirmation of favourable pricing is received from the independent auditors of the RSP Fund.

August 16th, 2000.

"J. A. Geller"

"R. Stephen Paddon"

**2.1.5 E\*Trade Group, Inc., EGI Canada Corporation, 3045175 Nova Scotia Company and Versus Technologies Inc. - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief granted, subject to certain conditions, from the prospectus and registration requirements in respect of trades in connection with a statutory arrangement where the Arrangement exemption is not available for technical reasons.

Reporting issuer exempted from certain continuous disclosure requirements subject to certain conditions. Disclosure required to be provided by these provisions would not be meaningful to shareholders.

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 35(1)15.i, 53, 72(1)(i), 72(5), 74(1), 75, 77, 78, 79, 80(b)(iii), 81(2), 107, 108, 109.

**Applicable Ontario Regulations**

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., s.21.

**IN THE MATTER OF THE  
SECURITIES LEGISLATION  
OF ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN  
MANITOBA, ONTARIO, NEW BRUNSWICK,  
NEWFOUNDLAND, NOVA  
SCOTIA, PRINCE EDWARD ISLAND, THE NORTHWEST  
TERRITORIES,  
NUNAVUT AND THE YUKON TERRITORY**

**AND**

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

**AND**

**IN THE MATTER OF  
E\*TRADE GROUP, INC., EGI CANADA CORPORATION,  
3045175 NOVA SCOTIA COMPANY AND  
VERSUS TECHNOLOGIES INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, The Northwest Territories, Nunavut and The Yukon Territory (collectively, the "Jurisdictions") has received an application from E\*TRADE Group, Inc. ("EGI"), EGI Canada Corporation ("ECC") and 3045175 Nova Scotia Company ("EGI Newco")

(collectively, the "Filer") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that:

- (a) the trades of securities involved in connection with the proposed acquisition (the "Transaction") by EGI of VERSUS Technologies Inc. ("VERSUS") to be effected by way of an Arrangement (as defined below) shall be exempt from the registration and prospectus requirements of the Legislation; and
- (b) ECC be exempt from the requirements of the Legislation to issue a press release and report material changes, to file with the Decision Makers and deliver to securityholders (as defined below) interim financial statements and audited annual financial statements, and to make an annual filing with the Decision Makers in lieu of filing an information circular (the "Continuous Disclosure Requirements");

all subject to certain conditions, as described below;

**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. EGI, EGI Newco, ECC, VERSUS, VERSUS Brokerage Services Inc., VERSUS Brokerage Services (U.S.) Inc. and Fairvest Securities Corporation have entered into a merger agreement dated as of June 14, 2000 (the "Merger Agreement"), providing for the Transaction, which is to be effected by way of an arrangement (the "Arrangement") under section 192 of the Canada Business Corporations Act ("CBCA").
2. EGI was incorporated in California in 1982 and reincorporated in Delaware in July 1996. EGI is currently subject to the informational requirements of the United States Securities Exchange Act of 1934, as amended, and is not a "reporting issuer" under the Legislation. The common stock of EGI (the "EGI Shares") is listed on the National Stock Market's National Market ("NASDAQ"). EGI's principal corporate offices are located at 4500 Bohannon Drive, Menlo Park, California 94025.
3. EGI's authorized capital consists of 600,000,000 EGI Shares, U.S.\$0.01 par value per share, and 1,000,000 shares of Preferred Stock, U.S.\$0.01 par value per share. The EGI Shares are fully participating voting shares. As of July 5, 2000, there were 298,290,560 EGI Shares and no shares of Preferred Stock issued and outstanding.
4. As part of the Transaction, EGI will issue one special voting share (the "Special Voting Share") to a trustee (the "Trustee") which will be appointed as trustee under a voting and exchange trust agreement (the "Voting and Exchange Trust Agreement"), as described below.
5. ECC was incorporated under the Ontario Business Corporations Act on June 12, 2000. ECC is an indirect wholly-owned subsidiary of EGI and a direct wholly-owned subsidiary of EGI Newco. ECC's registered office is located at 66 Wellington St. West, Suite 3600, Toronto, Ontario M5K 1N6.
6. The authorized capital of ECC will consist of an unlimited number of common shares and non-voting exchangeable shares (the "Exchangeable Shares"). As of July 5, 2000 there were 71,729 common shares issued and outstanding, all of which were indirectly beneficially owned by EGI.
7. ECC will apply to list the Exchangeable Shares on the Toronto Stock Exchange ("TSE"), and EGI will apply to list the EGI Shares issuable on exchange of Exchangeable Shares and those issued directly to VERSUS Shareholders, on NASDAQ.
8. Upon completion of the Transaction and subject in certain of the Jurisdictions to the Exchangeable Shares being listed on the TSE, ECC will become or will be deemed to become a reporting issuer in certain of the Jurisdictions.
9. EGI Newco is an indirect, wholly-owned subsidiary of EGI. EGI Newco was formed on June 13, 2000 as an unlimited liability company under the laws of the Province of Nova Scotia to hold all of the common shares of ECC and to hold the various call rights related to the Exchangeable Shares.
10. The authorized capital of EGI Newco consists of 10,000,000 common shares. As of July 5, 2000, there were 71,729 common shares issued and outstanding, all of which were indirectly beneficially owned by EGI.
11. VERSUS was incorporated on March 2, 1992 under the CBCA. On September 2, 1994, VERSUS amalgamated with 3061442 Canada Inc. and carried on as VERSUS Technologies Inc. On December 20, 1996, VERSUS amalgamated with Capital Works Inc. and Capital Works Brokerage Services Inc. to form VERSUS Technologies Inc. VERSUS has been a reporting issuer under the Legislation since March 5, 1999 and, to the best of the knowledge of EGI, ECC and EGI Newco, VERSUS is not in default of any of the requirements thereunder. The VERSUS Shares (as defined below) are listed on the TSE. VERSUS' registered office is located at 181 Bay Street, Suite 3810, Toronto, Ontario M5J 2T3.
12. VERSUS' authorized capital consists of an unlimited number of common shares and a class of preferred shares. As of July 5, 2000, 12,881,150 VERSUS Shares and no first preferred shares were issued and outstanding. As of July 5, 2000, 2,336,365 VERSUS Shares were reserved in the aggregate for issuance in respect of the VERSUS Options (as defined below) and 156,950 VERSUS Shares were reserved in the aggregate for issuance in respect of the Compensation Options (as defined below). As of July 5, 2000, no debt securities of VERSUS were outstanding.



13. Pursuant to the Transaction, holders of VERSUS Shares and associated rights issued under the VERSUS Shareholder Rights Plan (the "VERSUS Shares") (other than those held by dissenting holders, EGI or any subsidiary or affiliate thereof and holders who elect to receive EGI Shares) will receive in exchange for each VERSUS Share they own Exchangeable Shares of ECC based on an exchange ratio (the "Exchange Ratio") determined from (i) the total consideration payable for VERSUS Shares of U.S.\$173.9 million, (ii) the number of VERSUS Shares outstanding on a fully diluted basis, and (iii) the average closing price of EGI Shares for the 10 trading days immediately prior to the date on which the Exchange Ratio is fixed, being the third trading day prior to closing of the Transaction (the "Effective EGI Share Price"), subject to a minimum Effective EGI Share Price of U.S.\$15.20 and a maximum Effective EGI Share Price of U.S.\$22.80. VERSUS has the right to terminate the Transaction if the Effective EGI Share Price is below U.S.\$10.00 and EGI has the right to terminate the Transaction if the Effective EGI Share Price is above U.S.\$28.00. Upon completion of the Transaction, EGI, through ECC, will be the sole beneficial holder of all the issued and outstanding VERSUS Shares. Holders of VERSUS Shares shall also have the right, subject to the first two exceptions noted above, to elect, pursuant to the Transaction, to transfer their VERSUS Shares to EGI Newco in exchange for EGI Shares based on the Exchange Ratio.
14. No fractional Exchangeable Shares or EGI Shares will be delivered in exchange for VERSUS Shares pursuant to the Arrangement. In lieu of fractional shares, each holder of VERSUS Shares who is otherwise entitled to a fractional interest in an Exchangeable Share or EGI Share will receive a cash payment equal to such holder's pro rata portion of the net proceeds received by the depository (after expenses) upon the sale of whole shares representing an accumulation of all fractional interests in Exchangeable Shares or EGI Shares to which all such holders would otherwise be entitled. The depository will sell whole Exchangeable Shares or EGI Shares through the facilities of the TSE, in the case of the Exchangeable Shares, and NASDAQ, in the case of EGI Shares, as soon as reasonably practicable following the Effective Date (as defined below).
15. The VERSUS Employee Stock Option Plans and each VERSUS option issued thereunder (a "VERSUS Option") will be assumed by EGI pursuant to the Arrangement. Each such option so assumed (an "Assumed Option") shall have the same terms and conditions as those set forth in the VERSUS Stock Option Plans and the applicable stock option agreements then in effect immediately prior to the effective time of the Arrangement (the "Effective Time"), except that (i) each such Assumed Option will be exercisable for that number of whole EGI Shares equal to the product of the number of VERSUS Shares that were issuable upon exercise of such option immediately prior to the Effective Time multiplied by the Exchange Ratio and rounded down to the nearest whole number of EGI Shares, and (ii) the per share exercise price for the EGI Shares issuable upon the exercise of each such Assumed Option will be equal to the quotient determined by dividing the exercise price per VERSUS Share at which such option was exercisable immediately prior to the Effective Time (adjusted for the U.S. Dollar/Canadian Dollar exchange rate effective as of the close of business on the effective date of the Arrangement (the "Effective Date")) by the Exchange Ratio, rounded up to the nearest whole cent.
16. Certain outstanding rights, expiring March 12, 2001, held by certain underwriters to purchase VERSUS Shares at an exercise price of CDN\$11.50 per share (the "Compensation Options") shall be assumed by ECC and each such option so assumed (an "Assumed Compensation Option") shall continue to have and be subject to the same terms and conditions set forth therein immediately prior to the Effective Time except that (i) each such Assumed Compensation Option will be exercisable for that number of whole Exchangeable Shares equal to the product of the number of VERSUS Shares that were issuable upon exercise of such option immediately prior to the Effective Time multiplied by the Exchange Ratio and rounded down to the nearest whole number of Exchangeable Shares, and (ii) the per share exercise price for the Exchangeable Shares issuable upon exercise of each such Assumed Compensation Option will be equal to the quotient determined by dividing the exercise price per VERSUS Share at which such option was exercisable immediately prior to the Effective Time by the Exchange Ratio, rounded up to the nearest whole cent.
17. Subject to confirmation in the interim order to be obtained from Ontario's Superior Court of Justice (the "Court"), the Arrangement must be approved by the holders of the VERSUS Shares, VERSUS Options and Compensation Options (collectively, the "securityholders") by at least two-thirds of the votes cast by securityholders voting as a single class. Following the approval of securityholders, the Arrangement is subject to approval of the Court, to be granted in a final order.
18. In connection with the securityholders' meeting to be held to consider the Transaction, VERSUS has delivered to securityholders a management proxy circular (the "VERSUS Circular") containing prospectus level disclosure of the business and affairs of EGI and of the particulars of the Transaction and the Arrangement.
19. The Exchangeable Shares, together with the Voting and Exchange Trust Agreement to be entered into by EGI, ECC and the Trustee contemporaneously with the closing of the Transaction, will provide holders thereof with a security of a Canadian issuer having economic and voting rights which are, as nearly as practicable, equivalent to those of an EGI Share. Each Exchangeable Share will be exchangeable by the holder, at any time, for one EGI Share (subject to certain anti-dilution provisions) and will be required to be exchanged upon the occurrence of certain events.

20. The rights, privileges, restrictions and conditions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), and the Exchangeable Share Support Agreement (described in paragraph 28 below) will provide that each Exchangeable Share will entitle the holder to dividends from ECC equivalent to each dividend paid by EGI on an EGI Share, subject to applicable law.
21. The Exchangeable Shares will be retractable at any time. Subject to the overriding retraction call right of EGI Newco, upon retraction the holder will be entitled to receive from ECC for each Exchangeable Share retracted an amount equal to the current market price (as defined in the Exchangeable Share Provisions) of an EGI Share on the last business day prior to the retraction date, to be satisfied by the delivery of one EGI Share (the "Retraction Price"), together with, on the designated payment date therefor, all declared and unpaid dividends on each such retracted Exchangeable Share held by the holder on any dividend record date prior to the date of retraction (the "Dividend Amount"). Upon being notified by ECC of a proposed retraction of Exchangeable Shares, EGI Newco will have an overriding retraction call right to purchase from the holder exercising the retraction right all of the Exchangeable Shares that are the subject of the retraction notice for a price per share equal to the Retraction Price (to be satisfied by the delivery of one EGI Share), plus an amount, to the extent not paid by ECC, equal to the Dividend Amount.
22. Subject to applicable law and the overriding redemption call right of EGI Newco, ECC will be entitled to redeem all but not less than all of the then outstanding Exchangeable Shares on or after the fifth anniversary of the Effective Date of the Arrangement, unless the board of directors of ECC has accelerated the redemption date in the circumstances outlined in the Exchangeable Share Provisions (the "Redemption Date"). Upon such redemption, a holder will be entitled to receive from ECC for each Exchangeable Share redeemed an amount equal to the current market price of an EGI Share on the last business day prior to the Redemption Date, to be satisfied by the delivery of one EGI Share (the "Redemption Price"), together with an additional amount equivalent to all declared and unpaid dividends on each such redeemed Exchangeable Share held by the holder on any dividend record date which occurred prior to the Redemption Date (the "Redemption Dividend Amount"). Upon being notified by ECC of a proposed redemption of Exchangeable Shares, EGI Newco will have an overriding redemption call right to purchase on the Redemption Date all of the then outstanding Exchangeable Shares (other than Exchangeable Shares held by EGI and its affiliates) for a price per share equal to the Redemption Price (to be satisfied by the delivery of one EGI Share) plus, to the extent not paid by ECC, an amount equivalent to the Redemption Dividend Amount. Upon the exercise of the overriding redemption call right by EGI Newco, holders will be obligated to sell their Exchangeable Shares to EGI Newco. If EGI Newco exercises its overriding redemption call right, ECC's right and obligation to redeem the Exchangeable Shares on the Redemption Date will terminate.
23. Subject to the overriding liquidation call right of EGI Newco, in the event of the liquidation, dissolution or winding up of ECC or any other distribution of the assets of ECC among its shareholders for the purpose of winding up its affairs, a holder of Exchangeable Shares will be entitled, subject to applicable law, to receive from the assets of ECC, before any distribution among the holders of the common shares or any other shares ranking junior to the Exchangeable Shares, an amount per share equal to the current market price of an EGI Share on the last business day prior to the effective date (the "Liquidation Date") of the liquidation, dissolution or winding up of ECC, to be satisfied by the delivery of one EGI Share, together with an additional amount equivalent to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the Liquidation Date.
24. Subject to the overriding liquidation call right of EGI Newco, under the Voting and Exchange Trust Agreement, EGI will grant to the Trustee for the benefit of the holders of the Exchangeable Shares a right (the "Exchange Right"), exercisable upon an insolvency event relating to ECC (as defined in the Voting and Exchange Trust Agreement), to require EGI to purchase from a holder of Exchangeable Shares all or any part of the Exchangeable Shares held by the holder. The purchase price for each Exchangeable Share purchased by EGI under the Exchange Right will be an amount equal to the current market price (as defined in the Voting and Exchange Trust Agreement) of an EGI Share on the last business day prior to the day of closing the purchase and sale of such Exchangeable Share under the Exchange Right, to be satisfied by the delivery to the Trustee, on behalf of the holder, of one EGI Share, together with an additional amount, to the extent not paid by ECC, equal to the full amount of all declared and unpaid dividends on such Exchangeable Share held by the holder on any dividend record date which occurred prior to the closing of the purchase and sale.
25. Upon a proposed liquidation, dissolution or winding up of ECC, EGI Newco will have an overriding liquidation call right to purchase from all but not less than all of the holders of Exchangeable Shares (other than Exchangeable Shares held by EGI and its affiliates) on the Liquidation Date all of the Exchangeable Shares held by each such holder for a price per share equal to the current market price of an EGI Share on the last business day prior to the Liquidation Date, to be satisfied by the delivery of one EGI Share, together with, to the extent not paid by ECC, an additional amount equivalent to the full amount of all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the date of purchase by EGI Newco.
26. Under the Voting and Exchange Trust Agreement, upon the liquidation, dissolution or winding up of EGI or any proceedings to effect any other distribution of assets of

- EGI among its shareholders for the purpose of winding up its affairs (the "Liquidation Event Effective Date"), EGI will be required to purchase each outstanding Exchangeable Share, and each holder will be required to sell the Exchangeable Shares held by that holder (the "Automatic Exchange Right"), for a purchase price per share equal to the current market price of an EGI Share on the fifth business day prior to the Liquidation Event Effective Date, to be satisfied by the delivery of one EGI Share, together with an additional amount, to the extent not paid by ECC, equivalent to the full amount of all declared and unpaid dividends on each such Exchangeable Share held by the holder on any dividend record date prior to the date of the exchange.
27. The Exchangeable Shares will be non-voting (except as required by the Exchangeable Share Provisions or by applicable law). The Special Voting Share will be issued to the Trustee for the benefit of the holders of the Exchangeable Shares outstanding from time to time (other than EGI and its affiliates). Except as otherwise required by applicable law or the charter of EGI, the Special Voting Share will be entitled to the number of votes, exercisable at any meeting of the holders of EGI Shares and with respect to all written consents sought by EGI from its shareholders, equal to the number of Exchangeable Shares outstanding from time to time not owned by EGI and its affiliates. Each voting right attached to the Special Voting Share must be voted by the Trustee pursuant to the instructions of the holder of the related Exchangeable Share. In the absence of any such instruction from a holder as to voting, the Trustee will not be entitled to exercise the related voting rights. Upon the exchange of all of a holder's Exchangeable Shares for EGI Shares, all rights of such holder of Exchangeable Shares to instruct the Trustee to exercise votes attached to the Special Voting Share will cease.
28. Contemporaneously with the closing of the Transaction, EGI, ECC and EGI Newco will enter into an Exchangeable Share Support Agreement which will provide that EGI, among other things, so long as any Exchangeable Shares not owned by EGI or its affiliates are outstanding: (a) will not declare or pay any dividends on the EGI Shares unless ECC simultaneously declares or pays, as the case may be, an equivalent dividend on the Exchangeable Shares; and (b) will ensure that ECC and EGI Newco will be able to honour the redemption and retraction rights and liquidation entitlements that are attributes of the Exchangeable Shares and the related redemption, retraction and liquidation call rights described above.
29. The Transaction and the attributes of the Exchangeable Shares contained in the Exchangeable Share Provisions, the Voting and Exchange Trust Agreement and the Exchangeable Share Support Agreement involve or may involve a number of trades and/or distributions of securities. The trades and/or distributions of securities to which the Transaction and such attributes give rise are the following:
- (a) the issuance of Exchangeable Shares by ECC to holders of VERSUS Shares and the transfer of VERSUS Shares (and associated rights under the VERSUS shareholder rights plan) by holders thereof to ECC, as part of the Arrangement;
  - (b) the assumption of VERSUS Options (the "Assumed Options") by EGI as part of the Arrangement, the issuance of a document evidencing each such Assumed Option by EGI, and the issuance and delivery of EGI Shares by EGI on exercise of an Assumed Option;
  - (c) the issuance and intra-group transfers of EGI Shares and related issuances of shares of EGI affiliates in consideration therefor, all by and between EGI and its affiliates, to enable EGI Newco to deliver EGI Shares in connection with the Arrangement;
  - (d) the delivery of EGI Shares by EGI Newco to holders of VERSUS Shares who so elect to receive EGI Shares and the transfer of VERSUS Shares (and associated rights under the VERSUS shareholder rights plan) by holders thereof to EGI Newco, as part of the Arrangement;
  - (e) the sale by the depository of accumulated fractional entitlements to Exchangeable Shares or EGI Shares, the net proceeds of which are to be distributed on a pro rata basis to former holders of VERSUS Shares as part of the Arrangement;
  - (f) the assumption of VERSUS Compensation Options (the "Assumed Compensation Options") by ECC as part of the Arrangement, the issuance of a document evidencing each such Assumed Compensation Option by ECC, and the issuance and delivery of Exchangeable Shares by ECC on exercise of an Assumed Compensation Option;
  - (g) the grant by EGI to the Trustee for the benefit of the holders of Exchangeable Shares, pursuant to the Voting and Exchange Trust Agreement of the Exchange Right, the Automatic Exchange Right and the voting rights attached to the Special Voting Share;
  - (h) the grant of the redemption, retraction and liquidation call rights in favour of EGI Newco as described above;
  - (i) the issuance by EGI of the Special Voting Share to the Trustee for the benefit of the holders of the Exchangeable Shares;
  - (j) the issuance and intra-group transfers of EGI Shares and related issuances of shares of EGI affiliates in consideration therefor, all by and between EGI and its affiliates, from time to time to enable ECC to deliver EGI Shares to a holder of Exchangeable Shares upon a retraction of the Exchangeable Shares held by such holder, and

- the subsequent delivery of such EGI Shares to such holder by ECC upon such retraction;
- (k) the transfer of Exchangeable Shares by the holder to ECC upon the holder's retraction of Exchangeable Shares;
  - (l) the issuance and intra-group transfers of EGI Shares and related issuances of shares of EGI affiliates in consideration therefor, all by and between EGI and its affiliates, from time to time to enable EGI Newco to deliver EGI Shares to a holder of Exchangeable Shares in connection with EGI Newco's exercise of its overriding retraction call right, and the subsequent delivery of such EGI Shares by EGI Newco upon the exercise of such overriding retraction call right;
  - (m) the transfer of Exchangeable Shares by the holder to EGI Newco upon EGI Newco exercising its overriding retraction call right;
  - (n) the issuance and intra-group transfers of EGI Shares and related issuances of shares of EGI affiliates in consideration therefor, all by and between EGI and its affiliates, to enable ECC to deliver EGI Shares to holders of Exchangeable Shares upon the redemption of the Exchangeable Shares, and the subsequent delivery of such EGI Shares by ECC upon such redemption;
  - (o) the transfer of Exchangeable Shares by holders to ECC upon the redemption of Exchangeable Shares;
  - (p) the issuance and intra-group transfers of EGI Shares and related issuances of shares of EGI affiliates in consideration therefor, all by and between EGI and its affiliates, to enable EGI Newco to deliver EGI Shares to holders of Exchangeable Shares in connection with EGI Newco's exercise of its overriding redemption call right, and the subsequent delivery of such EGI Shares by EGI Newco upon the exercise of such overriding redemption call right;
  - (q) the transfer of Exchangeable Shares by holders to EGI Newco upon EGI Newco exercising its overriding redemption call right;
  - (r) the issuance and intra-group transfers of EGI Shares and related issuances of shares of EGI affiliates in consideration therefor, all by and between EGI and its affiliates, to enable ECC to deliver EGI Shares to holders of Exchangeable Shares on the liquidation, dissolution or winding up of ECC or other distribution of the assets of ECC among its shareholders for the purpose of winding up its affairs and the subsequent delivery of such EGI Shares by ECC upon such liquidation, dissolution, winding up or other distribution;
  - (s) the transfer of Exchangeable Shares by holders to ECC on the liquidation, dissolution or winding up of ECC or other distribution of the assets of ECC among its shareholders for the purpose of winding up its affairs;
  - (t) the issuance and intra-group transfers of EGI Shares and related issuances of shares of EGI affiliates in consideration therefor, all by and between EGI and its affiliates, to enable EGI Newco to deliver EGI Shares to holders of Exchangeable Shares in connection with EGI Newco's exercise of its overriding liquidation call right, and the subsequent delivery of such EGI Shares by EGI Newco upon the exercise of such overriding liquidation call right;
  - (u) the transfer of Exchangeable Shares by holders to EGI Newco upon EGI Newco exercising its overriding liquidation call right;
  - (v) the issuance and delivery of EGI Shares by EGI to a holder of Exchangeable Shares upon the exercise of the Exchange Right by such holder;
  - (w) the transfer of Exchangeable Shares by a holder to EGI upon the exercise of the Exchange Right by such holder;
  - (x) the issuance and delivery of EGI Shares by EGI to holders of Exchangeable Shares pursuant to the Automatic Exchange Right;
  - (y) the transfer of Exchangeable Shares by a holder to EGI pursuant to the Automatic Exchange Right.
- (collectively, the "Trades").
30. The fundamental investment decision to be made by a holder of VERSUS Shares is made at the time when such holder votes in respect of the Arrangement. As a result of this decision, unless Exchangeable Shares are sold in the market, a holder (other than a dissenting holder) will ultimately receive EGI Shares in exchange for the VERSUS Shares held by such holder. The use of the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be, as nearly as practicable, the economic and voting equivalent of the EGI Shares. As such, all subsequent exchanges of Exchangeable Shares are in furtherance of the holders initial investment decision.
31. As a result of the economic and voting equivalency in all material respects between the Exchangeable Shares and the EGI Shares, holders of Exchangeable Shares will have an equity interest determined by reference to EGI, rather than ECC. Dividend and dissolution entitlements will be determined by reference to the financial performance and condition of EGI, not ECC. Accordingly, it is the information relating to EGI, not ECC, that will be relevant to holders of the Exchangeable Shares.

32. EGI will send concurrently to all holders of Exchangeable Shares and EGI Shares resident in the Jurisdictions all disclosure material furnished to holders of EGI Shares resident in the United States including, without limitation, copies of its annual financial statements and all proxy solicitation materials.

33. The VERSUS Circular will disclose that, in connection with the Arrangement, applications have been made for prospectus, registration and resale exemptions and exemptions from the Continuous Disclosure Requirements. The VERSUS Circular will specify the disclosure requirements from which ECC has applied to be exempted and will identify the disclosure that will be made in substitution therefor if such exemptions are granted.

**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 Makers with the Jurisdiction to make the Decision has been met;

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

1. that the requirements contained in the Legislation to be registered to trade in a security, to file a preliminary prospectus and a prospectus and receive receipts therefor shall not apply to any of the Trades;
2. the first trade in Exchangeable Shares arising from a Trade shall be a distribution or a primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation"), unless otherwise exempt thereunder or unless such first trade is made in the following circumstances:
  - (i) ECC is or is deemed to be a reporting issuer or the equivalent under the Applicable Legislation in the Jurisdiction in which such first trade is made or, if ECC is not a reporting issuer or the equivalent pursuant to the Applicable Legislation, EGI complies with the filing requirements of paragraph 4 below;
  - (ii) if the seller is in a special relationship with ECC (as defined in the Applicable Legislation) the seller has reasonable grounds to believe that ECC is not in default of any requirement of the Applicable Legislation;
  - (iii) no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares, and no extraordinary commission or consideration is paid in respect of such first trade; and
  - (iv) disclosure of the exempt trade is made to the Decision Maker(s) (the Decision Makers hereby confirming that the filing of the VERSUS Circular

with the Decision Makers at the time of mailing the VERSUS Circular to holders of VERSUS Shares constitutes disclosure to the Decision Makers of the exempt trade);

then such a first trade is a distribution or a primary distribution to the public only if it is a trade made from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of EGI to affect materially the control of EGI but any holding of any person, company or combination of persons or companies holding more than 20% of the outstanding voting securities of EGI shall, in the absence of evidence to the contrary, be deemed to affect materially the control of EGI (and for this purpose EGI Shares and Exchangeable Shares are considered to be of the same class);

3. the first trade in EGI Shares arising from a Trade shall be a distribution or a primary distribution to the public under the Legislation unless such trade is executed through the facilities of a stock exchange or market outside of the Jurisdictions and such first trade is made in accordance with the rules of the stock exchange or market upon which the trade is made in accordance with all laws applicable to such stock exchange or market; and
4. that the Continuous Disclosure Requirements shall not apply to ECC, so long as:
  - (a) EGI sends to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of EGI Shares resident in the United States, including, without limitation, copies of its annual financial statements and all proxy solicitation materials;
  - (b) EGI files with the Decision Makers copies of all documents required to be filed pursuant to the United States *Securities Exchange Act of 1934*, as amended, including, without limitation, copies of any Form 10-K, Form 10-Q, Form 8-K and proxy statements prepared in connection with EGI's stockholders' meetings;
  - (c) EGI complies with the requirements of NASDAQ in respect of making public disclosure of material information on a timely basis and forthwith issues in the Jurisdictions and files with the Decision Makers any press release that discloses a material change in EGI's affairs;
  - (d) prior to or coincident with the distribution of the Exchangeable Shares, EGI shall cause ECC to provide to each recipient or proposed recipient of Exchangeable Shares resident in the Jurisdictions a statement that, as a consequence of this Decision, ECC will be exempt from certain disclosure requirements applicable to reporting issuers in the Jurisdictions, and specifying those requirements ECC has been exempted from and identifying the disclosure that will be made in substitution therefor (which may be satisfied by

the inclusion of such a statement in the VERSUS Circular);

- (e) ECC complies with the requirements of the Legislation in respect of making public disclosure of material information on a timely basis in respect of material changes in the affairs of ECC that would be material to holders of Exchangeable Shares but would not be material to holders of EGI Shares;
- (f) EGI includes in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to EGI and not in relation to ECC, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the EGI Shares and the right to direct voting at EGI's stockholders' meetings pursuant to the Voting and Exchange Trust Agreement;
- (g) EGI remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of ECC; and
- (h) ECC has not made a public offering of securities other than the Exchangeable Shares.

August 23rd, 2000.

"J. A. Geller"

"Stephen N. Adams"

**2.1.6 Global Strategy Diversified Europe Fund, Global Strategy Diversified World Equity Fund, Global Strategy Financial Inc. - MRRS Decision**

**Headnote**

Investment by mutual funds in securities of another mutual fund that is under common management for specified purpose exempted from the requirement of clause 111(2)(b), and subsection 111(3), clauses 117(1)(a) and 117(1)(d) subject to certain specified conditions under which an "active" investment structure may be used.

**Statutes Cites**

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).

**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  
GLOBAL STRATEGY DIVERSIFIED EUROPE FUND  
GLOBAL STRATEGY DIVERSIFIED WORLD EQUITY  
FUND  
GLOBAL STRATEGY FINANCIAL INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from Global Strategy Financial Inc. ("Global Strategy"), as manager and trustee of the Global Strategy Diversified Europe Fund ("Europe Plus RSP Fund"), Global Strategy Diversified World Equity Fund ("World Equity RSP Fund") and other mutual funds managed by Global Strategy after the date of this Decision having an investment objective or strategy that is linked to the returns or portfolio of another specified Global Strategy mutual fund (collectively referred to as 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 Global Strategy, as the case may be, in respect of certain investments to be made by the Europe Plus RSP Fund in Global Strategy Europe Plus Fund ("the Europe Plus Fund"), by World Equity RSP Fund in Global Strategy World Equity Fund ("World Equity Fund") and by the other RSP Funds in their applicable corresponding Global Strategy

mutual fund from time to time (collectively referred to as 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; and
- 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 securityholder.

**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** Global Strategy has represented to the Decision Makers as follows:

1. Global Strategy is a corporation amalgamated under the laws of Ontario and its head office is located in Ontario. Global Strategy is or will be the manager, trustee, promoter and the portfolio manager of the RSP Funds and the Underlying Funds (collectively, the "Funds"). The registered office of Global Strategy is located in the Province of Ontario.
2. The Funds are or will be open-end mutual fund trusts established under the laws of Ontario. The securities of the Funds are or will be qualified in all of the provinces and territories of Canada (the "Prospectus Jurisdictions") pursuant to the prospectus(es) and annual information form(s) (in each case, together the "Prospectus").
3. Each of the Funds is or will be a reporting issuer under the Legislation of each of the Prospectus Jurisdictions (other than those jurisdictions which do not recognize reporting issuers).
4. The investment objectives of the RSP Funds are or will be to provide long-term growth of capital, primarily through investment in derivatives that provide a return linked to the return of the applicable Underlying Fund. In the case of the World Equity RSP Fund, the return will be linked to the return of World Equity Fund and, in the case of Europe Plus RSP Fund, to the return of Europe Plus Fund. Each RSP Fund may use forwards and other derivatives, the returns on which are based on returns of units of the applicable Underlying Fund or on returns on portfolio securities of the applicable Underlying Fund. Each RSP Fund will also invest directly in the applicable Underlying Fund up to the amount prescribed from time to time as the maximum permitted amount which may be invested in foreign property under the Income Tax Act (Canada) (the "Tax Act") without the imposition of tax under Part XI of the Tax Act (the "Foreign Property Maximum").

5. The current investment objective of each of World Equity RSP Fund and Europe Plus RSP Fund (the "Existing RSP Funds") is to provide long-term growth of capital, primarily through effective exposure, including through derivatives, to equity financial markets anywhere in the world (in the case of World Equity RSP Fund) and to European financial markets, especially equity markets (in the case of Europe RSP Fund). The investment objective of each of World Equity Fund and Europe Plus Fund is to provide long-term growth of capital, primarily through investment in a portfolio of equity securities of issuers, in the case of World Equity Fund, located in equity financial markets located anywhere in the world and, in the case of Europe Plus Fund, located in (or which conduct a significant amount of their business in) the European region. The Existing RSP Funds currently follow an investment strategy involving the use of exchange-traded futures whose values are based, in each case, on a basket of foreign equity securities. The Existing RSP Funds propose to change their investment strategies with the result that each of the Existing RSP Funds will invest in a manner so that its return is linked to the return of the applicable Underlying Fund.
6. Global Strategy believes that there will be material positive consequences to each Existing RSP Fund, as a result of the changes in its investment strategy.
7. Global Strategy believes that the change in each Existing RSP Fund's investment strategy will result in it having more assets than would otherwise be the case, which should allow the Existing RSP Fund to be operated more efficiently.
8. The Prospectus contains or will contain disclosure with respect to the investment objective, investment practices and restrictions of the Funds. The change in investment strategy of each Existing RSP Fund is not a change in the fundamental investment objective of the Existing RSP Fund requiring unitholder approval. The investments of each Existing RSP Fund and the applicable Underlying Fund are substantially connected. Each Existing RSP Fund has given notice to its unitholders of the proposed change in investment strategy to link the return of the Existing RSP Fund to the return of the applicable Underlying Fund.
9. As part of its investment practice, each RSP Fund intends to invest in securities of the applicable Underlying Fund. All purchases of the Underlying Funds may be made through Global Strategy as principal distributor of the Underlying Funds.
10. Each of the RSP Funds will make investments such that its securities will be "qualified investments" for registered retirement savings plans, registered retirement income funds and deferred profit sharing plans (collectively, the "Registered Plans") under the Tax Act and, based on an opinion of counsel to Global Strategy, will not constitute foreign property to a Registered Plan.
11. The direct investment by an RSP Fund in securities of the applicable Underlying Fund (the "Permitted RSP

- Fund Investment") will be in an amount not to exceed the Foreign Property Maximum.
12. The Permitted Fund Investments will be within the Foreign Property Maximum. Global Strategy and the RSP Funds will comply with the conditions of this Decision in respect of such investments. The amount of the direct investment by each RSP Fund in the applicable 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.
  13. The investment objective of each Underlying Fund is or will be achieved through investment primarily in foreign securities.
  14. Except to the extent evidenced by this Decision Document and specific approvals granted by the securities regulatory authorities or regulators under National Instrument 81-102 ("NI 81-102"), the investments by the RSP Funds in the Underlying Funds have been or will be structured to comply with the investment restrictions of the Legislation and NI 81-102.
  15. In the absence of this Decision, an RSP Fund is prohibited from knowingly making and holding an investment in the applicable Underlying Fund in which the RSP Fund alone or together with one or more related mutual funds, is a substantial securityholder.
  16. In the absence of this Decision, Global Strategy is required to file a report on every purchase or sale of securities of the applicable Underlying Fund by an RSP Fund.
  17. An RSP Fund's investment in or redemption of securities of the applicable Underlying 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 Decision Document evidences the decision of each Decision Maker;
- 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 pursuant to the Legislation is that the Applicable Requirements shall not apply to the RSP Funds or Global Strategy, as the case may be, in respect of the investments to be made by the RSP Funds in securities of the Underlying Funds;
- PROVIDED THAT IN RESPECT OF** the investment by the RSP Funds in securities 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 applicable Underlying Fund that are made by an RSP Fund in compliance with the following conditions:
    - (a) the RSP Fund and the Underlying Fund are under common management and the securities of both are offered for sale in the jurisdiction of each Decision Maker, pursuant to a prospectus which has been filed with and accepted by the Decision Maker;
    - (b) the RSP Fund restricts its aggregate direct investment in securities of the applicable Underlying Fund to a percentage of its assets that is within the Foreign Property Maximum;
    - (c) the investment by the RSP Fund in its Underlying Fund is compatible with the fundamental investment objectives of the RSP Fund;
    - (d) the prospectus discloses the intent of the RSP Fund to invest in securities of the Underlying Fund;
    - (e) the RSP Fund may change the Permitted RSP Fund Investments if it changes its fundamental investment objective in accordance with the Legislation;
    - (f) no sales charges are payable by the RSP Fund in relation to its purchases of securities of the Underlying Fund;
    - (g) there are compatible dates for the calculation of the net asset value of the RSP Fund and the Underlying Fund for the purpose of issuing and redeeming securities of both mutual funds;
    - (h) 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;
    - (i) the arrangements between or in respect of the RSP Fund and the Underlying Fund are such as to avoid the duplication of management fees or incentive fees;
    - (j) 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;
    - (k) in the event of the provision of any notice to securityholders of the Underlying Fund as required by the applicable laws or the constating documents of the Underlying Fund, the notice will also be delivered to the securityholders of the RSP Fund; all voting rights attached to the



securities of the Underlying Fund that are owned by the RSP Fund will be passed through to the securityholders of the RSP Fund;

- (l) in the event that a meeting of the securityholders of the Underlying Fund is called, all of the disclosure and notice material prepared in connection with such meeting and received by the RSP Fund will be provided to the securityholders of the RSP Fund; and each securityholder will be entitled to direct a representative of the RSP Fund to vote that securityholder's proportion of the RSP Fund's holding in the Underlying Fund in accordance with his or her 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;
- (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 in either 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 prospectus and financial statements containing disclosure about the RSP Fund and the Underlying Fund, copies of the simplified prospectus, and annual information form and financial statements relating to the Underlying Fund may be obtained upon request by a securityholder of the RSP Fund.

July 12th, 2000.

"Howard I. Weston"

"Robert W. Davis"

## 2.1.7 ITEC-Mineral Inc. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issue of common shares by issuer to holders of its debentures, in satisfaction of the interest and principal amounts owing in respect of the debentures, exempted from registration and prospectus requirements - Issuer has no current operating revenue or cash flow - First trades in common shares acquired pursuant to decision made subject to resale restrictions corresponding to subsection 72(5) of the Ontario Act - Debentures were originally issued pursuant to a prospectus.

### Applicable Ontario Statute

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

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

AND

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

AND

IN THE MATTER OF  
ITEC-MINERAL INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan (the "Jurisdictions") has received an application from ITEC-Mineral Inc. ("ITEC" or the "Corporation") for a decision pursuant to the securities legislation (the "Legislation") of the Jurisdictions that the issue by ITEC of common shares ("Common Shares") of ITEC, in satisfaction of interest and principal amounts owing in respect of previously issued 9.5% convertible unsecured subordinated debentures (the "Debentures") of ITEC, to be made to holders of the Debentures, shall not be subject to the "registration requirement" (the "Registration Requirements") or the "prospectus requirement" (the "Prospectus Requirements") of the Legislation, as such terms are defined in National Instrument 14-101;

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 ITEC has represented to the Decision Makers that:

1. ITEC is a corporation incorporated under the *Companies Act* (Quebec) on September 23, 1987 under the name "Orphée Resources Inc." On November 15, 1994, in connection with a reverse take-over of the Corporation, then having the name ITEC-Mineral Inc., the Corporation's articles were amended to, among other things, change the name of the Corporation to its current name. ITEC is presently engaged principally in the business of the reclamation of mine tailing waste sites.
2. ITEC is a reporting issuer, or the equivalent, in each of the provinces of Canada and is not in default of any of the requirements of the Legislation of any Jurisdiction. The head office and registered office of ITEC is in Quebec.
3. The authorized share capital of ITEC consists of an unlimited number of common shares ("Common Shares"). As of August 10, 2000, there were approximately 12,307,009 Common Shares that were issued and outstanding.
4. The Common Shares are listed and posted for trading on The Toronto Stock Exchange (the "TSE").
5. The Debentures were issued on September 25, 1997 as part of an offering of units (the "Units") by ITEC. Each Unit consisted of:
  - (i) \$800 principal amount of Debentures;
  - (ii) 160 warrants ("Warrants") to purchase an adjustable number of Common Shares; and
  - (iii) a deferred payment receipt, evidencing the right to acquire a further \$200 principal amount of Debentures and a further 40 Warrants.
6. The securities comprising the Units were issued by ITEC pursuant to a prospectus (the "Prospectus") dated September 10, 1997, which was filed with the securities regulatory authority or regulator (the "Securities Regulators") in each of the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Ontario, Quebec and Saskatchewan, and, in respect of which receipts were obtained therefor, under the applicable securities legislation.
7. The Debentures were issued under a trust indenture (the "Trust Indenture") dated September 25, 1997 made between ITEC and Montreal Trust Company (the "Trustee").
8. The total principal amount owing in respect of outstanding Debentures is \$16,552,000, of which \$13,241,600 principal amount will mature on the first business day following September 25, 2002 and the remaining \$3,310,400 principal amount will mature on the first business day following September 25, 2003.
9. Before the 1999 Debenture Amendments and the 2000 Debenture Amendments referred to below (collectively, the "Debenture Amendments"), the Trust Indenture provided that:
  - (i) the principal amount under the Debentures was convertible, at the option of the holder, at any time prior to maturity, into Common Shares, at a conversion price of \$1.25 per Common Share; and
  - (ii) in the event that the weighted-average trading price of the Common Shares on the TSE for a 20-day trading period was at least \$3.00 (the "Trading Price Condition Trigger Price"), the Debentures were convertible by the Trustee, on behalf of the Corporation, into Common Shares.
10. It is a term of the Debentures that ITEC pay interest semi-annually at an annual rate of 9.5 per cent. The first two semi-annual payments due under the Debentures (being the payment due on March 25 and September 25, 1998) were paid when due. The interest payments due on March 25, 1999, September 29, 1999 and March 25, 2000 have not been paid and remain in arrears.
11. On March 25, 1999, ITEC requested that the holders of its Debentures authorize postponement of the interest payment under the Debentures then due on March 25, 1999 until September 25, 1999. Effective as of April 27, 1999, the holders of the requisite aggregate principal amount of the Debentures authorized the postponement.
12. On September 17, 1999, ITEC announced that it was not in the financial position to satisfy the interest payments under the Debentures which were then due on September 25, 1999, (being the interest payment due on September 25, 1999 and the March 25, 1999 interest payment which had been postponed).
13. At a meeting (the "1999 Meeting") held on December 13, 1999, holders of the requisite aggregate principal amount of Debentures approved, subject to any requisite regulatory approval, various amendments to the Trust Indenture (together, the "1999 Debenture Amendments"), described in a management information circular dated December 13, 1999 that was sent by ITEC to holders of the Debentures and filed with the Securities Regulators, including the following:
  - (i) amendments providing for the satisfaction of interest payments due to the holders of Debentures on March 25, 1999 and September 25, 1999, and the payment of the accumulated interest on such interest payments (the "Accumulated Interest"), by the issue by ITEC of such number of Common Shares as is determined by dividing the "aggregate dollar amount of the interest payments due on March 25, 1999 and September 25, 1999 plus the Accumulated Interest" by "the greater of \$0.15 per Common Share or the weighted-average trading price of the Common Shares on the TSE

- for the 20 trading days preceding the date of the approval by ITEC's shareholders of the 1999 Debenture Amendments”;
- (ii) an amendment to provide that ITEC have the option to satisfy future interest payments under the Debenture either in cash, or, through the issue of Common Shares, with the number of Common Shares to be issued in satisfaction of any such interest obligations determined by dividing “the aggregate interest payment then due” by “the greater of \$0.15 per Common Share or the weighted average trading price of the Common Shares on the TSE in the 20 trading days preceding the date of payment of interest”;
- (iii) an amendment which would result in the required repayment of principal under the Debentures in any year at and following maturity being limited to 40 per cent of ITEC's net cash flow (defined for such purposes to mean cash flow generated by the operating activities of ITEC within the meaning of the Handbook of Canadian Institute of Chartered Accountants), and, subject to a further condition that no payment would be made unless net cash flow in a particular financial year was in excess of \$500,000, provided that if the amount in any fiscal year was not sufficient to satisfy the principal amount outstanding on the Debentures, the amount distributable in respect of the year would be distributed on a *pro rata* basis to holders with any deficiency being carried forward to subsequent years until such time as the principal amount of the Debentures was repaid in full; and
- (iv) an amendment resulting in a change in the price at which Common Shares were convertible into Common Shares, at the option of the holder, from \$1.25 to \$0.65, and, a change in the Trading Price Condition Trigger Price from \$3.00 to \$1.00.
14. The 1999 Debenture Amendments were approved by the holders of Common Shares at a special meeting of the holders that was held on December 14, 1999.
15. On August 10, 2000, the closing price for the Common Shares on the TSE, as reported by the TSE, was \$0.32 per Common Share.
16. ITEC currently has no operating revenue or cash flow. The 1999 Debenture Amendments were designed, among other things, to reduce the risk of ITEC ultimately not being able to make payments due under the Debentures by, among other things, encouraging holders to convert their Debentures into Common Shares, and, providing for a reduction in the conversion price in consideration for the agreement by holders of the Debentures to waive past defaults by ITEC and permit ITEC to satisfy future interest amounts owing by the issue of Common Shares.
17. As of June 2, 2000, holders of the requisite aggregate principal amount of Debentures approved further amendments (the “2000 Debenture Amendments”) to the terms of the Debentures to permit ITEC to satisfy the aggregate principal amount of \$16,532,000 then outstanding in respect of the Debentures by converting these Debentures into Common Shares (the “Principal Shares”), at a conversion price of 65¢ per Common Share, so that, upon the issuance of the Principal Shares, and the issuance of Common Shares for all outstanding interest amounts (the “Interest Shares”) owing in respect of the Debentures in accordance with the 1999 Debenture Amendments, ITEC will have satisfied all of its obligations under the Debentures.
18. Immediately upon receipt of this Decision, ITEC intends to satisfy all of its obligations in respect of outstanding Debentures by issuing to the holders:
- (i) an aggregate of 25,433,846 Principal Shares; and
- (ii) an aggregate of 14,863,613 Interest Shares.
19. ITEC has scheduled an annual and special meeting (the “Special Meeting”) of its shareholders for August 21, 2000 to, among other things, approve a resolution authorizing the purchase by ITEC of all of the issued and outstanding shares of Electromed Imaging Inc. (“Electromed”), a corporation engaged in the business of medical technology, in consideration for the issue by ITEC of 22,727,273 Common Shares, representing 60 per cent of Common Shares after giving effect to the issuance of Common Shares referred to in paragraph 18, above.
20. The management information circular (the “Circular”) of ITEC which accompanied the notice of the Special Meeting that was sent by ITEC to the holders of its Common Shares, and filed with Securities Regulators, contains prospectus-level disclosure in respect of Electromed and ITEC's acquisition of Electromed, which, as the Circular explains, will be accounted for as a reserve take-over.

**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 Registration Requirements and Prospectus Requirements shall not apply to the issue by ITEC of Common Shares, that are Principal Shares or Interest Shares referred to in paragraph 18, above, to holders of then outstanding Debentures, provided that, in each case, the first trade in any Common Shares acquired by the holder of a Debenture pursuant to this Decision in a Jurisdiction shall be a distribution under the Legislation (the “Applicable Legislation”) of the Jurisdiction, unless:

- (i) at the time of the first trade, ITEC is a reporting issuer, or the equivalent, under the Applicable Legislation and has been a reporting issuer, or the equivalent, under the Applicable Legislation for at least twelve months;
- (ii) disclosure of the corresponding prior issuance of the Common Shares has been made to the Decision Maker under the Applicable Legislation;
- (iii) if, in respect of the first trade, the seller is in a "special relationship" with ITEC (where such expression is defined in the Applicable Legislation), the seller has reasonable grounds to believe that ITEC is not in default of any requirement of the Applicable Legislation;
- (iv) the first trade is not a trade from the holdings of any person or company holding a sufficient number of securities to affect materially the control of ITEC, but any holding of more than 20 per cent of the outstanding voting securities of ITEC shall, in absence of evidence to the contrary, be deemed, for these purposes, to affect materially the control of ITEC; and
- (v) no unusual effort is made to prepare the market or to create a demand for the Common Shares forming the subject matter of the first trade and no extraordinary commission or consideration is paid in respect of the first trade.

August 31<sup>st</sup>, 2000.

"Howard I. Wetson"

"R. Stephen Brown"

## 2.1.8 Monarch Development Corporation - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Reporting issuer deemed to have ceased to be a reporting issuer - only two related security holders remaining.

Subsection 1(6) of the OBCA - Issuer deemed to have ceased to be offering its securities to the public under the *Business Corporations Act* (Ontario).

### Applicable Ontario Statutory Provisions

*Securities Act*, R.S.O. 1990, c.S.5, as am., ss.1(1), 6(3) and 83.

*Business Corporations Act*, R.S.O. 1990, c.B.16, as am., s.1(6).

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

AND

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

AND

IN THE MATTER OF  
MONARCH DEVELOPMENT CORPORATION

### MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Newfoundland and Nova Scotia (the "Jurisdictions") has received an application from Monarch Development Corporation ("Monarch") for:

- (i) a decision under the securities legislation of the Jurisdictions (the "Legislation") that Monarch be deemed to have ceased to be a reporting issuer (or the equivalent thereof) under the Legislation; and

in Ontario only,

- (ii) an order pursuant to the *Business Corporations Act* (Ontario) (the "OBCA") that Monarch be deemed to have ceased to be offering its securities to the public;

**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** Monarch has represented to the Decision Makers that:

1. Monarch is a company amalgamated under the *Business Corporations Act* (Ontario) (the "OBCA") and its head office is located in Toronto, Ontario.
2. Monarch is a reporting issuer or the equivalent under the Legislation and is not in default of any requirement of the Legislation.
3. The authorized capital of Monarch consists of an unlimited number of common shares ("Common Shares") of which 40,907,750 Common Shares are outstanding. There are also 223,566 non-transferable options (the "Options") to purchase Common Shares of Monarch outstanding. These Options are held by five senior officers and directors of Monarch who have agreed to surrender the Options to Monarch for repurchase and cancellation. Fifty percent of the Options will be repurchased on April 28, 2001 and fifty percent of the Options will be repurchased on April 28, 2002 (subject to termination of employment). Monarch has no other securities or debt outstanding.
4. On April 28, 2000, Taylor Woodrow Holdings of Canada Limited ("Taylor Woodrow"), an indirect wholly-owned subsidiary of Taylor Woodrow plc, commenced a take-over bid for all of the Common Shares not owned by Taylor Woodrow and its affiliates. The take-over bid expired on May 20, 2000 and on May 29, 2000 Taylor Woodrow took up and paid for 18,210,450 tendered shares, representing approximately 99% of the Common Shares subject to the take-over bid.
5. On May 30, 2000, Taylor Woodrow mailed a Notice of Compulsory Acquisition under subsection 188(2) of the OBCA to holders of Common Shares not tendered pursuant to the take-over bid.
6. As of June 29, 2000, Taylor Woodrow and Taylor Woodrow plc became the only two holders of all of the issued and outstanding common shares of Monarch.
7. The Common Shares were delisted from The Toronto Stock Exchange on June 15, 2000. Monarch does not have any securities listed or quoted on any exchange or market in Canada.
8. Monarch does not intend to seek public financing by way of an issue of securities.

**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 that Decision Maker with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Maker pursuant to the Legislation is that Monarch is deemed to have ceased to be a reporting issuer (or equivalent thereof) under the Legislation.

August 18<sup>th</sup>, 2000.

"John Hughes"

**AND IT IS HEREBY ORDERED** by the Ontario Securities Commission pursuant to subsection 1(6) of the OBCA, that Monarch is deemed to have ceased to be offering its securities to the public for the purposes of the OBCA.

August 18<sup>th</sup>, 2000.

"Howard I. Wetston"

"J. A. Geller"

## 2.1.9 Search Energy Corp. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - 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 the 1999 financial year in respect of which its Initial AIF is 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

*In the Matter of the Prompt Offering Qualification System (1997)*, 20 OSCB 1217.

Proposed Rule implementing proposed National Instrument 44-101 - *Prompt Offering Qualification System (1998)*, 21 OSCB 1138.

### Policies Cited

National Policy Statement No. 47 - *Prompt Offering Qualification System*, ss. 4.1 and 4.5.

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

AND

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

AND

**IN THE MATTER OF  
SEARCH ENERGY CORP.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Makers") in each of the provinces of British Columbia, Alberta, Manitoba, Ontario, Quebec and Nova Scotia (the "Jurisdictions") has received an application from Search Energy Corp. (the "Filer") for a decision pursuant to section 4.5 of National Policy Statement No. 47 ("NP 47") and to the securities legislation of the Jurisdictions (the "Legislation") for a waiver of the eligibility requirements found in section 4.1(2)(b)(i) of NP 47 and section 169 of the Regulation Respecting Securities (Quebec) (the "Quebec Regulation") to permit the Filer to participate in the Prompt

Offering Qualification System (the "POP System") as if it were an eligible reporting issuer within the meaning of NP 47;

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

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

1. The Filer was incorporated in 1979 as Westrex Energy Corp. ("Westrex"). Through a plan of arrangement under the *Business Corporations Act* (Alberta), Westrex merged with Search Energy Inc. ("Search Inc.") on December 31, 1996, and changed its name to Search Energy Corp. on January 2, 1997. Search Inc. thereby became a wholly-owned subsidiary of the Filer. The Filer is registered to carry on business in the provinces of Alberta and British Columbia.
2. The Filer has been a reporting issuer in Alberta since April 11, 1991;
3. The Filer's head office is located in Alberta.
4. The Filer is not in default of securities legislation in any jurisdiction.
5. The Common Shares of the Filer are listed and posted for trading on the Toronto Stock Exchange under the trading symbol "SGY".
6. The Filer is authorized to issue an unlimited number of Common Shares.
7. The financial year end of the Filer is December 31.
8. As of July 10, 2000, apart from Mr. John Feigl (beneficially owning, directly or indirectly, or exercising control or direction over, 5,071,200 Common Shares, or approximately 10.86% of the issued and outstanding Common Shares), no person beneficially owns directly or indirectly, or exercises control or direction over Common Shares carrying more than 10 percent of the votes attached to all of the issued and outstanding Common Shares.
9. As of June 30, 2000 there were 46,709,415 Common Shares of the Filer issued and outstanding.
10. During the period from December 1, 1999 to December 31, 1999, the aggregate market value of the Equity Securities of the Filer, calculated in accordance with NP 47 and the Quebec Regulation, was \$59,415,431. During the period from June 1, 2000 to June 30, 2000, the aggregate market value of the Equity Securities of the Filer, calculated in accordance with NP 47 and the Quebec Regulation, was \$89,938,544. During the period from July 1, 2000 to July 31, 2000, the aggregate market value of the Equity Securities of the Filer, calculated in accordance with NP 47 and the Quebec Regulation, was \$89,522,162.

11. The Filer would be eligible to participate in the POP System, except that the market value of its Equity Securities (as defined in NP 47), being the Common Shares not held by John Feigl, during the last calendar month of its most recently completed financial year was less than \$75,000,000.

(iv) this Decision terminates on the earlier of: (a) 140 days after the end of the Filer's financial year ended December 31, 2000, and (b) the date of filing a renewal AIF by the Filer in respect of its financial year ending December 31, 2000.

12. The Filer would be eligible to participate in the POP System upon the filing and acceptance of its Initial AIF under Proposed National Instrument 44-101 which would replace the current calculations of the aggregate market value of an issuer's securities under NP 47 with a calculation as of a date within sixty (60) days before the filing of the issuer's preliminary short form prospectus.

**DATED** at Edmonton, Alberta on August 31<sup>st</sup>, 2000.

"Agnes Lau"  
Agnes Lau, CA  
Deputy Director, Capital Markets

13. The Filer may wish to effect an offering prior to its financial year end and is of the view that a short form prospectus is the most appropriate vehicle for such offering;

**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 Decision Makers hereby waive the requirements of section 4.1(2)(b)(i) of NP 47 and section 169 of the Quebec Regulation in respect of the Filer so that the Filer is eligible to participate in the POP System, provided that:

- (i) the Filer complies with all the filing requirements and procedures and each of the other eligibility requirements of NP 47 and the Quebec Regulation;
- (ii) the aggregate market value of the equity securities of the Filer, calculated in accordance with section 4.1(2) of NP 47 and section 169 of the Quebec Regulation is \$75,000,000 or more on a date within sixty (60) days before the date of filing of the Filer's preliminary short form prospectus;
- (iii) the eligibility certificate to be filed in respect of the Filer's initial AIF shall state that the Filer satisfies the eligibility criteria set out in the Legislation and shall make reference to this waiver; and

**2.1.10 TD Split Inc. and TD Securities Inc. - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - subdivided offering - the prohibitions contained in the Legislation prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds shall not apply to the promoter/agent with respect to certain principal trades with the issuer in securities comprising the issuer's portfolio in connection with an offering where underlying interest consists of a portfolio of common shares of a chartered Canadian bank.

The restrictions restricting registrants from acting as underwriters in connection with the distribution of securities of a related or connected issuer shall not apply to the promoter/agent in connection with the offering.

Market making trades by promoter/agent shall not be subject to requirements to file and obtain a receipt for a preliminary and final prospectus provided that the promoter/agent and its affiliates do not beneficially own or have the power to exercise control of a sufficient number of voting securities of an issuer of the securities comprising the issuer's portfolio to permit the promoter/agent to affect materially the control of such issuer.

Issuer, a mutual fund, exempted from restriction against making an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company.

**Applicable Ontario Statutes**

Securities Act, R.S.O. 1990, c.S.5, as amended, ss. 1(1), 53, 59, 74(1), 111(2)(a), 119, 121(2)(a)(ii).

**Applicable Ontario Regulations**

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as amended, ss. 233, 224(1)(b).

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

**AND**

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

**AND**

**IN THE MATTER OF  
TD SPLIT INC.  
AND TD SECURITIES INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland, New Brunswick and Prince Edward Island (the "Jurisdictions") has received an application from TD Split Inc. (the "Issuer") and TD Securities Inc. ("TD Securities") for a decision under the securities legislation (the "Legislation") of the Jurisdictions that the following requirements contained in the applicable Legislation shall not apply to the Issuer and/or TD Securities, as applicable, in connection with the initial public offering (the "Offering") of class A capital shares (the "Capital Shares") and class A preferred shares (the "Preferred Shares") of the Issuer:

- (a) in the case of the Legislation of each of the Jurisdictions other than Nova Scotia and Manitoba, the restrictions contained therein restricting registrants from acting as underwriters in connection with the distribution of securities of a related or connected issuer (the "Underwriting Restrictions") shall not apply to TD Securities in connection with the Offering;
- (b) the requirements contained in the Legislation of each of the Jurisdictions to file and obtain a receipt for a preliminary prospectus and final prospectus (the "Prospectus Requirements") shall not apply to Market Making Trades (as hereinafter defined) by TD Securities in Capital Shares and Preferred Shares of the Issuer;
- (c) in the case of the Legislation of each of the Jurisdictions other than Manitoba, the prohibitions contained therein prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds (the "Principal Trading Prohibitions") shall not apply to TD Securities in connection with the Principal Sales and Principal Purchases (both as hereinafter defined); and
- (d) in the case of the Legislation of each of the Jurisdictions other than Manitoba, the restrictions contained therein prohibiting the Issuer from making investments in The Toronto-Dominion Bank, which bank is a substantial security holder of a distribution company of the Issuer (the "Investment Restrictions") shall not apply to the Issuer in connection with the Offering;

subject to certain restrictions;

**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 Issuer has represented to the Decision Makers that:

- 1. The Issuer was incorporated on July 31, 2000 under the laws of the Province of Ontario and has its principal office in Toronto, Ontario.
- 2. The Issuer has filed with the securities regulatory authorities of each Jurisdiction a preliminary prospectus



- dated August 3, 2000 (the "Preliminary Prospectus") in respect of the Offering of Capital Shares and Preferred Shares to the public.
3. The Issuer intends to become a reporting issuer under the Legislation by filing a final prospectus (the "Final Prospectus") relating to the Offering.
  4. The Issuer is authorized to issue an unlimited number of Class A voting shares (the "Class A Shares"), of which 100 Class A Shares are currently outstanding.
  5. Prior to the filing of the Final Prospectus, the articles of incorporation of the Issuer will be amended so that the authorized capital of the Issuer will consist of an unlimited number of Capital Shares, an unlimited number of Preferred Shares, an unlimited number of Class B, Class C and Class D Preferred Shares, issuable in series, and an unlimited number of Class E voting shares (the "Class E Shares"), having the attributes set forth under the headings "Description of Share Capital" and "Details of the Offerings" commencing on page 11 of the Preliminary Prospectus.
  6. At the time of filing the Final Prospectus, all Class A Shares will be converted into Class E Shares and, as at such time, 100 Class E Shares will be issued and outstanding. The Class E Shares will be the only voting shares in the capital of the Issuer. TD Securities will own 50 of the issued and outstanding Class E and TD Split Holdings Corporation will own the remaining 50 issued and outstanding Class E Shares. Two employees of TD Securities, J. David Beattie and R. Denys Calvin, each own 50% of the issued and outstanding common shares of TD Split Holdings Corporation.
  7. The Capital Shares and Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.
  8. Application will be made to list the Capital Shares and Preferred Shares on The Toronto Stock Exchange (the "TSE").
  9. All Capital Shares and Preferred Shares outstanding on a date approximately five years from the closing of the Offering will be redeemed by the Issuer on such date and Preferred Shares will be redeemable at the option of the Issuer on any Annual Retraction Payment Date (as described in the Preliminary Prospectus).
  10. The Issuer has a board of directors which currently consists of three directors. All of the directors are employees of TD Securities. Also, the offices of President/Chief Executive Officer and Chief Financial Officer/Secretary of the Issuer are held by employees of TD Securities. Prior to filing the Final Prospectus, it is contemplated that at least two additional directors, independent of TD Securities, will be appointed to the board of directors of the Issuer.
  11. The Issuer is a passive investment company whose principal undertaking will be to invest the net proceeds of the Offering in a portfolio (the "Portfolio") of publicly listed common shares (the "TD Bank Shares") of The Toronto-Dominion Bank (the "TD Bank"). The aggregate number of TD Bank Shares to be included in the Portfolio will represent less than 2% of the public market capitalization of the TD Bank. The purpose of the Issuer is to provide a vehicle through which different investment objectives with respect to participation in TD Bank Shares may be satisfied.
  12. The TD Bank Shares are listed and traded on the TSE.
  13. The Issuer is considered to be a mutual fund as defined in the Legislation. Since the Issuer does not operate as a conventional mutual fund, it has made application for a waiver from certain requirements of National Instrument 81-102.
  14. TD Securities was incorporated under the federal laws of Canada and is a direct, wholly-owned subsidiary of the TD Bank and is registered under the Legislation as a dealer in the categories of "broker" and "investment dealer" and is a member of the Investment Dealers Association of Canada and the TSE.
  15. TD Securities is the promoter of the Issuer and will be establishing a credit facility in favour of the Issuer in order to facilitate the acquisition of the TD Bank Shares by the Issuer.
  16. Pursuant to an administration agreement (the "Administration Agreement") to be entered into, the Issuer will retain TD Securities to administer the ongoing operations of the Issuer and will pay TD Securities a fee equal to:
    - (a) monthly fee of 1/12 of 0.15% of the market value of the TD Bank Shares held in the Portfolio; and
    - (b) any interest income earned by the Issuer during the term of the Administration Agreement.
  17. Pursuant to an agreement (the "Agency Agreement") to be made between the Issuer and TD Securities, Scotia Capital Inc. and such other agents as may be appointed after the date of this decision document (collectively, the "Agents" and individually, an "Agent"), the Issuer will appoint the Agents, as its agents, to offer the Capital Shares and Preferred Shares of the Issuer on a best efforts basis and the Final Prospectus qualifying the Offering will contain a certificate signed by each of the Agents in accordance with the Legislation.
  18. TD Securities' economic interest in the Issuer and in the material transactions involving the Issuer are disclosed in the Preliminary Prospectus and will be disclosed in the Final Prospectus under the heading "Interest of Management and Others in Material Transactions".
  19. The net proceeds from the sale of the Capital Shares and Preferred Shares under the Final Prospectus, after payment of commissions to the Agents, expenses of issue and carrying costs relating to the acquisition of the TD Bank Shares, will be used by the Issuer to:

- (a) pay the acquisition cost (including any related costs or expenses) of the TD Bank Shares; and
  - (b) pay the initial fee payable to TD Securities for its services under the Administration Agreement (as defined below).
20. Pursuant to an agreement (the "Securities Purchase Agreement") to be entered into between the Issuer and TD Securities, TD Securities will purchase, as agent for the benefit of the Issuer, TD Bank Shares in the market on commercial terms or from non-related parties with whom TD Securities and the Issuer deal at arm's length.
21. The Final Prospectus will disclose the acquisition cost of the TD Bank Shares and selected information with respect to the dividend and trading history of the TD Bank Shares.
22. Subject to the relief granted hereby, TD Securities may, as principal, sell TD Bank Shares to the Issuer (the "Principal Sales"). The aggregate purchase price to be paid by the Issuer for the TD Bank Shares (together with carrying costs and other expenses incurred in connection with the purchase of TD Bank Shares) will not exceed the net proceeds from the Offering.
23. The Preliminary Prospectus discloses and the Final Prospectus will disclose that any Principal Sale will be made in accordance with the rules of the applicable stock exchange and the price paid to TD Securities (inclusive of all transaction costs, if any) will not be greater than the price which would have been paid (inclusive of all transaction costs, if any) if the acquisition had been made through the facilities of the principal stock exchange on which the TD Bank Shares are listed and posted for trading at the time of the purchase from TD Securities.
24. TD Securities will not receive any commissions from the Issuer in connection with the Principal Sales and all Principal Sales will be approved by at least two independent directors of the Issuer.
25. For the reasons set forth in paragraphs 22 and 23 above, and the fact that no commissions are payable to TD Securities in connection with the Principal Sales, in the case of the Principal Sales, the interests of the Issuer and the shareholders of the Issuer may be enhanced by insulating the Issuer from price increases in respect of the TD Bank Shares.
26. None of the TD Bank Shares to be sold by TD Securities as principal to the Issuer have been acquired, nor has TD Securities agreed to acquire, any TD Bank shares while TD Securities had access to information concerning the investment program of the Issuer, although certain of the TD Bank Shares to be held by the Issuer may be acquired or TD Securities may agree to acquire such TD Bank Shares on or after the date of this Decision Document.
27. The Issuer is not, and will not upon the completion of the Offering, be an insider of the TD Bank within the meaning of the Legislation.
28. TD Securities does not have knowledge of a material fact or material change with respect to the TD Bank that has not been generally disclosed.
29. It will be the policy of the Issuer to hold the TD Bank Shares and to not engage in any trading of the TD Bank Shares, except:
- (a) to fund retractions or redemptions of Capital Shares and Preferred Shares;
  - (b) to fund a portion of the fixed cumulative dividends payable on the Preferred Shares;
  - (c) following receipt of stock dividends on the TD Bank Shares; or
  - (d) in certain other limited circumstances as described in the Preliminary Prospectus.
30. In connection with the services to be provided by TD Securities to the Issuer pursuant to the Administration Agreement, TD Securities may sell TD Bank Shares to fund retractions of Capital Shares and Preferred Shares prior to the Redemption Date and upon liquidation of the TD Bank Shares prior to the Redemption Date. These sales will be made by TD Securities as agent on behalf of the Issuer, but in certain circumstances, such as where a small number of Capital Shares and Preferred Shares have been surrendered for retraction, TD Securities may purchase TD Bank Shares as principal (the "Principal Purchases") subject to the relief granted hereby.
31. In connection with any Principal Purchases, TD Securities will comply with the rules, procedures and policies of the applicable stock exchange of which it is a member and in accordance with orders obtained from all applicable securities regulatory authorities. The Preliminary Prospectus discloses and the Final Prospectus will disclose that TD Securities may realize a gain or loss on the resale of such securities.
32. The Administration Agreement will provide that TD Securities must take reasonable steps, such as soliciting bids from other market participants or such other steps as TD Securities, in its discretion, considers appropriate after taking into account prevailing market conditions and other relevant factors, to enable the Issuer to obtain the best price reasonably available for the TD Bank Shares so long as the price obtained is at least as advantageous to the Issuer as the price which is available (net of all transaction costs, if any) through the facilities of the applicable stock exchange at the time of the trade.
33. TD Securities will not receive any commissions from the Issuer in connection with the Principal Purchases and, in carrying out the Principal Purchases, TD Securities shall deal fairly, honestly and in good faith with the Issuer.

34. TD Securities will be a significant maker of markets for the Capital Shares and Preferred Shares, although it is not anticipated that TD Securities will be appointed the registered pro-trader by the TSE with respect to the Issuer. As a result, as discussed above TD Securities will, from time to time, purchase and sell Capital Shares and Preferred Shares as principal and trade in such securities as agent on behalf of its clients, the primary purpose of such trades (the "Market Making Trades") being to provide liquidity to the holders of Capital Shares and Preferred Shares. All trades made by TD Securities as principal will be recorded daily by the TSE.
35. As TD Securities owns 50% of the Class E Shares of the Issuer, TD Securities will be deemed to be in a position to effect materially the control of the Issuer and consequently, each Market Making Trade will be a "distribution" or "distribution to the public" within the meaning of certain of the Legislation.
36. By virtue of TD Securities' relationship with the Issuer, including the fact that three of the directors of the Issuer and all of the officers of the Issuer are employees of TD Securities and TD Securities is the Promoter of the Issuer, the Issuer is a connected issuer (or its equivalent) and/or related issuer (or its equivalent) of TD Securities under certain of the Legislation.
37. The TD Bank is a substantial security holder of TD Securities, which is a distribution company of the Issuer. Accordingly, an investment by the Issuer in the TD Bank Shares will constitute an investment in a substantial security holder of a distribution company of the Issuer which, in the absence of the relief hereby granted, is prohibited by certain of the Legislation.
38. Although TD Securities and Scotia Capital Inc. will be lead and co-lead underwriters of the Offering, respectively, it is not known at this time what proportions of the Offering will be sold by additional agents other than TD Securities and Scotia Capital Inc. A minimum of 20% of the Offering will be sold by Scotia Capital Inc.

**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 Legislation is that:

- A. The Underwriting Restrictions shall not apply to TD Securities in connection with the Offering.
- B. The Prospectus Requirements shall not apply to the Market Making Trades by TD Securities in the Capital Shares and Preferred Shares provided that at the time of each Market Making Trade, TD Securities and its affiliates do not

beneficially own or have the power to exercise control or direction over a sufficient number of voting securities of the TD Bank, securities convertible into voting securities of the TD Bank, options to acquire voting securities of the TD Bank, or any other securities which provide the holder with the right to exercise control or direction over voting securities of the TD Bank which in the aggregate, permit TD Securities to affect materially the control of the TD Bank and without limiting the generality of the foregoing, the beneficial ownership of or the power to exercise control or direction over securities representing in the aggregate, 20% or more of the votes attaching to all the then issued and outstanding voting securities of the TD Bank shall, in the absence of evidence to the contrary, be deemed to affect materially the control of the TD Bank.

- C. The Principal Trading Prohibitions shall not apply to TD Securities in connection with the Principal Sales and Principal Purchases.
- D. The Investment Restrictions shall not apply to the Issuer in connection with investments in the TD Bank Shares for the purposes of the Offering as described in the Preliminary Prospectus.

August 30<sup>th</sup>, 2000.

"Howard I. Wetson"

"Theresa McLeod"

**2.2 Orders**

**2.2.1 Cogeco Cable Inc. - s. 233, Regulation**

**Headnote**

Issuer is a connected issuer, but not a related issuer, in respect of registrants that are underwriters in proposed distribution of subordinate voting shares by the issuer - Underwriters exempt from the independent underwriter requirement in the legislation provided that issuer not in financial difficulty.

**Regulations Cited**

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 219(1), 224(1)(b) and 233

**Rules Cited**

Proposed Multi-Jurisdictional Instrument 33-105 *Underwriting Conflicts* (1998), 21 OSCB 788

**IN THE MATTER OF THE SECURITIES ACT  
R.S.O. 1990, AS AMENDED (the "Act")**

**AND**

**IN THE MATTER OF  
COGECO CABLE INC.**

**AND**

**IN THE MATTER OF  
BMO NESBITT BURNS INC., CIBC WORLD MARKETS  
INC.,  
NATIONAL BANK FINANCIAL INC.,  
RBC DOMINION SECURITIES INC., SCOTIAMCLEOD INC.  
AND TORONTO DOMINION SECURITIES INC.**

**ORDER  
(Section 233 of the Regulation)**

UPON the Ontario Securities Commission (the "Commission") having received from BMO Nesbitt Burns Inc., CIBC World Markets Inc., National Bank Financial Inc., RBC Dominion Securities Inc., ScotiaMcLeod Inc. and Toronto Dominion Securities Inc. (collectively, the "Underwriters") an application for an order pursuant to section 233 of the Regulation (the "Regulation") under the Act that the Underwriters are exempt from the requirements contained in clause 224(1)(b) of the Regulation under the Act, as varied by a rule of the Commission entitled *In the Matter of the Limitation on a Registrant Underwriting Securities of a Related Issuer or Connected Issuer of the Registrant* (1997), 20 OSCB 1217 (the "Rule"), in respect of the distribution (the "Offering") by Cogeco Cable Inc. ("Cogeco") of 2,500,000 Subordinate Voting Shares of Cogeco by way of a short form prospectus (the "Prospectus");

AND UPON considering the application and recommendation of staff;

AND UPON the Underwriters having represented to the Commission that:

1. Cogeco was incorporated under the *Canada Business Corporations Act* on March 24, 1992.
2. Cogeco is a reporting issuer under the Act and is not in default of any requirement under the Act.
3. Cogeco has filed on August 28, 2000 a preliminary short-form prospectus (the "Preliminary Prospectus") with the Commission des valeurs mobilières du Québec and with the securities regulatory authorities in each of the other provinces of Canada in order to qualify the Offering at a price of \$40.00 per share.
4. Pursuant to the terms of an underwriting agreement between Cogeco and the Underwriters, the Underwriters will agree to act as underwriters in connection with the Offering; the proportionate share of the Offering to be underwritten by each of the Underwriters is as follows:

<u>UNDERWRITER NAME</u>	<u>PROPORTIONATE SHARE OF OFFERING</u>
BMO Nesbitt Burns Inc.	38.8%
CIBC World Markets Inc.	16.7%
National Bank Financial Inc.	16.7%
RBC Dominion Securities Inc.	11.1%
ScotiaMcLeod Inc.	11.1%
Toronto Dominion Securities Inc.	5.6%

5. Cogeco has an agreement with a syndicate of financial institutions (the "Syndicate") for a committed revolving term facility of \$620 million (the "Credit Facility"). Further, Cogeco has an operating line of credit of \$25 million (the "Line of Credit"). Each of the Underwriters is controlled by a Canadian chartered bank (the "Banks") which is a member of the Syndicate.
6. By virtue of the Facility and the Line of Credit, Cogeco is a "connected issuer" (as defined in subsection 219(1) of the Regulation) of each of the Underwriters; thus the Underwriters do not comply with the proportionate requirements of clause 224(1)(b) of the Regulation as varied by the Rule.
7. Cogeco is not a "related issuer" to the Underwriters (as defined in subsection 219(1) of the Regulation).
8. The net proceeds of the Offering will be used to reduce Cogeco's indebtedness to the Banks. The Banks did not participate in the decision to make the Offering nor in the determination of the terms of the Offering or the use of proceeds thereof.
9. The disclosure required by Schedule C to the Proposed Multi-Jurisdictional Instrument 33-105 entitled *Underwriting Conflicts* (1998) 21 OSCB 788 (the "Proposed Conflict Instrument") is contained in the Preliminary Prospectus and in the Prospectus.

10. Cogeco is not a "related issuer", as that term is defined in the Proposed Conflict Instrument, of any of the Underwriters; nor is Cogeco a "specified party", as that term is defined in the Proposed Conflict Instrument.
11. Cogeco is in good financial condition and is not under any immediate financial pressure to complete the Offering.
12. The certificate in the Preliminary Prospectus and the Prospectus is signed by each of the Underwriters as required by the Act.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 233 of the Regulation that the Underwriters are exempt from the requirements contained in section 224(1)(b) of the Regulation as modified by the Rule, in respect of the Offering.

September 6<sup>th</sup>, 2000.

"J. A. Geller"

"R. Stephen Paddon"

## 2.2.2 Pan American Resources Inc. - s. 147

### Headnote

Section 147 - Exemption from provisions of section 13.2 of OSC Policy 5.2 where price per share at which debt is to be converted into shares is below \$0.20 per share

### Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as amended, ss. 6 and 147

### Rules Cited

*In the Matter of Certain Trades in Securities of Junior Natural Resource Issuers* (1997) 20 O.S.C.B. 1218 (March 1, 1997).

IN THE MATTER OF THE SECURITIES ACT,  
R.S.O. 1990, CHAPTER S.5. AS AMENDED (the "Act")

AND

IN THE MATTER OF  
PAN AMERICAN RESOURCES INC.

ORDER  
(Section 147)

UPON the application (the "Application") of Pan American Resources Inc. (the "Issuer") to the Ontario Securities Commission (the "Commission") for an order pursuant to section 147 of the Act exempting the Issuer from the provisions of section 13.2 of Ontario Securities Commission Policy Statement No. 5.2 ("OSC Policy 5.2") now deemed to be a rule pursuant to the rule entitled *In the Matter of Certain Trades in Securities of Junior Resource Issuers* (1997) 1218 20 OSCB as amended, (the "Junior Resource Issuers Rule"), which restricts the price per share at which any debt may be converted to shares;

AND UPON the Issuer having represented to the Commission that:

1. The Issuer was amalgamated under the laws of the Province of Ontario on January 16, 1996.
2. The Issuer is a reporting issuer under the Act and the *Securities Act* (Quebec) and is not on the list of defaulting reporting issuers maintained pursuant to the Act.
3. The common shares in the capital of the Issuer (the "Pan American Shares") are quoted on the Montreal Exchange.
4. The price of the Pan American Shares, using a 10 day weighted average price as of August 23, 2000, applied without a discount, is \$0.07.
5. In connection with the debt settlement agreements to be entered into between the Issuer and certain creditors pursuant to which the Issuer would issue shares in settlement of certain debts (the "Debt Settlement"), the

Issuer proposes to issue 5,306,666 Pan American Shares to certain creditors as follows:

- (i) 2,333,334 Pan American Shares at a price of \$0.15 per share, in satisfaction of accounts from a non-arms length party (the "Insider") in the amount of approximately \$350,000; and
  - (ii) 2,973,332 Pan American Shares at a price of \$0.15 per share, in satisfaction of trade accounts payable to various arm's-length creditors (the "Creditors") in the amount of approximately \$446,000.
6. Section 13.2 of OSC Policy 5.2 would require that the Pan American Shares be issued at \$0.20 per share.
  7. The Insider and Creditors have expressed their willingness to receive 5,306,666 Pan American Shares at \$0.15 per share in satisfaction of such accounts payable.
  8. The Issuer will disclose in the agreements with the Insider and Creditors the fact that this Order has been issued and that, but for this Order, OSC Policy 5.2 would have required that such Pan American Shares be issued at \$0.20 per share.
  9. The Debt Settlement will otherwise comply with the provisions of Article 13 of OSC Policy 5.2 and the Junior Resource Issuers Rule.

**AND UPON** considering the Application and the recommendation of the staff of the Commission;

**AND UPON** the Director being satisfied that to do so would not be prejudicial to the public interest;

**IT IS ORDERED**, pursuant to section 147 of the Act, that the Issuer is exempt from the provisions of section 13.2 of OSC Policy 5.2 and the Junior Resource Issuers Rule in respect of the issuance of Pan American Shares to the Insider and to the Creditors in relation to the Debt Settlement.

September 5<sup>th</sup>, 2000.

"Margo Paul"

## 2.2.3 Royop Properites Corporation - ss. 80(b)(iii)

### Headnote

Subsection 80 (b) (iii) - exemption from the requirement of section 79 of the Act to deliver to security holders the interim comparative financial statements.

### Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., ss77(1), 79 and 80 (b)(iii).

**IN THE MATTER OF  
THE SECURITIES ACT, R.S.O. 1990,  
CHAPTER S.5, AS AMENDED (the "Act")**

**AND**

**IN THE MATTER OF  
ROYOP PROPERTIES CORPORATION**

**ORDER  
(subsection 80 (b)(iii))**

**UPON** the application of Royop Properties Corporation ("Royop") to the Ontario Securities Commission (the "Commission") for an order, pursuant to subsection 80 (b)(iii) of the *Securities Act* (Ontario) (the "Act"), that Royop be exempted from the requirements under sections 77 and 79 of the Act to file interim financial statements for the period ended June 30, 2000 (the "Second Quarter Financial Statements") and to mail the Second Quarter Financial Statements to its security holders;

**AND UPON** considering the application and the recommendation of the staff of the Commission;

**AND UPON** Royop having represented to the Commission that:

1. Royop is a corporation existing under the *Canada Business Corporations Act* (the "CBCA");
2. Royop's fiscal year end is December 31;
3. Royop is authorized to issue an unlimited number of common shares (the "Royop Shares"), of which 38,617,401 Royop Shares were issued and outstanding on August 22, 2000;
4. Royop is a reporting issuer or the equivalent in Ontario, British Columbia, Alberta and Saskatchewan (the "Jurisdictions") and the Royop Shares are listed for trading on The Toronto Stock Exchange;
5. On May 31, 2000, Royop entered into an arrangement agreement with H&R Real Estate Investment Trust ("H&R REIT") whereby H&R REIT will acquire all of the Royop Shares and holders of Royop Shares will receive, in exchange for each Royop Share held, 0.0938 of a unit of H&R REIT;

**Decisions, Orders and Rulings**

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6. The transaction has been structured as a plan of arrangement (the "Arrangement") pursuant to section 192 of the CBCA;
7. On July 25, 2000, a notice of annual and special meeting (the "Meeting") of shareholders, management proxy circular, letter of transmittal and proxy form were sent to holders of Royop Shares;
8. The Meeting was held on August 22, 2000 where the requisite majorities of holders of Royop Shares approved Arrangement on August 25, 2000;
9. The Ontario Superior Court of Justice (the "Court") approved the Arrangement on August 25, 2000;
10. The Arrangement is expected to become effective on August 30, 2000 when the Director under the CBCA issues a Certificate of Arrangement effecting the Arrangement; and
11. Once the Arrangement is effective, H&R REIT will own all of the outstanding Royop Shares.

**AND UPON** the Commission being satisfied that to so rule would not be prejudicial to the public interest;

**IT IS ORDERED**, pursuant to subsection 80(b)(iii) of the Act, that the requirement to file the Second Quarter Financial Statements and to concurrently send the Second Quarter Financial Statements to the holders of its securities shall not apply to Royop, provided that:

- (a) H&R REIT files an application as soon as possible to the various applicable securities regulatory authorities or regulators to have Royop deemed to have ceased to be a reporting issuer in the Jurisdictions; and
- (b) Arrangement becomes effective on or about August 30, 2000.

August 29<sup>th</sup>, 2000.

"J. A. Geller"

"Howard I. Wetston"

## 2.3 Rulings

### 2.3.1 1396164 Ontario Limited - s. 59 of Schedule 1

#### Headnote

Subsection 59(2) of Schedule 1 to the Regulation - reduction in fee otherwise due as a result of a takeover bid in connection with a corporate reorganization involving no change in beneficial ownership.

#### Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., s. 93(1)(c).

#### Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am. Schedule 1 s.32(1), 59(2).

IN THE MATTER OF THE SECURITIES ACT,  
R.S.O. 1990, CHAPTER S.5, AS AMENDED (the "Act")

AND

IN THE MATTER OF  
THE REGULATION UNDER THE SECURITIES ACT,  
R.R.O. 1990, REGULATION 1015, AS AMENDED (the  
"Regulation")

AND

IN THE MATTER OF  
1396164 ONTARIO LIMITED

RULING

(Section 59 of Schedule 1)

UPON the application (the "Application") of 1396164 Ontario Limited (the "Applicant") to the Ontario Securities Commission (the "Commission") for a ruling, pursuant to section 59 of Schedule 1 (the "Schedule") to the Regulation under the Act, exempting the Applicant from payment in part of the fee payable pursuant to section 32(1)(b) of the Schedule;

AND UPON reading the Application and the recommendation of the staff of the Commission;

AND UPON the Applicant having represented to the Director as follows:

1. The Applicant is a corporation incorporated under the laws of Ontario and, is not a reporting issuer under the Act. The Applicant is a wholly-owned subsidiary of The Thomson Company Inc. ("TTCI").
2. On August 23, 2000, the Applicant acquired 278,835 common shares of The Thomson Corporation ("TTC") (the "Shares") from TTCI with the consideration therefor being satisfied by common shares of the Applicant.

3. The Applicant and TTCI are both controlled by Kenneth R. Thomson and, as a result, the Applicant and TTCI are affiliated corporations. Because the Applicant is deemed to own beneficially all of the TTC shares beneficially owned by companies controlled by Kenneth R. Thomson, the acquisition of the Shares by the Applicant resulted in the Applicant owning in excess of 20% of the outstanding common shares of TTC. Accordingly, the acquisition of the Shares by the Applicant constituted a take-over bid under the Act.

4. The Shares were acquired pursuant to the take-over bid exemption in clause 93(1)(c) of the Act.

5. The transaction was an internal corporate reorganization within the same control group and did not result in a change in beneficial ownership of the Shares.

6. In the absence of the relief provided by this ruling and pursuant to the formula in clause 32(1)(b) of the Schedule, the Applicant would be required to pay a fee of \$2,460.93 as a result of the transaction described above.

AND UPON the Director being satisfied that to do so would not be prejudicial to the public interest;

IT IS RULED, pursuant to subsection 59(2) of the Schedule, that the Applicant be exempt from the requirement to pay the fee otherwise payable pursuant to clause 32(1)(b) of the Schedule, provided that the minimum fee of \$800.00 is paid.

August 31<sup>st</sup>, 2000.

"Stan Magidson"



Chapter 3

**Reasons: Decisions, Orders and Rulings**

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IN THIS ISSUE

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## Chapter 4

# Cease Trading Orders

### 4.1.1 Extending Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Rescinding Order
PALLET PALLET Inc.	Aug 18/2000	---	Aug 30/2000	---

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## Chapter 5

# Rules and Policies

### 5.1 Rules and Policies

#### 5.1.1 OSC Rule 91-504 Over-the-Counter Derivatives

**NOTICE OF FINAL RULE AND POLICY  
UNDER THE SECURITIES ACT  
ONTARIO SECURITIES COMMISSION RULE 91-504  
OVER-THE-COUNTER DERIVATIVES  
AND  
COMPANION POLICY 91-504CP**

#### Introduction

The Commission has, pursuant to section 143 of the *Securities Act* (Ontario), made Ontario Securities Commission Rule 91-504 Over-the-Counter Derivatives (the "Rule") and Companion Policy 91-504CP (the "Policy"). The Commission published the Rule and Companion Policy for comment on January 7, 2000 at (2000), 23 OSCB 51 ("2000 Draft Rule"). The Rule and Companion Policy had previously been published for comment on December 18, 1998 at (1998), 21 OSCB 7755 ("1998 Draft Rule") and November 1, 1996, at (1996), 19 OSCB 5929 ("1996 Draft Rule").

The Rule and Policy were delivered to the Minister of Finance on September 8, 2000. If the Minister does not approve or reject the Rule or return the Rule for further consideration by November 7, 2000, or if the Minister approves the Rule, the Rule will come into force, pursuant to section 5.1 of the Rule, on December 1, 2000. The Policy will come into force on the day that the Rule comes into force.

During the comment period on the Rule and the Policy, which expired on February 7, 2000, the Commission received 1 submission from 1 commenter, the Canadian Bankers Association (the "CBA"). A summary of the CBA's comments and the response of the Commission are contained in Appendix A to this Notice. The Commission thanks the CBA for providing its comments on the Rule and Policy. In consideration of the CBA's comments, the Commission has made some minor amendments to the Rule and the Policy. However, as these changes are not material, the Commission is not publishing the Rule for a further comment period.

#### Substance and Purpose of Rule

The Rule deals with the regulation of transactions consisting of over-the-counter ("OTC") derivatives in Ontario and provides complete exemptions from Ontario securities law for some transactions and provides exemptions from the registration and prospectus requirements of the Act for other transactions. Derivatives products are, generally speaking, instruments the value of which is dependent, wholly or partially, upon the price, level or value of an external benchmark such as a security, financial instrument, interest rate, foreign exchange rate, index

or commodity price. The Rule pertains only to the OTC derivatives market, which is a general term given to the market in which parties contract directly with each other off-exchange and without the interposition of a clearing corporation. The most common derivatives products used in the OTC market are swaps, options and forwards on a variety of underlying interests.

#### Purpose of Policy

The Policy sets out the Commission's interpretation of certain provisions of the Rule and the applicability of certain aspects of the Act to transactions consisting of OTC derivatives.

#### Summary of Changes to the Rule

This section of this Notice describes changes proposed to be made in the Rule and Policy.

For additional background and a summary of the 1996 Draft Rule, the 1998 Draft Rule, and the 2000 Draft Rule, reference should be made to the notices that accompanied the publication of those instruments at (1996), 19 OSCB 5929, (1998), 21 OSCB 7755 and (2000), 23 OSCB 51.

#### Section 1.1

Section 1.1 has been amended by including a definition of "Chartered Financial Analyst Program".

#### Sections 2.3 and 2.4

Sections 2.3 and 2.4 have been amended to reflect the corrected course name of the Chartered Financial Analyst Program.

#### Section 5.1

Section 5.1 has been added to provide that the Rule comes into force on December 1, 2000.

#### Appendix A

There have been a number of changes to the list of Qualified Parties contained in Appendix A.

First, Schedule III banks have been added to the list of Qualified Parties.

Second, insurance companies listed in paragraph (g) that are licensed to do business in Canada or a province or territory in Canada no longer have to have a minimum paid up capital and surplus in excess of \$25 million.

Third, paragraph (i) has been amended to enable a person or company, together with its affiliates, to qualify.

Fourth, paragraph (j) enables an individual to include the net worth of his or her spouse as part of the \$5 million threshold.

Fifth, the minimum capital threshold for corporations listed in paragraph (n) has been changed to \$25 million in revenue or assets. As well, the paragraph clarifies that financial statements will have to be audited only if the corporation is already subject to a requirement to prepare audited financial statements.

Finally, paragraph (w) has been amended to include a reference to paragraph (j).

**Text of Rule and Policy**

The text of the Rule and Policy follows.

**DATED: September 8, 2000**

**APPENDIX A**

**SUMMARY OF COMMENTS**

The following is a summary of the comments received and the responses of the Commission.

**General Comments**

**A. Jurisdictional Concerns**

The CBA restated its view that no rule for the OTC derivatives market is appropriate or necessary. It believes that OTC derivatives are an integral part of the business of banking and are subject to federal, not provincial jurisdiction.

*Response:*

*The Commission continues to believe that the Rule has been carefully tailored to focus on investor protection in the retail market and is therefore designed to protect those least able to protect themselves. It is not aimed at ensuring the financial soundness of financial institutions, the subject matter and primary concern of federal legislation pertaining to derivatives.*

**B. Rule Not Necessary**

The CBA restated its view that it does not believe that the Commission's stated objectives are appropriate in current circumstances and even if they are, it does not believe that these objectives are met by the terms of the Rule. In the CBA's opinion, there is no significant uncertainty in the market and no investor protection problem that needs to be addressed. In addition, the CBA believes that the Rule is a disproportionate response to address a narrow or limited policy concern.

*Response:*

*The Commission continues to be of the view that the Rule is appropriate and addresses a need in some sectors of the marketplace for regulatory certainty, and also implements a non-intrusive and useful regime for investor protection.*

**C. Structure of the Rule Creates Problems**

The CBA restated its opinion that the Rule is complex and will result in additional costs and administrative burdens. The banks will have to categorize their OTC derivatives business based on whether or not the client is a "qualified party" and obtain representations from non-qualifying parties as to whether transactions are for hedging or speculating purposes.

*Response:*

*The Commission remains of the view that the Rule is structured in an appropriate way and makes reference to the discussion on that issue in the 1998 Notice. In addition, the Commission believes that it is appropriate that less sophisticated investors be identified and protected in respect of OTC derivatives transactions.*

*This obviously will entail the implementation of procedures necessary to identify such investors. The Commission expects that appropriate procedures will be put in place.*

**D. Impact on the Competitiveness of OTC Derivatives Business in Ontario/Canada**

The CBA restated that any regulatory mechanism imposed will impose significant burdens on Ontario market participants. The burdens of mandated fixed disclosure procedures, employee education and dealer processing requirements will create inefficiencies and onerous administrative difficulties and will affect the competitiveness of Canadian dealers and end-users in an international marketplace.

**Response:**

*The Commission does not believe that the Rule will have a damaging effect on the OTC derivatives market in Ontario, and notes, as it did in the 1998 Notice, that the primary purpose of the Rule is merely to provide exemptions to a large number of transactions. The Commission notes that as a result of the comments received in response to the December 1999 publication, the exemptions have been broadened.*

The CBA noted comments made by U.S. Federal Reserve Board Chairman Alan Greenspan and U.S. Treasury Secretary Lawrence Summers support rationalizing the regulatory framework applicable to OTC derivatives with a view to preventing an erosion of the international competitiveness of U.S. financial markets. The CBA is of the view that the Rule is an example of the type of regulation that should be avoided and since the Ontario market is smaller than that in the U.S., the competitive effect of the Rule will be significantly greater.

**Response:**

*Both Chairman Greenspan and Treasury Secretary Summers provided testimony before the Senate Committee on Agriculture, Nutrition and Forestry during February 2000. Their comments reflected the report of the President's Working Group on Financial Markets entitled Over-the-Counter Derivatives Markets and the Commodity Exchange Act. The Working Group sought to achieve four objectives - one of which was "to protect retail customers by ensuring that appropriate regulations are in place to deter unfair practices in all markets in which they participate and by closing existing loopholes that allow unregulated entities to pursue such unfair practices." Chairman Greenspan states in his testimony that "In the case of financial OTC derivatives transactions between professional counterparties, the working group has agreed that such regulation is unnecessary and should be excluded from [the CEA]."*

*In the opinion of the Commission, the Rule provides protection to retail customers while exempting sophisticated entities from either the Act or the prospectus and registration requirements of the Act. The Rule is consistent with movement in the U.S. to protect retail investors and provide exemptions for*

*"professional counterparties" who engage in OTC derivatives transactions.*

**Specific Comments**

**A. The Rule**

**(i) Difficulties in characterizing OTC derivatives transactions**

The CBA requests guidance regarding the criteria to be used to characterize OTC derivatives transactions for the purposes of registration and prospectus requirements.

**Response:**

*It is not possible to anticipate new products that may be developed. The Commission will consider providing exemptions on a case by case basis and has the option of amending the Rule, should the need arise.*

**(ii) Sharing of Confidential Information with Dealers**

The CBA restated its concern that the Rule may require the sharing of confidential information with dealers. For banks to comply with the investor protection measures of the Rule, in particular the requirement to involve a dealer/registered representative in the process, the bank may be asked to disclose confidential client information to the dealer. In addition, there will be an additional cost in imposing the administrative burden of obtaining client authorization. The CBA recommended the deletion of the dealer requirement, and that consideration be given to a requirement for an enhanced disclosure statement.

**Response:**

*The Commission does not believe that the sharing of confidential information is a major problem with the Rule. The OTC derivatives dealer that becomes involved in a transaction will have to be supplied with substantially the same information as any dealer involved in any securities transaction.*

**B. Appendix A - Qualified Parties**

**(i) Paragraph 3(c) - Banks and Paragraph 3(f) - Loan and Trust Companies Paragraph 3(h) - Insurance Companies**

The CBA suggests that the Commission adopt an approach similar to the British Columbia Securities Commission in Blanket Order 91-501 (the "BC Order") which does not contain a minimum paid up capital and surplus requirement upon regulated foreign banks, loan and trust companies and insurance companies or banks, loan and trust companies and insurance companies that have adopted the rules set out in the Basel Accord. In the view of the CBA, there is no reason to conclude that such entities are not sufficiently sophisticated if the minimum paid up capital and surplus requirement is not met.

Response:

*It is the view of the Commission that minimum standards are necessary when dealing with foreign entities under foreign regulatory jurisdictions. Regulation or the adoption of Basel Accord standards by foreign governments does not guarantee sophistication.*

(ii) Paragraph 3(g) - Insurance Companies

The CBA indicate that the section imposes a minimum paid up capital and surplus requirement upon regulated Canadian insurance agencies that should be removed.

Response:

*The Commission agrees and will amend paragraph 3(g) to remove the minimum paid up capital and surplus requirement.*

(iii) Paragraph 3(i) - Sophisticated Entities

The CBA recommend that the words "together with its affiliates" be added after the words "a person or company" in the first line of section 3(i).

Response:

*The Commission accepts the recommendation and will make this change.*

(iv) Paragraph 3(j) - Individuals

The CBA recommends that the words "either alone or jointly with the individual's spouse" be inserted after the words "an individual who" in section 3(j).

Response:

*The Commission accepts the recommendation and will make this change.*

(vii) Paragraph 3(n) - Corporations and other Entities

(A) Dollar Threshold

Acknowledging their suggestion to move to a revenue test, the CBA now suggests that the test should be based on revenue or assets.

Response:

*The Commission accepts this recommendation and will make this change.*

(B) Audited Financial Statements

The CBA suggests that the definition in paragraph 3(n) be reworded such that audited financial statements would be necessary only when they are otherwise required to be prepared.

Response:

*The Commission accepts the recommendation and will make this change.*

(viii) Paragraph 3(w) - Affiliates

The CBA suggests that section 3(w) be amended to refer to "organizations and individuals" and a reference to paragraph 3(j) be added.

Response:

*The omission of the reference to paragraph 3(j) was an oversight. Paragraph (j) will be included.*

The CBA suggests that paragraph 3(w) include reference to other business organizations such as trusts or partnerships. They suggest that a new clause be added to provide that any entity controlled by a qualified party is itself a qualified party.

Response:

*The Commission is of the view that it would not be appropriate to enable the business organization controlled by a qualified party to be a qualified party unless it has active business. If the organization has an active business, then it may itself be a qualified party if it fits within paragraph 3(n).*



**ONTARIO SECURITIES COMMISSION RULE 91-504  
OVER-THE-COUNTER DERIVATIVES**

**ONTARIO SECURITIES COMMISSION RULE 91-504  
OVER-THE-COUNTER DERIVATIVES**

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**1.1 Definitions - In this Rule**

"Canadian Securities Course" means a course prepared and conducted by The Canadian Securities Institute and so named by that Institute as of the date on which this Rule comes into force, every predecessor to that course, and every successor to that course that does not narrow the scope of the significant subject matter of the course;

"Chartered Financial Analyst Program" means the three level program prepared and conducted by the Association for Investment Management and Research, and so named by that Association as of the date on which this Rule comes into force, every predecessor to that course, and every successor to that course that does not narrow the scope of the significant subject matter of the course;

"commercial user" means a person or company that enters into a specified commodity derivative transaction, if

- (a) the person or company deals in its business with a specified commodity, and
- (b) the transaction consists of a specified commodity derivative of which the underlying interest, or a material component of the underlying interest, is
  - (i) a specified commodity referred to in paragraph (a),
  - (ii) a related specified commodity to a specified commodity referred to in paragraph (a), or
  - (iii) a specified commodity derivative, the underlying interest of which is
    - (A) a specified commodity, or
    - (B) a related specified commodity to a specified commodity

referred to in paragraph (a);

"contract for differences" means an agreement, other than an option, a forward contract, a spot currency contract or a conventional floating rate debt security, that provides for

- (a) an exchange of principal amounts, or
- (b) the obligation or right to make or receive a cash payment based upon the value, level or price, or on relative changes or movements of

the value, level or price of, an underlying interest;

"conventional floating rate debt security" means an evidence of indebtedness of which the interest obligations are based upon a benchmark commonly used in commercial lending arrangements;

"exempt transaction" means a transaction consisting of

- (a) a foreign exchange derivative in which
  - (i) one party to the transaction is a qualified party for that transaction, or
  - (ii) each party to the transaction is a person or company entering into the transaction for OTC derivatives hedging purposes;
- (b) an interest rate derivative in which each party to the transaction is
  - (i) a qualified party for that transaction, or
  - (ii) a person or company entering into the transaction for OTC derivatives hedging purposes, or
- (c) a specified commodity derivative in which each party to the transaction is a qualified party for that transaction;

"foreign exchange derivative" means an OTC derivative of which the underlying interest consists entirely of

- (a) Canadian or foreign currency or a foreign exchange rate, or some relationship between, or combination of, any of them, or
- (b) a matter referred to in paragraph (a), or an agreement or instrument that has as its underlying interest a matter referred to in paragraph (a), or some relationship between, or combination of, any of them;

"forward contract" means an agreement, not entered into or traded on or through an organized market, stock exchange or futures exchange and cleared by a clearing corporation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

1. Make or take delivery of the underlying interest of the agreement.
2. Settle in cash instead of delivery;

"freely tradeable" means, in respect of securities, that

- (a) the securities are not non-transferable,

- (b) the securities are not subject to any escrow requirements,

- (c) the securities do not form part of the holdings of any person or company or combination of persons or companies referred to in paragraph (c) of the definition of "distribution" in the Act,

- (d) the securities are not subject to any cease trade order imposed by a Canadian securities regulatory authority,

- (e) all hold periods imposed by Canadian securities legislation before the securities can be traded without a prospectus or in reliance on a prospectus exemption have expired, and

- (f) any period of time for which the issuer has to have been a reporting issuer before the securities can be traded without a prospectus or in reliance on a prospectus exemption has passed;

"futures exchange" means an association or organization operated to provide the facilities necessary for the trading of commodity futures";

"Futures Licensing Course" means a course prepared and conducted by The Canadian Securities Institute and so named by that Institute as of the date on which this Rule comes into force, every predecessor to that course, and every successor to that course that does not narrow the scope of the significant subject matter of the course;

"interest rate derivative" means an OTC derivative of which the underlying interest consists entirely of

- (a) an interest rate, or an evidence of indebtedness of an entity other than a corporation that is not exchangeable for or convertible into another security, or some relationship between, or combination of, any of them, or
- (b) a matter referred to in paragraph (a), or an agreement or instrument that has as its underlying interest a matter referred to in paragraph (a), or some relationship between, or combination of, any of them;

"Options Licensing Course" means a course prepared and conducted by The Canadian Securities Institute and so named by that Institute as of the date on which this Rule comes into force, every predecessor to that course, and every successor to that course that does not narrow the scope of the significant subject matter of the course;

"OTC derivative" means an option, a forward contract, or a contract for differences of a type commonly considered to be a derivative, in which

- (a) the agreement relating to the option, forward contract or contract for differences is not part

of a fungible class of agreements that are standardized as to their material economic terms,

- (b) the creditworthiness of a party having an obligation under the agreement would be a material consideration in entering into or determining the terms of the agreement, and
- (c) the agreement is not entered into or traded on or through an organized market, stock exchange or futures exchange and cleared by a clearing corporation;

"OTC derivatives dealer" means a person or company registered under the Act as a dealer in the category of broker or investment dealer or under the CFA as a dealer in the category of futures commission merchant;

"OTC derivatives hedging" means the entering into of a transaction, or a series of transactions, the intended effect of which, or the intended cumulative effect of which, is to offset or reduce a risk to which a person or company is, or can reasonably expect to be, exposed, and which transaction or series of transactions

- (a) involves an OTC derivative, or a series of OTC derivatives, for which there is a high degree of negative correlation between changes in the value of the position or positions being hedged and changes in the value of the instrument or instruments with which the position or positions are hedged, and
- (b) is intended to no more than offset the effect of changes in value in the position or positions being hedged;

"qualified party" means, for any transaction

- (a) a company, person or entity described in Appendix A, or
- (b) a commercial user for that transaction;

"related specified commodity" means a specified commodity that is part or all of an underlying interest of a specified commodity derivative that is used by a commercial user to hedge its exposure to a risk resulting from its use of another specified commodity in its business;

"Risk Disclosure Statement for OTC Derivatives" means the statement attached to this Rule as Appendix B; and

"specified commodity" means

- (a) whether in the original or a processed state, an agricultural product, forest product, product of the sea, mineral, metal, hydrocarbon fuel product or precious stone or other gem,

- (b) a pollutant emission level,
- (c) electricity,
- (d) a liability from an insurance contract, and
- (e) a matter designated by the Commission as a specified commodity, if that designation has not been revoked; and

"specified commodity derivative" means an OTC derivative of which an underlying interest is

- (a) a specified commodity, or
- (b) another OTC derivative of which the underlying interest is a specified commodity.

## PART 2 APPLICATION OF THE ACT

**2.1 Non-Application of the Act** - The Act does not apply to an exempt transaction.

**2.2 Application of Provisions of the Act** - Subject to section 2.1, sections 25 and 53 of the Act apply to a transaction consisting of an OTC derivative that does not constitute a trade in a security as if, and to the same extent as those sections would apply if, the transaction did constitute a trade in a security.

**2.3 Registration Provisions** - Despite section 2.2, section 25 of the Act does not apply to a transaction consisting of an OTC derivative if

- (a) each party to the transaction is either
  - (i) a qualified party for that transaction; or
  - (ii) a person or company
    - (A) that enters into the transaction with or through an OTC derivatives dealer, if each person acting as a representative of the OTC derivatives dealer for that transaction has successfully completed the Chartered Financial Analyst Program, or each of the Futures Licensing Course, the Options Licensing Course and the Canadian Securities Course, and
    - (B) that has been provided with a copy of the Risk Disclosure Statement for OTC Derivatives by the OTC derivatives dealer; or

- (b) in the case of a transaction that does not constitute a trade in a security, the transaction would have been exempt from section 25 of the Act if the transaction did constitute a trade in securities.

**2.4 Prospectus Exemption** - Despite section 2.2, section 53 of the Act does not apply to a transaction consisting of an OTC derivative if

- (a) each party to the transaction is either
  - (i) a qualified party for that transaction; or
  - (ii) a person or company
    - (A) that enters into the transaction with or through an OTC derivatives dealer, if each person acting as a representative of the OTC derivatives dealer for that transaction has successfully completed the Chartered Financial Analyst Program, or each of the Futures Licensing Course, the Options Licensing Course and the Canadian Securities Course, and
    - (B) that has been provided with a copy of the Risk Disclosure Statement for OTC Derivatives by the OTC derivatives dealer; or
- (b) in the case of a transaction that does not constitute a trade in a security, the transaction would have been exempt from section 53 of the Act if the transaction did constitute a trade in securities.

**2.5 Freely Tradeable Securities** - Section 2.3 and 2.4 are not available for the settlement of a transaction consisting of an OTC derivative if settlement is made by way of the physical delivery of securities that are not freely tradeable.

**2.6 Exemption from Underwriting Conflicts Rules** - Section 224 of the Regulation and Multilateral Instrument 33-105 Underwriting Conflicts do not apply to an OTC derivatives transaction.

### PART 3 DESIGNATION OF SPECIFIED COMMODITIES

**3.1 Designation** - The Commission may designate any matter as a specified commodity, subject to the terms or restrictions that may be contained in the designation, if

- (a) an OTC derivative of which the matter is an underlying interest may be used by a person or company for OTC derivatives hedging purposes; and
- (b) the matter is not included in paragraph (a) or (b) of the definition of "foreign exchange derivative" or "interest rate derivative".

**3.2 Revocation of Designation** - The Commission may revoke a designation given under section 3.1 if the continuation of the designation

- (a) may adversely expose persons or companies to unfair, improper or fraudulent practices; or
- (b) may be prejudicial to the public interest.

### PART 4 EXEMPTION

**4.1 Exemption** - The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

### PART 5 EFFECTIVE DATE

**5.1 Effective Date** - This Rule comes into force on December 1, 2000.

**OVER-THE-COUNTER DERIVATIVES**

**APPENDIX A**

**QUALIFIED PARTIES**

**Interpretation**

- (1) The terms "subsidiary" and "holding body corporate" used in paragraphs (w), (x) and (y) of subsection (3) of this Appendix have the same meaning as they have in the *Business Corporations Act*.
- (2) All requirements contained in this Appendix that are based on the amounts shown on the balance sheet of an entity apply to the consolidated balance sheet of the entity.

**Qualified Parties Acting as Principal**

- (3) The following are qualified parties for all OTC derivatives transactions, if acting as principal:

*Banks*

- (a) a bank listed in Schedule I, II or III to the *Bank Act* (Canada);
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);
- (c) a bank subject to the regulatory regime of a country that is a member of the Basel Accord, or that has adopted the banking and supervisory rules set out in the Basel Accord, if the bank has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of \$25 million or its equivalent in another currency;

*Credit Unions and Caisses Populaires*

- (d) a credit union central, federation of caisses populaires, credit union or regional caisse populaire, located, in each case, in Canada;

*Loan and Trust Companies*

- (e) a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or under the *Trust and Loan Companies Act* (Canada), or under comparable legislation in any other province or territory of Canada;
- (f) a loan company or trust company subject to the regulatory regime of a country that is a member of the Basel Accord, or that has adopted the banking and supervisory rules set out in the Basel Accord, if the loan company or trust company has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of \$25 million or its equivalent in another currency;

*Insurance Companies*

- (g) an insurance company licensed to do business in Canada or a province or territory of Canada;
- (h) an insurance company subject to the regulatory regime of a country that is a member of the Basel Accord, or that has adopted the banking and supervisory rules set out in the Basel Accord, if the insurance company has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of \$25 million or its equivalent in another currency;

*Sophisticated Entities*

- (i) a person or company that, together with its affiliates,
  - (i) has entered into one or more transactions involving OTC derivatives with counterparties that are not its affiliates, if
    - (A) the transactions had a total gross dollar value of or equivalent to at least \$1 billion in notional principal amount; and
    - (B) any of the contracts relating to one of these transactions was outstanding on any day during the previous 15-month period, or
  - (ii) had total gross marked-to-market positions of or equivalent to at least \$100 million aggregated across counterparties, with counterparties that are not its affiliates in one or more transactions involving OTC derivatives on any day during the previous 15-month period;

*Individuals*

- (j) an individual who, either alone or jointly with the individual's spouse, has a net worth of at least \$5 million, or its equivalent in another currency, excluding the value of his or her principal residence;

*Governments/Agencies*

- (k) Her Majesty in right of Canada or any province or territory of Canada and each crown corporation, instrumentality and agency of a Canadian federal, provincial or territorial government;
- (l) a national government of a country that is a member of the Basel Accord, or that has adopted the banking and supervisory rules of the Basel Accord, and each instrumentality and agency of that government or corporation wholly-owned by that government;

*Municipalities*

- (m) any Canadian municipality with a population in excess of 50,000 and any Canadian provincial or territorial capital city;

*Corporations and other Entities*

- (n) a company, partnership, unincorporated association or organization or trust, other than an entity referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h), with total revenue or assets in excess of \$25 million or its equivalent in another currency, as shown on its last financial statement, to be audited only if otherwise required;

*Pension Plan or Fund*

- (o) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission, if the pension fund has total net assets, as shown on its last audited balance sheet, in excess of \$25 million, provided that, in determining net assets, the liability of a fund for future pension payments shall not be included;

*Mutual Funds and Investment Funds*

- (p) a mutual fund or non-redeemable investment fund if each investor in the fund is a qualified party;
- (q) a mutual fund that distributes its securities in Ontario, if the portfolio manager of the fund is registered as an adviser, other than a securities adviser, under the Act or securities legislation elsewhere in Canada;
- (r) a non-redeemable investment fund that distributes its securities in Ontario, if the portfolio manager of the fund is registered as an adviser, other than a securities adviser, under the Act or securities legislation elsewhere in Canada;

*Brokers/Investment Dealers*

- (s) a person or company registered under the Act or securities legislation elsewhere in Canada as a broker or an investment dealer or both;
- (t) a person or company registered under the Act as an international dealer if the person or company has total assets, as shown on its last audited balance sheet, in excess of \$25 million or its equivalent in another currency;

*Futures Commission Merchants*

- (u) a person or company registered under the CFA as a dealer in the category of futures commission merchant, or in an equivalent capacity elsewhere in Canada;

*Charities*

- (v) a registered charity under the *Income Tax Act* (Canada) with assets not used directly in charitable activities or administration, as shown on its last audited balance sheet, of at least \$5 million or its equivalent in another currency;

*Affiliates*

- (w) a wholly-owned subsidiary of any of the organizations described in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), (n), (o), (s), (t) or (u);
- (x) a holding body corporate of which any of the organizations described in paragraph (w) is a wholly-owned subsidiary;
- (y) a wholly-owned subsidiary of a holding body corporate described in paragraph (x);
- (z) a firm, partnership, joint venture or other form of unincorporated association in which one or more of the organizations described in paragraph (w), (x) or (y) have a direct or indirect controlling interest; and

*Guaranteed Party*

- (aa) a party whose obligations in respect of the OTC derivatives transaction for which the determination is made is fully guaranteed by another qualified party.

**Qualified Party Not Acting as Principal**

- (4) The following are qualified parties, in respect of all OTC derivative transactions:

*Managed Accounts*

1. Accounts of a person, company, pension fund or pooled fund trust that are fully managed by a portfolio manager or financial intermediary referred to in paragraphs (a), (d), (e), (g), (s), (t), (u) or (w) of subsection (3) or a broker or investment dealer acting as a trustee or agent for the person, company, pension fund or pooled fund trust under section 148 of the Regulation.

**Subsequent Failure to Qualify**

- (5) A party is a qualified party for the purpose of any OTC derivatives transaction if it, he or she is a qualified party at the time it, he or she enters into the transaction.

## OVER-THE-COUNTER DERIVATIVES

### APPENDIX B

#### RISK DISCLOSURE STATEMENT FOR OTC DERIVATIVE TRANSACTIONS

This risk disclosure statement sets out general information relevant to entering into transactions in over-the-counter derivative products ("OTC derivatives").

There are many different types of OTC derivatives. OTC derivatives include options, forwards, swaps, swaptions, caps, floors, collars and forward rate agreements and combinations or variations upon these transactions. This disclosure statement does not disclose all of the risks and other significant aspects of entering into these transactions. In light of the risks, you should undertake these transactions only if you understand the nature of the product, the contractual relationships into which you are entering and the extent of your exposure to risk. Entering into OTC derivative transactions is not suitable for many investors. You should carefully consider whether these transactions are appropriate for you in light of your experience, investment objectives, financial and operational resources, ability to bear risk, understanding of the products and other relevant circumstances. Your exposure to risk of loss may significantly exceed the amount of any payment you make.

#### Over-the-Counter Derivatives

##### (a) General

You should confirm with the firm with which you deal the terms and conditions of the specific OTC derivative you are entering into and associated obligations (including such things as the circumstances under which you may become obligated to make payments or to make or take delivery of the underlying interest, expiration dates and any restrictions on exercise).

You should, as well, familiarize yourself with the terms and conditions of any agreement that you may be required to enter into with the firm with which you deal so that you fully understand the nature of your relationship with the firm with which you deal and your rights and obligations under that agreement.

The value of OTC derivatives may be influenced by a number of inter-related factors. The relationship among these factors is complex. Factors that can be expected to affect the value of OTC derivatives include: time remaining to expiry (or maturity) of the instrument, the level of interest rates, the credit rating of the counterparty, the price or level of the underlying interest of the derivative component and the volatility of the underlying interest of the derivative component.

You should calculate the extent to which the value of the derivative component must increase for your position to become profitable, taking into account the imputed cost of the component and all transaction costs.

You will also be exposed to risks which are specific to the underlying interest of the OTC derivative and you should

familiarize yourself with those risks prior to entering into the transaction.

##### (b) Effect of Leverage

Transactions in OTC derivatives can carry a high degree of risk. Certain OTC derivatives are leveraged so that a relatively small market movement in the price of the underlying interest will have a proportionately larger impact on your position. This may work against you as well as for you.

##### (c) Risk Reducing Strategies

Certain strategies intended to reduce the risk of entering into a transaction in OTC derivatives may not be effective because market conditions may make it impossible to implement the strategy. Strategies using combinations of positions may be as risky as taking simple 'long' or 'short' positions.

Hedging transactions may require constant monitoring. A failure to adjust a hedging transaction in light of changing market conditions can result in the position becoming either unhedged or overhedged and losses can ensue.

##### (d) Risk of Options

Purchasers and sellers of options should familiarize themselves with the type of option (i.e. put or call) that they contemplate entering into and the associated risks.

The purchaser of an over-the-counter option may be able to offset or exercise the option or allow the option position to expire. The exercise of an option results in either a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the purchased option expires worthless you will suffer a total loss of your investment that will consist of the option premium paid plus transaction costs.

If you are purchasing deep out-of-the-money options you should be aware that the chance of these options becoming profitable ordinarily is remote.

Selling ("writing" or "granting") an option generally entails greater risk than purchasing an option. Although the premium received by the seller is fixed, the seller may sustain a total loss well in excess of that amount. The seller may be liable for additional margin to maintain the position if the market moves unfavourably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the seller is 'covered', by holding a corresponding position in the underlying interest, the risk may be reduced. If the option is not covered, the risk of loss may be unlimited.

##### (e) Liquidity and Restrictions of Pricing Relationships

OTC derivatives are not traded on an exchange or other organized market and permit precise customization to accomplish particular financial and risk management objectives that might otherwise be unachievable. Customization can introduce significant liquidity risk and other risk factors of a complex character. As a result, it may be difficult or impossible to effect transactions or to liquidate or

offset positions. The customized nature of many derivatives may also add to illiquidity. If you have sold options, an illiquid market may increase the risk of loss, particularly where you do not hold the underlying interest or an equivalent amount of cash.

Normal pricing relationships between the underlying interest and the OTC derivative may not exist. This can occur when, for example, there are market interruptions or circuit breakers in effect. The lack of availability of an underlying reference price may make it difficult to judge 'fair' value.

(f) Credit Risk

You should assess the creditworthiness of the firm with which you deal and any other counterparty. Most OTC derivatives transactions are direct obligations of the counterparty.

You should also determine how easily your OTC derivatives position can be assigned in the event of a bankruptcy or insolvency and at what cost. In the case of OTC derivatives transactions where there are mutual obligations, you should determine whether the netting of payments is supportable under bankruptcy and insolvency legislation.

You should also note that your right to enforce your counterparty's obligations under your agreement may be compromised if your counterparty receives protection under insolvency legislation in relevant jurisdictions.

You should familiarize yourself with the protections accorded to cash or other property you deposit for domestic and foreign OTC derivatives transactions, particularly in the event of the insolvency or bankruptcy of the counterparty with whom you deal. The extent to which you recover may be governed by specific legislation or local rules. In some jurisdictions, property that had been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

(g) Commissions and Other Charges

Before you enter into an OTC derivatives transaction, you should obtain a clear explanation of all commissions, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

(h) Transactions in Other Jurisdictions

Transactions with institutions in other jurisdictions, including institutions with formal links to the domestic market, may expose you to additional risk. Those institutions may be subject to regulation that may offer different or diminished investor protection.

Before you enter into an OTC derivative transaction, you should enquire about any rules relevant to your particular transaction. You should ask the firm with which you deal or your legal adviser for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

(i) Currency Risks

The profit or loss in foreign currency denominated OTC derivatives products (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates.

(j) Legal Risks

As in any financial transaction, you should ensure that you understand the requirements (including investment restrictions), if any, applicable to you that are established by your regulators or by your board of directors or other governing body. Certain entities may not be permitted to enter into derivatives transactions pursuant to their incorporating documents or governing legislation. You should ensure that counterparty with which you deal is empowered to deal with you using derivatives and you should be aware of the legal implications of default in the jurisdiction in which the counterparty resides.

You should also consider the legal and accounting implications of entering into any OTC derivative transaction and consulting such advisers as may appropriate to assist you in understanding the risks involved.

(k) Management Risks

You should inform yourself about the risks and ongoing monitoring requirements of the specific OTC derivatives transactions into which you propose to enter.

OTC derivatives are complex instruments that can be difficult to value and to monitor. Before entering into a transaction involving OTC derivatives you should ensure that you have supervisory procedures and analytical systems commensurate with the level of activity you contemplate so that you are able to keep track of your OTC derivatives exposure.

(l) Tax Risks

Before entering into a transaction in OTC derivatives you should understand the income tax implications of doing so. Different OTC derivatives transactions may have different income tax implications. The income tax implications of using OTC derivatives are dependent upon the nature of your business activities and the transaction in question. You should, therefore, consult your tax adviser to understand the relevant income tax considerations.



COMPANION POLICY 91-504CP TO  
ONTARIO SECURITIES COMMISSION RULE 91-504  
OVER-THE-COUNTER DERIVATIVES

COMPANION POLICY 91-504CP TO  
ONTARIO SECURITIES COMMISSION RULE 91-504  
OVER-THE-COUNTER DERIVATIVES

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PART 1 INTRODUCTION

- 1.1 **Purpose** - The purpose of this Policy is to state the Commission's interpretation of
- (a) certain provisions of Rule 91-504 Over-the-Counter Derivatives (the "Rule"); and
  - (b) the applicability of certain aspects of the Act to trades in OTC derivatives.
- 1.2 **Definition of "contract for differences"** - The definition of "contract for differences" contained in the Rule excludes a "spot currency contract". The Commission has decided not to define the term "spot currency contract" and to interpret it to have its normal commercial meaning.
- 1.3 **Definition of "OTC derivative"** - The definition of "OTC derivative" contained in the Rule requires, among other things, that the agreement relating to an OTC derivative not be "part of a fungible class of agreements that are standardized as to their material economic terms". The Commission is of the view that a master agreement, such as the ISDA form of agreement, and any supplements to the master agreement, should not be considered to be an agreement that is standardized as to its material economic terms.
- 1.4 **Definition of "OTC derivatives hedging"** - One component of the definition of "OTC derivatives hedging" contained in subsection 1.1 of the Rule is the requirement that hedging transactions must have a "high degree of negative correlation between changes in the value of the position or positions being hedged and the instrument or instruments with which the position or positions are hedged". The Commission is of the view that there need not be complete congruence between the hedging instrument or instruments and the position or positions being hedged if it is reasonable to regard the one as a hedging instrument for the other, taking into account the closeness of the relationship between fluctuations in the price of the two.

PART 2 ESTABLISHING QUALIFICATION

- 2.1 **Qualified Parties** - The Rule provides exemptions from the Act or specified sections of the Act if one or both parties to the transaction is a qualified party for the relevant transaction. The Commission is of the view that a party entering into a transaction with a person or a company claiming to be a qualified party for the transaction is entitled to rely upon representations by that person or company to the effect that that person or company is a qualified party in those circumstances unless the party has reason to believe otherwise. Staff of the Commission will

therefore normally not take any enforcement action in respect of a transaction against a party that has reasonably relied, in the manner described, on representations of its counterparty.

**2.2 Receipt of Risk Disclosure Statement** - Clauses 2.3(a)(ii)(B) and 2.4(a)(ii)(B) of the Rule require the delivery of a risk disclosure statement by the OTC derivatives dealer that is involved with the transaction as a condition to relying on the respective exemptions contained in those provisions. It is possible that the OTC derivatives dealer will not be a principal in the transaction, and that the principal would want to receive comfort that the risk disclosure statement had been received by the appropriate party. The Commission is of the view that the principal may, in those circumstances, rely on representations from the intended recipient of the risk disclosure statement that the statement was in fact received.

**2.3 Hedging** - Section 2.1 of the Rule provides that the Act does not apply to an "exempt transaction"; this includes, among other things, certain transactions that one of the parties enters into for OTC derivatives hedging purposes. The Commission is of the view that a party entering into an OTC derivatives transaction is entitled to rely, for purposes of establishing that the transaction is an "exempt transaction" under the Rule, upon representations by the other party to the effect that that party is entering into the transaction for OTC derivatives hedging purposes within the meaning of the Rule unless the party has reason to believe otherwise. Staff of the Commission will therefore normally not take any enforcement action in respect of a transaction against a party that has relied, in the manner described, on representations of its counterparty.

### **PART 3 APPLICATION OF ONTARIO SECURITIES LAW**

#### **3.1 Territorial Scope of the Rule**

- (1) Many OTC derivatives transactions have an international component, in which one party may be located in Ontario and other parties located elsewhere. This raises the issue of whether, or in what circumstances, those transactions should be considered to have taken place in Ontario and be therefore subject to the Rule or any other applicable Ontario law.
- (2) The Commission is of the view that the persons or companies entering into an OTC derivative transaction in which some parties are not located in Ontario are entitled to consider the connecting factors of the transaction with Ontario in order to determine whether the transaction is subject to the Rule and any other applicable Ontario securities law.

- (3) The Commission notes that the investor protection aspects of the Rule are designed for the benefit of Ontario persons or companies.

- (4) The Commission notes that the ISDA master agreements provide that the rights and obligations thereunder are not transferable except in certain prescribed circumstances, such as default or reorganization. The Commission is of the view that those provisions do not lead to any inference that would make paragraph (3)(c) above inapplicable.

**3.2 Exemption from the Act** - Section 2.1 of the Rule provides that the Act does not apply to an exempt transaction. This provision is designed to remove exempt transactions entirely from Ontario securities law in all respects.

### **PART 4 USE OF OTHER EXEMPTIONS**

**4.1 Use of Other Exemptions** - A party conducting an OTC derivatives transaction under an exemption provided by the Rule is not required to come within the scope of any of the exemptions contained in the Act or the Regulation. However, a party conducting an OTC derivatives transaction that is not exempt from the prospectus and registration provisions of the Act under the Rule is not precluded from using an exemption contained in the Act, the Regulation or another rule when available, despite the Rule.

### **PART 5 ISSUES RELATING TO DEALERS**

#### **5.1 Universal Registration**

- (1) The universal registration regime contained in Part XI of the Regulation operates by removing certain registration exemptions contained in the Act. However, persons or companies entering into OTC derivatives transactions through the exemptions provided in the Rule are not subject to the universal registration regime because the exemptions contained in the Rule are not removed by Part XI of the Regulation.

- (2) OTC derivatives transactions not effected under exemptions in the Rule will be subject to the application of the ordinary registration and universal registrations rules contained in the Act. Therefore, a person or company engaged in effecting OTC derivatives transactions under, for instance, the \$150,000 private placement exemption may be a market intermediary and therefore required to be registered as a limited market dealer.

**5.2 Responsibilities of OTC Derivatives Dealers**

- (1) Clauses 2.3(a)(ii)(A) and 2.4(a)(ii)(A) require as a condition to the exemptions provided in those sections that a person or company entering into the transaction must do so with or through an OTC derivatives dealer. The Commission is of the view that this requirement is satisfied
  - (a) if an OTC derivatives dealer acts as principal in the transaction, or
  - (b) if the OTC derivatives dealer is not acting as principal in the transaction, the OTC derivatives dealer has taken the steps required by dealers under section 1.5 of Rule 31-505 Conditions of Registration for that transaction.

interest. These exemptions would not be available, therefore, for transactions entered into "at-the-money" where no premium is paid, as is typically the case for swaps and forwards, regardless of the notional amount of the OTC derivative. These exemptions should not be interpreted as being available where only the notional amount of the transaction, or the value of the underlying interest, equals or exceeds \$150,000.

**6.4 Form 45-501F1 Requirements**

- (1) A transaction effected pursuant to the exemptive relief provided by the Rule does not trigger Form 45-501F1 filing requirements or the payment of any fee.
- (2) Any OTC derivative transaction effected in reliance upon a paragraph of section 72 of the Act enumerated in subsection 72(3) triggers the requirement of the filing of a Form 45-501F1 and payment of the requisite filing fee under Rule 45-501. At the effective date of this Policy, Rule 45-501 provides, in effect, that the fee payable in respect of a Form 45-501F1 filing is the greater of \$100 and 0.02 per cent of the aggregate gross proceeds to be realized in Ontario from the distribution of the securities, other than special warrants, to which the Form 45-501F1 relates.
- (3) The Commission is of the view that the "aggregate gross proceeds to be realized in Ontario from the distribution of the securities" will be, in the case of an OTC derivative, the consideration paid for the instrument, such as the amount of premium paid for an option. The "aggregate gross proceeds to be realized" is not the amount, notional or otherwise, of the underlying interest.
- (4) In the case of "at-the-money" swaps and forwards, no proceeds are realized from the distribution of the securities, and, therefore, the fee payable in respect of any Form 45-501F1 filed in respect of transactions of this nature is \$100 at the effective date of this Policy.

**PART 6 APPLICATION OF THE ACT**

- 6.1 Effect of Section 2.2 of the Rule** - The Rule is structured so that it is unnecessary to determine whether a given OTC derivatives transaction involves a trade in a security. Section 2.2 of the Rule is a technical provision designed to achieve this purpose; this section causes OTC derivatives transactions that are not exempt transactions or trades in securities to be subject to sections 25 and 53 of the Act. This puts those transactions on the same footing in respect of the registration and prospectus provisions of the Act as OTC derivative transactions that are trades in securities. These transactions, however, are subject to provisions of the Act other than the prospectus and registration provisions only if they are trades in a security.
- 6.2 Circumstances of Mutual Obligation** - In an OTC derivatives transaction, both parties may be issuing securities. The Commission is of the view that each party to the transaction needs to ensure either that the Act does not apply to that transaction or that appropriate exemptions are available, either under the Rule or the Act.
- 6.3 Paragraph 5 of Subsection 35(1) and Clause 72(1)(d) of the Act** - Under section 3.1 of Rule 45-501 Prospectus Exempt Distributions, the exemptions contained in paragraph 5 of subsection 35(1) and clause 72(1)(d) of the Act are available where the "aggregate acquisition cost" to a purchaser of a security is not less than \$150,000. The Commission is of the view that those exemptions are available for OTC derivatives transactions only if an amount of at least \$150,000 is paid as premium at the time that the OTC derivative position is created. Pursuant to section 3.2 of Rule 45-501, that payment must be satisfied by the payment of cash or other immediately available funds or the incurring or assumption of a liability, or any combination thereof. These payments or commitments must be in consideration for the security being issued, rather than constituting part of the payment of the purchase price of the underlying

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## Chapter 6

# Request for Comments

### 6.1 Request for Comments

#### 6.1.1 Proposed OSC Rule 45-501 - Exempt Distributions

##### NOTICE OF PROPOSED RULE, POLICY AND FORMS UNDER THE SECURITIES ACT

##### RULE 45-501 EXEMPT DISTRIBUTIONS (REVISED) COMPANION POLICY 45-501CP (REVISED) FORM 45-501F1 (REVISED), FORM 45-501F2 (REVISED), FORM 45-501F3

AND

##### RESCISSION OF EXISTING RULE 45-501 AND COMPANION POLICY 45-501CP AND RULE 45-504 PROSPECTUS EXEMPTION FOR DISTRIBUTIONS OF SECURITIES TO PORTFOLIO ADVISERS ON BEHALF OF FULLY MANAGED ACCOUNTS

#### Introduction

A proposed Rule, three proposed Forms and a proposed Companion Policy, each of which is being published for comment, accompany this Notice. Proposed Rule 45-501 Exempt Distributions (Revised) (the "Proposed Rule") will replace existing Rule 45-501 Exempt Distributions and will deal with certain interpretation and other issues that have arisen in the context of that existing Rule. The Proposed Rule will also implement the recommendations, as modified as a result of public comment, contained in the Staff concept proposal entitled "Revamping the Regulation of the Exempt Market" ((1999) 22 OSCB 2835) (the "Concept Paper"). As part of the revisions to incorporate the Concept Paper recommendations, the exemptive relief contained in Rule 45-504 Prospectus Exemption for Distributions of Securities to Portfolio Advisers on Behalf of Fully Managed Accounts, will be included in the Proposed Rule and Rule 45-504 will be repealed.

The Commission is also publishing for comment under a separate notice issued today, proposed Multilateral Instrument and Companion Policy 45-102 Resale of Securities (the "Resale Instrument"). The resale provisions in the Proposed Rule reflect the application, where appropriate, of the resale regime contained in the Resale Instrument.

#### Substance and Purpose of Proposed Rule and Forms

##### *Concept Paper*

In June 1994, the Ontario Securities Commission (the "Commission") established the Task Force on Small Business Financing (the "Task Force") with a mandate to make

recommendations about the Ontario legislative and regulatory framework governing the raising of capital by small and medium-sized enterprises. In October 1996, the final Report of the Task Force on Small Business Financing (the "Task Force Report") was published. In 1997, the Commission established a staff committee to consider the Task Force Report and make recommendations for implementation. On May 7, 1999, the Commission published the Concept Paper. The Concept Paper was based on the recommendations contained in the Task Force Report and outlined the Commission's proposals for revamping the regulation of the exempt market.

Staff received many comments on the Concept Paper. A summary of those comments and the Commission's response is found in Appendix "A" to this Notice.

The Proposed Rule introduces several new exemptions (the "New Exemptions") reflecting the recommendations made in the Concept Paper, as modified by the Commission's consideration of the submissions made by commentators. The purpose of the New Exemptions is to create an approach to private market regulation that is more consistent with the needs of that market and its investors. The new regime will provide a more rational basis for exempt financings than the current exemptions. The Commission believes that the Proposed Rule represents a significant improvement over existing exempt market regulation.

The New Exemptions replace, among others, the private company exemption (paragraph 35(2)10 and subsection 73(1) of the Act), the private issuer exemption (section 2.17 of the existing Rule), the \$150,000 exemption (paragraph 35(1)5 and clause 72(1)(d) of the Act), the seed capital exemption (paragraph 35(1)21 and clause 72(1)(p) of the Act) and the government incentive security exemption (section 2.4 of the existing Rule). The New Exemptions are as follows:

The Closely-Held Issuer Exemption - This exemption will permit issuers to raise a total of \$3.0 million, through any number of financings, from up to 35 investors (excluding employees who acquire securities under a compensation or incentive plan) without concern for the "qualifications" of the investors.

The Family Member Exemption - This exemption will permit issuers to issue securities on an exempt basis to spouses, parents, grandparents or children of its officers, directors and promoters.

The Accredited Investor Exemption - This exemption will permit issuers to raise any amount at any time from any person or company that meets specified qualification criteria.

### *Resale Instrument*

The Proposed Rule also includes various amendments and new provisions needed to ensure that securities acquired under the prospectus exemptions contained in the Proposed Rule will be subject to the appropriate resale restrictions contained in the Resale Instrument. This will provide clarity as to the relationship between the Proposed Rule and the Resale Instrument.

### *Other Changes to Existing Rule*

A number of other changes to existing Rule 45-501 are being proposed to deal with issues that have arisen since it came into effect in 1998. Specifically, the Proposed Rule would: (a) implement a statutory right of action in the context of certain exempt trades if an offering memorandum is provided to investors; (b) clarify the hold period applicable to exchangeable securities; and (c) require that the identity of the purchaser be disclosed on Form 45-501F1.

### **Substance and Purpose of Companion Policy**

The purpose of the proposed Companion Policy (the "Policy") is to set forth the views of the Commission as to the manner in which the Proposed Rule and the provisions of the *Securities Act* (Ontario) (the "Act") relating to exempt distributions are to be interpreted and applied. The Policy will replace existing Companion Policy 45-501CP.

### **Summary of Proposed Rule and Forms**

#### **Definitions**

Part I of the Proposed Rule contains definitions, many of which are the same as those contained in existing Rule 45-501. Two important new definitions have been included in section 1.1 of the Proposed Rule, being the terms "accredited investor" and "closely-held issuer". These definitions form the basis of the New Exemptions.

The "accredited investor" definition lists certain types of institutions, and certain categories of persons and companies that meet specific net worth criteria or have other qualifications. These investors are considered to have the capacity to obtain and analyze the information needed to assess a particular investment opportunity without the assistance provided by a prospectus and to have the financial ability to withstand the loss of the investment.

The "closely-held issuer" definition supersedes the "private company" definition in the Act and the "private issuer" definition in the existing Rule. This new term forms the basis of the new exemption for issuers having a maximum of 35 security holders, exclusive of accredited investors and employees holding securities acquired through compensation or incentive arrangements.

The definition of "government incentive security" in the existing Rule is being removed in accordance with the removal of the related exemption. A definition of "spouse" has been included in order to incorporate the changes made to the Act reflecting the Supreme Court of Canada decision in *M. v. H.* Amended terms define "Type 1 trade" and "Type 2 trade" for purposes of the Resale Instrument.

A definition of "financial assets" has been included for purposes of a category of accredited investor relating to an individual's net worth. Definitions of "managed account" and "portfolio adviser" have been added in order to incorporate the exemptive relief provided under existing Rule 45-504 in the accredited investor exemption in the Proposed Rule.

### **Registration and Prospectus Exemptions**

Part 2 of the Proposed Rule provides for certain exemptions from the registration and prospectus requirements that supplement or replace exemptions contained in the Act. Certain exemptions in the existing Rule have been replaced by the New Exemptions and other exemptions have been modified, as discussed below. The following exemptions have been retained from the existing Rule with no material changes: Exemption for a Trade in a Variable Insurance Contract; Exemption for a Trade by a Control Person in a Security Acquired under a Formal Take-over Bid; Exemption for a Trade in Connection with a Securities Exchange Issuer Bid; Exemption for a Trade on an Amalgamation, Arrangement or Specified Statutory Procedure; Exemption for a Trade upon Exercise of Conversion Rights in a Convertible Security; Exemption for a Trade upon Exercise of Exchange Rights in an Exchangeable Security; Exemption for a Trade in a Security under the Execution Act; Exemption for a Trade in a Security Acquired in Connection with a Take-over Bid; Exemption for a Trade in an Underlying Security Where the Right to Purchase, Convert or Exchange is Qualified by Prospectus; and Exemption for a Trade in Debt of Conseil Scolaire de L'île de Montréal. The exemption for a trade in a "multiple convertible security", "convertible security" or "exchangeable security" acquired under certain exemptions has also been retained with modifications to make it subject to certain conditions in the Resale Instrument. For a more detailed history of these exemptions, please refer to the Notice that was published with the existing Rule ((1999), 22 O.S.C.B. 56).

Section 2.1 of the Proposed Rule creates a new exemption from the registration and prospectus requirements for trades in securities of a closely-held issuer. Under this exemption, the registration and prospectus requirements set out in sections 25 and 53 of the Act would not apply to a trade in securities of a closely-held issuer if: (i) the proceeds raised in reliance on this exemption, in any number of financings, do not exceed \$3.0 million; (ii) an information statement in a prescribed form is provided to the purchaser if the issuer will have more than five holders of securities; (iii) no promoter of the issuer has acted as a promoter of any issuer that has used this exemption in the past 12 months; and (iv) the issuer has not engaged in any advertising of its securities and no selling or promotional expenses are being incurred in connection with the trade.

A new form, Form 45-501F3, is being prescribed as the form of information statement to be provided to investors in connection with most trades effected under the closely-held issuer exemption.

Section 2.3 of the existing Rule is being eliminated, as this exemption is no longer required. The existing section provides an exemption for trades among promoters of the issuer and among promoters and control persons. The new definition of accredited investor includes promoters.

Section 2.3 of the Proposed Rule creates an exemption from the registration and prospectus requirements if the purchaser falls within any of the categories in the definition of accredited investor and the purchaser purchases as principal.

In the Concept Paper, staff proposed that an individual could qualify as an accredited investor if that individual, either alone or jointly with a spouse, satisfied a "net worth" test. In the Proposed Rule, the Commission has: (i) replaced the "net worth" test with a test based on the value of the "financial assets" beneficially owned by the individual and, if applicable, the individual's spouse; and (ii) significantly lowered the applicable threshold from \$2.5 million (which included all assets except for one-half the net equity of a personal residence) to \$1.0 million (which includes cash, securities and bank deposits).

As noted above, the accredited investor exemption will exempt trades to accounts managed by portfolio advisers or trust corporations registered in Ontario. Therefore, Rule 45-504 Prospectus Exemption for Distribution of Securities to Portfolio Advisers on Behalf of Fully Managed Accounts will be rescinded.

Section 2.4 of the Proposed Rule creates a new exemption from the registration and prospectus requirements for a trade in a security of an issuer if (i) the purchaser is a spouse, parent grandparent or child of an officer, director or promoter of the issuer; (ii) the purchaser purchases as principal; and (iii) no advertising is done and no selling or promotional expenses are incurred in connection with the trade.

Section 2.15 of the Proposed Rule confirms that trades by an individual or an associate to a registered retirement savings plan or registered retirement income fund established by or for the individual are exempt from the registration and prospectus requirements.

The government incentive and seed capital exemptions are being replaced in the Proposed Rule with the closely-held issuer and accredited investor exemptions.

Section 2.15 of the existing Rule is being eliminated, as it will no longer be needed with the inclusion of "promoter" in the accredited investor definition.

Section 2.17 and subsection 2.18(1) of the existing Rule are being eliminated, as these exemptions for securities of private issuers and British Columbia private companies will be superseded by the closely-held issuer exemption.

### Removal of Exemptions

Part 3 of the Proposed Rule removes certain registration and prospectus exemptions in the Act that are being replaced by the new exempt market regime. This Part also provides for the removal of certain exemptions in the Act and the Proposed Rule if certain conditions are not met.

Section 3.1 of the Proposed Rule provides for the removal of the registration exemptions in paragraphs 3, 4, 5, 18 and 21 of subsection 35(1) of the Act and paragraph 10 of subsection 35(2) of the Act and the prospectus exemptions contained in clauses (a), (c), (d), (l) and (p) of subsection 72(1) and clause

(a) of subsection 73(1) as it relates to paragraph 35(2) of the Act.

Sections 3.1 to 3.7, inclusive, and sections 3.10 and 3.11 of the existing Rule are all being eliminated, as these provisions refer to exemptions that are being replaced with new exemptions in the Proposed Rule or impose conditions that will be addressed in the proposed Resale Instrument.

Section 3.8 of the existing Rule is retained and renumbered as section 3.2. Section 3.9 of the existing Rule is retained and renumbered as section 3.3. Section 3.4 provides for the removal of the registration exemptions for market intermediaries as set out in subsection 2.2(2) and sections 2.1, 2.3, 2.4, 2.6, 2.7, 2.8, 2.9, 2.10 and 2.15. This is consistent with the provisions of the existing Rule.

### Offering Memorandum

Part 4 of the Proposed Rule imposes certain requirements in respect of the use of an offering memorandum in connection with certain exempt distributions.

Currently, an offering memorandum must be delivered to purchasers of government incentive securities in connection with trades made in reliance upon the exemption in section 2.4 of existing Rule 45-501 and, if there has been any advertisement of the offered securities, trades made in reliance upon the exemption in clause 72(1)(d) of the Act or section 2.11 of existing Rule 45-501. Under the Proposed Rule, there is no longer a positive obligation to deliver an offering memorandum. However, if the issuer or selling security holder voluntarily delivers an offering memorandum pursuant to certain specified exemptions (i.e. the exemptions for securities of closely-held issuers and for trades to accredited investors and family members), the purchaser will have a statutory right of action which must be described in the offering memorandum for those exemptions to be available.

Specifically, section 4.1 of the Proposed Rule provides for the application of the statutory rights of action, as set out in section 130.1 of the Act, in respect of an offering memorandum delivered to a prospective purchaser in connection with a trade made in reliance upon a prospectus exemption in section 2.1, 2.3 or 2.4. Consequently, contractual rights of action are no longer necessary. Section 4.2 further states that the exemption provided for in section 2.1, 2.3 or 2.4 is not available unless any offering memorandum provided to a prospective purchaser describes the statutory right of action outlined in section 130.1 of the Act. Section 4.3 provides that a copy of any offering memorandum provided shall be delivered to the Commission within 10 days of the trade.

It should also be noted that the use of an offering memorandum in connection with trades to institutional investors under the accredited investor exemption in section 2.1 will give rise to the application of the statutory right of action in section 130.1 of the Act. This is broader than the scope of contractual rights of action under the existing private placement regime as an offering memorandum voluntarily delivered in respect of a trade made in reliance upon clause 72(1)(a) of the Act does not result in a requirement to provide a contractual right of action to the purchaser.

The Commission is considering extending the application of the statutory right of action to all offering memoranda that are voluntarily delivered in respect of exempt distributions and specifically requests comment on this proposal.

### Certain International Offerings by Private Placement

In December 1993, the Commission granted a blanket ruling entitled *In the Matter of Regulation 1015, R.R.O. 1990, as amended and In the Matter of Certain International Offerings by Private Placement in Ontario* (1993), 16 OSCB 5931 (the "International Offering rule"), which provided relief for certain international offerings extended to Ontario investors by way of private placement under clause 72(1)(c) or (d) of the Act, from the requirement to provide a contractual right of action. At the same time, the Commission granted blanket relief entitled *Blanket Permission - International Offerings by Private Placement in Ontario - Subsection 38(3) of the Securities Act (Ontario)* (1993), 16 OSCB 5938 (the "Blanket Permission rule"), from the requirement in subsection 38(3) of the Act to obtain the Director's consent for listing representations in connection with offerings extended to Ontario investors in reliance upon the International Offering rule.

On March 1, 1997, these deemed rules, the International Offering rule and the Blanket Permission rule, were made into rules. The text of both of the rules provided that the rules would expire on the earlier of the date on which a new rule intended to replace them came into force and July 1, 1998. Effective June 30, 1998, the expiry date for both rules was extended to July 1, 1999 and effective June 21, 1999, the expiry date for both rules was extended to July 1, 2001.

The International Offering rule provides relief from the requirement to provide a contractual right of action for certain international offerings by foreign issuers made in Ontario under the exemption contained in clause 72(1)(c) or (d) of the Act.

Recent amendments to the Act ("More Tax Cuts for Jobs, Growth and Prosperity Act, 1999") introduced new section 130.1 which provides statutory civil liability for misrepresentations in offering memoranda.

The Commission has decided not to reformulate the International Offering rule as the Commission is of the view that the rule will no longer be required to facilitate extending international offerings to Ontario investors by private placement when contractual rights of action are replaced by statutory rights of action.

The International Offering rule also provides certain ancillary relief from the requirement to comply with National Policy Statement No. 48 Future-Oriented Financial Information ("NP 48") and National Policy Statement No. 14 Acceptability of Currencies in Material Filed with the Securities Regulatory Authorities ("NP 14").

NP 48 is being reformulated as proposed National Instrument 52-101 Future-Oriented Financial Information. Pending reformulation of NP 48, to facilitate extending international offerings to Ontario investors by private placement, the Commission would not object to delivery to Ontario investors of an offering memorandum that includes a U.S. prospectus

containing FOPI presented in compliance with U.S. securities law requirements.

NP 14 is being reformulated as proposed National Instrument 52-102 Use of Currencies. Pending reformulation of NP 14, to facilitate extending international offerings to Ontario investors by private placement, the Commission would not object to delivery to Ontario investors of an offering memorandum disclosing financial information in a foreign currency other than the U.S. dollar without disclosure as to exchange rates between the foreign currency and the Canadian dollar, provided that disclosure as to exchange rates between the foreign currency and the U.S. dollar has been presented in accordance with U.S. securities law requirements. Further, the Commission would not object to presentation of supplementary disclosure about withholding taxes, foreign exchange controls and hyperinflationary effects in compliance with U.S. securities law requirements.

The Blanket Permission rule provides relief from the requirements of subsection 38(3) of the Act for certain listing representations made in connection with the International Offering rule. The recent amendments to the Act, referred to above, introduced revisions to subsection 38(3) which expressly permit listing representations to be made without Director consent if: (i) a listing/quotation application has been made and securities of the same issuer are listed or quoted; or (ii) approval to the representation has been obtained from an exchange/quotation reporting system. Consequently, the Commission does not intend to reformulate the Blanket Permission rule.

As mentioned above, the International Offering rule expires on July 1, 2001. It is possible that the Proposed Rule will not become effective before the International Offering rule expires. To address this potential gap, the Commission is publishing a revision to Rule 45-501 that would amend the existing Rule by providing for the application of statutory rights of action instead of contractual rights of action.

### Dealer Registration

Part 5 of the Proposed Rule, which limits the availability of exemptions based on dealer involvement, is not changed materially from the corresponding Part in the existing Rule.

### Resale Restrictions

Part 6 of the Proposed Rule provides for restrictions on subsequent trades in securities acquired under certain exemptions. The provisions of the Part in the existing Rule have been amended in order to subject securities acquired under prospectus exemptions in the Proposed Rule to the appropriate provisions of the Resale Instrument. In addition, the resale restrictions applicable to exchangeable securities have been modified to clarify that resale restrictions apply whether the underlying security has been issued or transferred to the security holder.

### Filing Requirements and Fees

Part 7 of the Proposed Rule provides for the form of the reports to be filed and the amount of fees to be paid in connection with certain exempt distributions and the resale of securities acquired under such exempt distributions. Forms



## Request for Comments

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45-501F1 and 45-501F2 have been revised to reflect the provisions of the Proposed Rule. In addition, Form 45-501F1 has been modified to require certain information about the identity of the purchaser under a private placement. Fees payable under the Proposed Rule will be subject to across-the-board reductions implemented by the Commission prior to its effective date.

### Transitional Provisions

Part 8 of the Proposed Rule provides transitional provisions relating primarily to subsequent trades in securities acquired under the exemptions in the existing Rule that are being eliminated.

### Summary of Policy

The Policy sets forth the views of the Commission as to the manner in which certain provisions of the Act and the rules relating to exempt distributions are to be interpreted and applied.

In section 2.1, the Commission recognizes that sellers of securities may continue to rely concurrently on different exemptions, subject to certain limitations. Section 2.2 of the Policy confirms the Commission's views regarding the availability of the closely-held issuer exemption in various respects, including matters concerning the \$3.0 million maximum amount that may be raised using the exemption. Section 2.3 confirms the Commission's view that the closely-held issuer exemption provides the exemptive relief contemplated by certain "sunset" provisions that have historically been included in rulings exempting trades in additional pooled fund interests to existing investors. As a result, previous rulings with "sunset" provisions will expire and staff will cease recommending relief of this type when the Proposed Rule comes into effect.

Section 2.4 of the Policy sets out the Commission's view that clause 72(1)(i) of the Act is available in respect of trades in connection with amalgamations, arrangements or similar statutory proceedings taken under the laws of a jurisdiction other than Ontario. Section 2.5 of the Policy sets out the Commission's view that section 2.7 of the Proposed Rule extends to three-cornered amalgamations. Section 2.6 of the Policy clarifies that certain resale exemptions in the Proposed Rule operate as alternatives to the provisions of the Resale Instrument that would otherwise apply.

In light of recent changes to the definition of "reporting issuer" in the Act, the discussion in the existing Companion Policy regarding Securities Exchange Take-over Bids is no longer relevant and has been deleted.

Part 3 of the Policy sets out the Commission's views concerning the diligence that should reasonably be exercised by sellers for the purposes of the certification contained in Form 45-501F1.

Part 4 provides the views of the Commission as to the use of offering memoranda in connection with private placements.

Section 4.1 of the Policy provides that the statutory right of action contained in section 130.1 of the Act applies to offering memoranda delivered to prospective investors in connection

with trades made in reliance upon the new prospectus exemptions contained in sections 2.1, 2.3 and 2.4 of the Proposed Rule. The Commission does not prescribe the form of such offering memoranda.

Part 5 of the Policy discusses the interaction of the Proposed Rule with the Resale Instrument.

Part 6 of the Policy indicates that offering material used by the vendors of securities who rely on private placement exemptions is not generally reviewed and commented upon by Commission staff.

### Authority for the Proposed Rule and Forms

The following sections of the Act provide the Commission with authority to adopt the Proposed Rule and Forms. Paragraphs 143(1)8 and 20 authorize the Commission to make rules that provide for exemptions from the registration and prospectus requirements under the Act and for the removal of exemptions from those requirements. Paragraph 143(1)11 authorizes the Commission to make rules regulating the listing or trading of publicly traded securities and paragraph 143(1)13 authorizes the Commission to make rules regulating trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors. Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by this Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents and paragraph 143(1)43 authorizes the Commission to make rules prescribing fees.

### Related Instruments

The Proposed Rule and the Policy are related in that they deal with the same subject matter. The Policy is related to Parts XII and XVII of the Act and Parts III and V of the Regulation.

### Alternatives Considered

The Commission has relied upon the advice of the Task Force and its Report and has based the Proposed Rule on these considerations in addition to the views of Staff and the comments received on the Concept Paper.

### Unpublished Materials

The Commission has not relied upon any significant unpublished study, report, decision or other written materials.

### Anticipated Costs and Benefits

The principal benefit of the Proposed Rule, Policy and Forms will be to implement needed reforms to the private placement regime, in particular as it relates to the financing of small business. The Task Force engaged in an extensive study of exempt market regulation in Ontario and recommended extensive reform. The Proposed Rule will implement many of those recommendations.

Based on the foregoing, the Commission believes that the benefits of the Proposed Rule outweigh the costs, if any.

### Rescission of Existing Rules and Companion Policy

Adoption of the Proposed Rule, Policy and Forms will result in the rescission of existing Rule 45-501 Exempt Distributions, existing Companion Policy 45-501CP and Rule 45-504 Prospectus Exemption for the Distribution of Securities to Portfolio Advisers on Behalf of Fully Managed Accounts. The texts of the proposed rescissions will be as follows:

"Rule 45-501 Exempt Distributions and Companion Policy 45-501CP are hereby rescinded."

"Rule 45-504 Prospectus Exemption for Distribution of Securities to Portfolio Advisers on Behalf of Fully Managed Accounts is hereby rescinded."

### Conflicting Regulations

In connection with the implementation of the Proposed Rule, it is the intention of the Commission to amend the Regulation under the Act to the extent that certain provisions of the Regulation require consequential amendment. The implementation of the Proposed Rule requires that the following amendments to the Regulation be made:

1. Subsections 149(1), (2) and (3), which deal with applications for exempt purchaser recognition, will be revoked since the exemptions for persons or companies that are exempt purchasers will no longer be available.
2. Clause 154(1)(c) refers to the exemptions from the prospectus requirement under clauses 72(1)(a), (c) and (d) of the Act, all of which will no longer be available. Clause 154(1)(c) will be amended to delete the references to these exemptions and to refer to the exemption for accredited investors as set out in the Proposed Rule.
3. The definition of "designated institution" in subsection 204(1) of the Regulation will be amended to delete clause (i), which refers to an exempt purchaser, and to add a new clause that refers to an accredited investor as defined in the Proposed Rule.
4. Subsection 45(1) of Schedule 1 – Fees will be revoked since applications for exempt purchaser recognition will no longer be accepted. Section 7.7 of the Proposed Rule prescribes the amount of fees payable in respect an application for accredited investor recognition.
5. Form 11, Application For Recognition As An Exempt Purchaser will be revoked since the related exemptions from the registration and prospectus requirements will no longer be available.

### Comments

Interested parties are invited to make written submissions with respect to the Proposed Rule, Policy and Forms. Submissions received by December 8, 2000 will be considered.

Submissions should be made to:

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario M5H 3S8

A diskette containing an electronic copy of the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions received cannot be maintained.

Questions may be referred to:

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### Texts of the Proposed Rule, Policy and Forms

The texts of the Proposed Rule, the Policy and the three Forms follow, together with footnotes that are not part of the Proposed Rule, Policy or Forms but have been included to provide both background and explanation.

DATED: September 8, 2000.

APPENDIX A

SUMMARY OF COMMENTS  
RECEIVED BY THE COMMISSION  
ON THE CONCEPT PAPER "REVAMPING THE  
REGULATION OF THE EXEMPT MARKET"

The Commission received 40 submissions in response to the Concept Paper. A list of commentators is set out in Schedule A to this Summary. The Commission has considered all submissions received and thanks the commentators for providing constructive comments on the Concept Paper.

The following is a summary of the comments received, together with the Commission's corresponding responses.

GENERAL COMMENTS

The commentators generally were very supportive of the initiative to revamp the regulation of the exempt market.

Several commentators expressed the view that the initiative should have national scope to harmonize exempt market regulation across all Canadian jurisdictions and thereby simplify and reduce the costs of multijurisdictional capital-raising activities. Commentators indicated, however, that they preferred speedy implementation of the proposed changes in Ontario to national harmonization.

*While the Commission agrees that harmonization is a worthy objective, the Commission agrees that timely local implementation takes precedence over harmonization.*

Several commentators suggested abandoning the proposals in favour of a system identical to, or more similar to, that in the United States.

*The Concept Paper's recommendations were based upon the Task Force Report's recommendations. The Task Force considered but rejected adopting the U.S. system due to the differences in the two jurisdictions' capital markets. The Commission supports the Task Force recommendations in this regard.*

SPECIFIC COMMENTS - CLOSELY-HELD ISSUER  
EXEMPTION

Number of Security Holders

Several commentators questioned why the pool of unsophisticated investors was limited to 35 persons, given that the existing "private issuer" exemption permits 50 investors.

*The "35 unaccredited investor" limit provided for in the proposed closely-held issuer exemption represents a balance between: (a) facilitating small companies' access to capital; and (b) limiting the potential risk assumed by unsophisticated investors. The closely-held issuer exemption is designed to be used by companies to raise investment capital from people and entities known by the company's principals and not through broad solicitations of potential investors. The private issuer exemption achieved a similar objective by prohibiting offers to the public. The closely-held issuer exemption is intended to remove the uncertainty surrounding this concept.*

*Furthermore, the closely-held issuer exemptions may prove less numerically restrictive than the private issuer exemption because the following groups of investors would count toward the 50 investor limit for purposes of the private issuer exemption but would not count toward the 35 investor limit for purposes of the closely-held issuer exemption:*

- (1) *accredited investors; and*
- (2) *persons who fall within the scope of the new "family members" exemption.*

Several commentators suggested that employees should not count toward the 35 investor limit. This was considered to be particularly important in the high technology and biotechnology sectors where the ability to reward and compensate employees with securities assists issuers in attracting and retaining employees, as well as facilitating cash conservation by such issuers.

*The Proposed Rule excludes employees from the 35 investor limit, provided that the employee holds securities of the issuer issued under a compensation or incentive plan of the issuer or an affiliated entity of the issuer. The Proposed Rule would still include in the group of 35 those employees who make capital investments in the issuer.*

One commentator was concerned that the 35 investor limit would impede liquidity since those required to approve the transfer may not do so if it affects the number of investors.

*The effect on liquidity is substantially similar to that currently experienced with the private issuer exemption. One principal difference under the proposed regime, however, is the ability of investors who acquire securities under the closely-held issuer exemption to transfer securities to accredited investors without affecting the issuer's ability to raise additional capital using the closely-held issuer exemption.*

Dollar Limit

Several commentators viewed the \$3 million cap as too restrictive. In their view, many preliminary stage issuers, particularly those in the real estate and high technology sectors, require significantly more capital. One commentator suggested that the \$3 million cap be "refreshed" for a given issuer after a certain time period or upon the occurrence of specified events. Another commentator suggested that the 35 investors should be able to invest additional capital after the \$3 million cap has been reached.

*The Commission considers the \$3 million dollar cap as striking the appropriate balance between providing small issuers with easy access to significant amounts of capital while managing the risk assumed by unsophisticated investors. It also should be noted that the \$3 million cap applies only to capital raised through investments from the "group of 35" pursuant to the closely-held issuer exemption. There is no limit on the amount of capital that may be raised from accredited investors or family members. Furthermore, the value of securities issued to employees under a compensation or incentive plan of the issuer or an affiliate of the issuer does not count toward the \$3 million cap.*

## Nature of Entity

Several commentators proposed that mutual funds should be able to rely upon the closely-held issuer exemption on the grounds, among others, that protection is provided to investors through regulatory requirements, the pooling of funds and professional advice and management.

*Mutual funds are subject to a separate regulatory regime that more adequately meets the needs of that market and mutual fund investors.*

## Generic Information Statement

The Concept Paper proposed that an issuer with five or more investors must provide a generic form of information statement to potential investors. A few commentators suggested that this five investor limit was too low because many family-owned businesses will have five or more immediate family members as investors.

*The five investor limit is designed to minimize securities regulatory requirements for companies that are very closely held. It is anticipated that trades to family members will be made in reliance upon the family member exemption, which does not require delivery of a generic information statement. Further, it is the Commission's view that the standard form information statement requirement is not onerous and is a necessary investor protection component of the exemption.*

One commentator suggested that a sample form of the generic document, to be used as a guideline, be posted on the Commission's website.

*A sample generic document is appended to the Proposed Rule and, when the Proposed Rule is finalized, will be available on the Commission's website.*

One commentator suggested that the requirement to deliver the generic statement four days in advance of the trade provided too little time for potential investors to acquire and assimilate relevant information.

*The Commission is of the view that, in many cases, the four day period will be sufficient for potential investors to acquire and analyze the information. However, it is anticipated that, if potential investors have not satisfied themselves concerning the potential investment within the four days, the trade can be delayed. At a minimum, the "four day" requirement will provide potential investors with time to consider the proposed investment and decide what information they will require prior to making an investment decision.*

## Anti-avoidance

The Concept Paper proposed to restrict the availability of the closely-held issuer exemption by applying the \$3 million cap to all funds raised by issuers "in common enterprise". One commentator expressed concern about this anti-avoidance provision. The commentator indicated that an entrepreneur could have more than one legitimate business interest in his or her lifetime and each business should have full access to the closely-held issuer exemption.

*The availability of the closely-held issuer exemption is restricted only where entities are engaged in common enterprise. If affiliated entities legitimately are carrying on different business activities, the closely-held issuer exemption is fully available to each entity. Furthermore, the Proposed Rule contains a provision whereby issuers that are engaged in common enterprise can apply to the Commission for relief from this requirement.*

## Promoters

One commentator expressed concern with the proposal to limit the closely-held issuer exemption's availability where a promoter of the issuer has acted as a promoter of another issuer that has issued securities in reliance upon the closely-held issuer exemption within the preceding calendar year.

*This restriction is aimed at potential abusive conduct by promoters, such as a scenario in which a promoter establishes a series of issuers, each of which purports to raise \$3 million in capital from unsophisticated investors in reliance upon the closely-held issuer exemption. If a promoter wishes to use the closely-held issuer exemption for another legitimate enterprise within the same twelve month period, the promoter can apply to the Commission for exemptive relief from the application of this prohibition.*

## Disclosure Documents and Liability

One commentator suggested that, in accordance with the Task Force Report, there should be deemed reliance upon all documents provided to potential investors regarding the purchase and sale of securities.

*It is anticipated that much of the disclosure material provided to investors in connection with the closely-held issuer exemption will fall within the scope of the defined term "offering memorandum" contained in the Act. The Proposed Rule provides that the statutory rights of action contained in the Act apply in respect of an offering memorandum provided to investors under the closely-held issuer exemption.*

One commentator suggested that small businesses should be permitted to hire professionals to assist in the marketing of securities since "angel" capital is difficult to raise without experience.

*Market intermediaries may be employed in connection with trades made in reliance upon the accredited investor exemption. It is anticipated that the majority of "angel" investors would be accredited investors. Prohibiting market intermediaries from participating in trades made in reliance upon the closely-held issuer exemption will encourage investment by investors that are closely connected to the issuer or its principals.*

One commentator expressed the view that the prohibition on advertising would be a significant barrier to the use of the Internet to obtain private financing, particularly since there is no restriction on the nature of the 35 investors or their relationship to the issuer.

*Advertising is not prohibited in connection with the accredited investor exemption (although an issuer that advertises in*

connection with any trade will be precluded thereafter from relying upon the closely-held issuer exemption). Advertising is prohibited for issuers who seek to rely upon the closely-held issuer exemption in order to ensure that trades made in reliance upon this exemption are made to persons or entities are closely connected in some way to the issuer or its principals.

## SPECIFIC COMMENTS - ACCREDITED INVESTOR EXEMPTION

### Summary

Some commentators felt that the income and net worth thresholds did not provide evidence of an adequate level of sophistication, nor did these criteria establish that such investors could afford a complete loss of their investment.

*The Commission agrees with the Task Force's conclusion that an investor's sophistication should be measured primarily by the ability to withstand the loss of the investment. While using either a "net worth" test or an income test to determine whether a potential investor can afford to lose an investment cannot fully assess sophistication, such tests do provide a strong proxy for sophistication. They are also relatively easy to calculate. The Commission also notes that the statutory civil liability attaching to offering memoranda will provide further protection for investors.*

Many commentators were concerned about the monetary thresholds for determining accredited investor status. In general, these comments expressed the view that the net worth and personal income thresholds were too high for individuals, thereby limiting the pool of potential investment capital for small businesses. The lower thresholds set out in the Task Force Report were considered to be more appropriate. Several commentators were concerned that the high thresholds proposed in the Concept Paper would exclude mid-level investors from participating in the exempt market. Certain commentators were concerned that investors would not be comfortable disclosing their full net worth or producing personal income tax returns in order to prove their status. Some commentators expressed concern about issuers' ability to use exempt market financing in smaller communities, which may have fewer high income investors. It also was suggested that income be calculated on "net income" basis, rather than a "taxable income" basis, since net income provides a more accurate reflection of wealth.

*The Commission has considered the asset and income thresholds proposed in the Concept Paper for individual accredited investors and determined that the asset test should be restricted to the individual's liquid financial assets. Financial assets used for the purposes of the threshold would include cash, cash equivalents and marketable securities. The threshold has been reduced to \$1 million from \$2.5 million. Upon reconsideration, the Commission did not consider it appropriate to include assets in the net worth calculation that the investor cannot afford to lose. An example of such an asset may be an individual's principal residence. The income thresholds have not been altered.*

Many commentators requested that immediate family members of officers, directors and promoters be included in the definition of accredited investor.

*The Commission has provided a separate exemption from the prospectus and registration requirements for trades in securities of an issuer where the purchaser purchases as principal and is a spouse, grandparent, parent or child of an officer, director or promoter of the issuer or an RRSP or RRIF of such family members. Family members were not included in the definition of accredited investor because the Commission believes it is inappropriate to involve market intermediaries in trades to family members. Like the closely-held issuer exemption, the family member exemption prohibits advertising and the payment of promotional or selling expenses.*

One commentator asked that the Commission consider adding non-profit housing organizations and building co-operatives, especially those without charitable status, to the definition of accredited investor.

*The Commission is not prepared to include these entities as accredited investors. Unlike registered charities, the investment activity of these entities is not subject to regulation.*

One commentator requested that credit unions incorporated under the *Co-operative Credit Associations Act* (Canada) and comparable provincial legislation be included within the definition of accredited investor since these associations are comparable to banks, trust and loan companies and credit unions.

*The definition of accredited investor has been amended in the Proposed Rule to include the entities referred to above as accredited investors.*

Some commentators also requested that the definition of accredited investor be extended to include entities other than corporations.

*The Commission has extended the definition in the Proposed Rule to include non-corporate entities.*

The existing seed capital exemption permits trades to investors in certain circumstances where, among other things, the investors are able to evaluate the prospective investment, either by virtue of their "net worth and investment experience" or by virtue of consultation with or advice from a registered adviser or dealer. One commentator recommended that the new regime retain an exemption for the "well-advised" category of investors.

*With respect to the category of individual accredited investors, the Commission believes that qualification as an "accredited investor" should turn on whether the individual can afford to withstand the loss of his or her entire investment. This strikes the appropriate balance between facilitating capital-raising activities and protecting investors.*

One commentator recommended that the new exempt market scheme permit accredited investors to certify their status as such in order to protect issuers and relieve them of the burden of verifying the status of potential investors.

*The Commission believes that it should remain the issuer's responsibility to ensure that it is complying with securities regulatory requirements when it sells its securities.*

#### **Benefits of Having a Complete Accredited Investor List**

A few commentators were concerned about the proposal to repeal Rule 45-504 - Prospectus Exemption for Distributions of Securities to Portfolios Advisers on Behalf of Fully Managed Accounts ("Rule 45-504").

*Managed accounts have been included as accredited investors in the Proposed Rule. In keeping with Rule 45-504, managed accounts only will be considered accredited investors and therefore able to avail themselves of the accredited investor exemption if they are not acquiring securities of a mutual fund or non-redeemable investment fund.*

#### **Disclosure Documents and Civil Liability**

Some commentators indicated that including a contractual right of action in, or attaching statutory liability to, offering memoranda is unnecessary for accredited investors since they are able to negotiate appropriate protections.

*The Commission believes that it is appropriate to attach statutory civil liability to all offering memoranda provided to investors in connection with trades made in reliance upon the accredited investor, closely-held issuer and/or family member exemptions. With respect to the closely-held issuer and family member exemptions, potential investors may not be in a position or have the experience to negotiate the appropriate protections. Furthermore, not all accredited investors necessarily have the ability to negotiate protections. Providing for statutory civil liability in respect of offering memoranda ensures consistent protections for all investors acquiring securities under any of these exemptions.*

#### **Registration Exemption: Accredited Investors**

One commentator suggested that the registration exemption should be extended to cover those persons in non-corporate issuers, such as partnerships and trusts, acting in similar capacities to directors and officers, in order to bring the treatment of non-corporate issuers in line with the treatment of corporate issuers.

*The Proposed Rule includes registration and prospectus exemptions for officers and directors of issuers. The exemptions, together with the broad definitions of director and officer in the Act, generally provide exemptive relief for trades to persons who, in respect of non-corporate issuers, act in capacities similar to those of corporate officers or directors.*

One commentator recommended that mutual and investment funds that distributed securities pursuant to a discretionary order permitting sprinkling among managers' accounts should be "grandfathered" under the new exempt market regime.

*The \$150,000 exemption, upon which these orders were premised, is being removed by the Proposed Rule. Therefore, it is inappropriate to grandfather these issuers.*

One commentator proposed that group RRSPs, commonly used by employers in place of registered pension plans, should be treated in the same manner as pension plans.

*Unlike pension plans, group RRSPs are not subject to regulation regarding the suitability of investments. Accordingly, the Commission does not believe it is appropriate to treat group RRSPs in the same manner as pension plans under the Proposed Rule.*

Some commentators were concerned about a statement in the Concept Paper regarding the proposed elimination of the "limited market dealer" category of registration. These commentators generally emphasized that limited market dealers provide a valuable service in facilitating capital-raising by small and medium size businesses.

*The Concept Paper indicated that the category of "limited market dealer" registration would be re-examined. This re-examination is now being undertaken as part of a general re-examination of the categories of registration and is not reflected in the Proposed Rule.*

#### **Proposed Repeal of Existing Exemptions**

Several commentators indicated that the existing "government incentive securities" exemption should not be eliminated because it is useful for natural resources issuers.

*The accredited investor exemption should allow natural resource issuers to continue to raise capital through the issuance of government incentive securities on substantially the same basis as under the government incentive securities exemption. The existing government incentive securities exemption, like the accredited investor exemption, requires purchasers to be sophisticated. It should be noted, however, that unlike the government incentive securities exemption, the accredited investor exemption does not: (i) require the delivery of an offering memorandum; (ii) prohibit advertising; (iii) restrict the number of accredited investors; or (iv) require the security in question to meet the definition of a "government incentive security".*

Certain commentators expressed the view that the accredited investor exemption is more restrictive than the private placement exemption and could impede private capital-raising activities.

*The Task Force Report concluded that the \$150,000 minimum investment requirement for the private placement exemption is not an adequate proxy for sophistication and has the unfortunate effect of defining a minimum risk exposure for investors relying upon that exemption. Defining sophistication through the definition of accredited investor provides flexibility in the level of investment by sophisticated investors. This flexibility could facilitate increased access by issuers to the "angel" market.*

Certain commentators were concerned about the effect that removing the private company exemption will have on tax and estate planning and/or corporate reorganizations.

*The closely-held issuer exemption should not change significantly the way in which corporations are used for tax and estate planning purposes.*

The Concept Paper proposed that a company, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redeemable investment fund, that had net assets of at least \$5 million as of the date of its most recent audited financial statements would qualify as an accredited investor. One commentator asked why trusts needed to have audited financial statements in order to qualify as accredited investors.

*The comparable provision in the Proposed Rule uses a "\$5 million in net assets" test, as of the date of the entity's most recent financial statements. The requirement that the financial statements be audited has been eliminated.*

One commentator was concerned that certain recognized exempt purchasers that otherwise would not qualify as accredited investors under the *Proposed Rule* would be required to apply for accredited investor status.

*A transitional provision in the Proposed Rule will operate to temporarily "grandfather" investors recognized by the Commission as exempt purchasers at the time the Proposed Rule comes into effect. This transitional provision will apply for a one-year period after the Proposed Rule comes into effect. Once this one-year transitional period expires, these exempt purchasers will have to apply to be recognized as accredited investors if they do not fit into one of the existing categories and to continue participating in the exempt market. It is anticipated, however, that many persons and companies who currently have been recognized as exempt purchasers will fit within the new definition of "accredited investor" in the Proposed Rule.*

#### SCHEDULE A – List of Commentators

1. ARC Financial Corporation
2. Aur Resources Inc.
3. Barclays Global Investors Canada Limited
4. Bennett Jones
5. British Columbia Securities Commission
6. Burgundy Asset Management Ltd.
7. Canada Trustco Mortgage Company, CT Investment Management Group Inc. and CT Securities Inc.
8. Canadian Global Finance Group
9. Canadian Venture Capital Association
10. Connor, Clark & Lunn Investment Management Ltd.
11. Credit Union Central of Canada
12. Dumont Nickel Inc.
13. GENSEL Biotechnologies Ltd.
14. Gundy and Associates, Limited et al.
15. Industry Canada on behalf of The Seven Ontario Demonstration Projects under the Canada Community Investment Plan
16. Integra Capital Corporation
17. Investment Counsel Association of Canada
18. Investment Dealers Association of Canada
19. The Investment Funds Institute of Canada
20. Jeffrey D. Stacey & Associates Ltd.
21. John D. Hillery Investment Counsel Inc.
22. KPMG Corporate Finance Inc. (Stephen M. Smith)
23. KPMG Corporate Finance Inc. (John P.R. Kingston)
24. Lafleur Brown
25. Lang Michener
26. Jeffrey G. MacIntosh
27. Manitoba Securities Commission
28. McElvaine Investment Management Ltd.
29. Northern Securities Inc.
30. Osler, Hoskin & Harcourt
31. Prentice Yates & Clark Management Consultants
32. Saskatchewan Securities Commission
33. Securities Subcommittee of the Business Law Section of the Canadian Bar Association (Ontario)
34. Sentron Capital Group
35. Sharwood and Company
36. Sheldon Huxtable
37. State Street Trust Company Canada
38. Stikeman, Elliott
39. Strategic Analysis (1994) Corporation ( C. Ross Healy)
40. Tory Tory DesLauriers & Binnington

ONTARIO SECURITIES COMMISSION RULE 45-501

EXEMPT DISTRIBUTIONS  
(REVISED)

PART 1 DEFINITIONS

1.1 Definitions - In this Rule

"accredited investor"<sup>1</sup> means

- (a) a bank listed in Schedule I or II or an authorized foreign bank branch listed in Schedule III of the *Bank Act* (Canada);
- (b) the Business Development Bank incorporated under the *Business Development Bank Act* (Canada);
- (c) a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or under the *Trust and Loan Companies Act* (Canada), or under comparable legislation in any other jurisdiction;<sup>2</sup>
- (d) a credit union central, federation of caisses populaires, credit union or league, or regional caisse populaire located, in each case, in Canada;
- (e) a company licensed to do business as an insurance company in any jurisdiction;
- (f) a subsidiary of any company referred to in paragraph (a), (b), (c), (d) or (e), where the company owns all of the voting shares of the subsidiary;
- (g) a person or company registered under the Act or securities legislation in another jurisdiction as an adviser or dealer, other than a limited market dealer;
- (h) the government of Canada or any jurisdiction or any crown corporation, instrumentality or agency of a Canadian federal, provincial or territorial government;

- (i) any Canadian municipality or any Canadian provincial or territorial capital city;
- (j) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any instrumentality or agency thereof;
- (k) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission;
- (l) a registered charity under the *Income Tax Act* (Canada);
- (m) an individual who, either alone or jointly with a spouse, beneficially owns financial assets having an aggregate net realizable value exceeding \$1.0 million;<sup>3</sup>
- (n) an individual whose net income exceeded \$200,000 in each of the two most recent years or whose joint net income with a spouse exceeded \$300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year;
- (o) an individual who has been granted registration under the Act or securities legislation in another jurisdiction as a representative of a person or company referred to in paragraph (g), whether or not the individual's registration is still in effect;
- (p) an officer, director or promoter of the issuer, an affiliated entity of a promoter of the issuer, or a RRSP or a RRIIF established by or for an officer, director or promoter of the issuer or under which the officer, director or promoter is a beneficiary;<sup>4</sup>

<sup>3</sup> In the Concept Paper, Staff proposed that an individual would qualify as an accredited investor if that individual, either alone or jointly with a spouse, has a net worth (including registered retirement savings plans but excluding one-half of the net equity of such individual's personal residence(s) at the time of purchase) exceeding \$2.5 million. This proposed accredited investor category has been refined by: (i) replacing the "net worth" test with a test based on the net realizable value of the "financial assets" beneficially owned by the individual and, if applicable, the individual's spouse; and (ii) significantly reducing the threshold from \$2.5 million to \$1.0 million.

<sup>4</sup> Paragraph (p) overlaps with the exemption in Rule 45-503 Trades to Employees, Executives and Consultants in respect of trades by an issuer of securities of the issuer's own issue to executives. The exemption in Rule 45-503 is broader in certain respects because it extends to trades with executives of an affiliate of the issuer as well as trades to an executive administrator of the issuer.

<sup>1</sup> This is a new definition created to implement the exemption regime presented in the OSC Staff Concept Paper entitled "Revamping the Regulation of the Exempt Market" as published for comment at (1999), 22 OSCB 2829 (the "Concept Paper"). The language used to describe some of the accredited investor categories has been revised from that used in the Concept Paper to achieve greater consistency with the definition of "qualified party" in the repropoed OTC Derivatives Rule published by the Commission. One effect of this approach is that institutions regulated under similar laws of other provinces and territories in Canada would qualify as accredited investors in Ontario.

<sup>2</sup> The term "jurisdiction" is defined in Multilateral Instrument 14-101 Definitions as "a province or territory of Canada".



- (q) a person or company that, in relation to the issuer, is a person or company referred to in clause (c) of the definition of distribution in subsection 1(1) of the Act;<sup>5</sup>
- (r) an issuer that is acquiring securities of its own issue;<sup>6</sup>
- (s) a company, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redeemable investment fund, that had net assets of at least \$5 million as of the date of its most recent financial statements;
- (t) a person or company that is recognized by the Commission as an accredited investor;<sup>7</sup>
- (u) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities only to persons or companies that are accredited investors;
- (v) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities under a prospectus for which a receipt has been granted by the Director, if the prospectus discloses
- (i) that the fund may purchase securities in reliance upon the exemption in section 2.3; and
  - (ii) any restrictions on the fund's ability to rely upon that exemption;
- (w) a managed account if it is acquiring a security that is not a security of a mutual fund or non-redeemable investment fund;<sup>8</sup>
- (x) an entity organized outside of Canada that is analogous to any of the entities referred to in paragraphs (a) through (g) in form and function; and
- (y) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are accredited investors;

"closely-held issuer"<sup>9</sup> means an issuer, other than a mutual fund or non-redeemable investment fund, whose outstanding securities

- (a) have not been offered or sold by advertisement;
- (b) are subject to restrictions on transfer contained in the constating documents of the issuer or one or more agreements among the issuer and the holders of its securities; and
- (c) are beneficially owned, directly or indirectly, by not more than 35 persons or companies, exclusive of
  - (i) persons or companies that are, or at the time they last acquired securities of the issuer were, accredited investors;
  - (ii) current or former employees of the issuer or an affiliated entity of the issuer, or current or former consultants as defined in Rule 45-503 Trades to Employees, Executives and Consultants, in either case who beneficially own only securities of the issuer that were issued as compensation by, or under an incentive plan or arrangement of, the issuer or an affiliated entity of the issuer;<sup>10</sup> and

<sup>5</sup> Paragraph (q) is intended to replace subsection 2.2(a) of existing Rule 45-501. The new provision is broader in scope since it exempts any trade to a control person rather than being limited to trades among control persons.

<sup>6</sup> Paragraph (r) is intended to replace subsection 2.2(b) of existing Rule 45-501.

<sup>7</sup> The registration and prospectus exemptions for exempt purchasers in paragraph 35(1)4. and clause 72(1)(c), respectively, of the Act have been removed since the definition of "accredited investor" provides broad relief to persons or companies with significant net worth and since paragraph (t) of that definition provides the Commission with residual discretionary authority to recognize a person or company as an "accredited investor" in other appropriate circumstances. Note that section 8.1 of the revised Rule provides transitional relief by extending the definition of "accredited investor" to include a person or company recognized as an exempt purchaser during the 12 month period following the effective date of the revised Rule. As well, it is proposed that the definition of "designated institution" in subsection 204(1) of the Regulation will be amended to provide that accredited investors are treated as designated institutions after the effective date of the revised Rule.

<sup>8</sup> Paragraph (w) facilitates consolidation of the prospectus exemption in Rule 45-504 with the accredited investor exemption so that Rule 45-504 may be repealed. The requirement to provide a contractual right of action is not carried forward because statutory rights of action in section 130.1 of the Act will supercede contractual rights. See section 4.1.

<sup>9</sup> This is a new definition included for the purpose of implementing the exemption regime presented in the Concept Paper.

<sup>10</sup> The exclusion of certain employees and consultants from the 35 shareholder limit represents a change from the proposal in the Concept Paper. The scope of this exclusion is qualified to ensure that employees who acquire securities outside of a compensation or incentive arrangement are included for purposes of the 35 shareholder limit.

- (iii) spouses, parents, grandparents or children of current or former officers, directors or promoters of the issuer;<sup>11</sup>

provided that:

- (A) two or more persons who are the joint registered holders of one or more securities of the issuer shall be counted as one beneficial owner of those securities; and
- (B) a corporation, partnership, trust or other entity shall be counted as one beneficial owner of securities of the issuer unless the entity has been created or is being used primarily for the purpose of acquiring or holding securities of the issuer, in which event each beneficial owner of an equity interest in the entity or beneficiary of the entity, as the case may be, shall be counted as a separate beneficial owner of those securities of the issuer;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase, or of the issuer to cause the purchase of, a security of the same issuer;

"entity" means a company, syndicate, partnership, trust or unincorporated organization;

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase, or of the exchange issuer to cause the purchase of, a security of another issuer that is a reporting issuer;

"exchange issuer" means an issuer that distributes securities of a reporting issuer held by it in accordance with the terms of an exchangeable security of its own issue;

"financial assets" means cash, securities and any evidence of deposit that is not a security for purposes of the Act;

"managed account" means

- (a) an investment portfolio account of a client established in writing with a portfolio adviser that makes investment decisions for the account and has full discretion to trade in securities of the account without requiring the client's express consent to a transaction; or

- (b) an account that is fully managed by a trust corporation registered under the *Loan and Trust Corporations Act*,<sup>12</sup>

"multiple convertible security" means a security of an issuer that is convertible into or exchangeable for, or carries the right of the holder to purchase, or of the issuer or exchange issuer to cause the purchase of, a convertible security, an exchangeable security or another multiple convertible security;

"MI 45-102" means Multilateral Instrument 45-102 Resale of Securities;

"portfolio adviser" means

- (a) a portfolio manager; or
- (b) a broker or investment dealer exempted from registration as an adviser under subsection 148(1) of the Regulation if that broker or investment dealer is not exempt from the by-laws or regulations of The Toronto Stock Exchange or the Investment Dealers' Association of Canada referred to in that subsection;

"Previous Rule" means Rule 45-501 Exempt Distributions as it read when it was published on January 8, 1999 at (1999) 22 OSCB 56;

"spouse", in relation to an individual, means another individual to whom that individual is married, or another individual of the opposite sex or the same sex with whom that individual is living in a conjugal relationship outside marriage;

"Type 1 trade" means a trade in a security under an exemption from the prospectus requirement in clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the Act, or section 2.3<sup>13</sup> or 2.4<sup>14</sup> of this Rule, or section 2.4, 2.5 or 2.11 of the Previous Rule;<sup>15</sup>

<sup>12</sup> Paragraph (b) is intended to replace subsection 72(2) of the Act which will no longer have application after the prospectus exemption in clause 72(1)(a) is removed.

<sup>13</sup> Section 2.3 is the new exemption for trades to "accredited investors".

<sup>14</sup> Section 2.4 is the new exemption for trades to certain family members of officers, directors and promoters.

<sup>15</sup> This definition and the next definition have been renamed to anticipate the adoption of Multilateral Instrument 45-102 Resale of Securities (the "proposed Resale Instrument"). Note that the definition of "Type 1 trade" refers to sections 2.4, 2.5 and 2.11 in existing Rule 45-501, none of which are included in the revised Rule. Sections 2.3 and 2.4 of the revised Rule are replacing certain 72(4) trades and therefore have been included in this definition in the revised Rule.

<sup>11</sup> A separate new exemption is provided for trades to certain family members. Accordingly, these persons are excluded from the 35 shareholder limit. See section 2.4 for the new exemption.

"Type 2 trade" means a trade in a security under an exemption from the prospectus requirement in clause 72(1)(f) (other than a trade to an associated consultant or investor consultant as defined in Rule 45-503 Trades to Employees, Executives and Consultants), (h), (i), (j), (k) or (n) of the Act, or section 2.6 or 2.7 of this Rule; and

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.

## 1.2 Interpretation

- (1) In this Rule a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other, or if both are subsidiary entities of the same person or company, or if each of them is controlled by the same person or company.
- (2) In this Rule a person or company is considered to be controlled by a person or company if
  - (a) in the case of a person or company,
    - (i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and
    - (ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;
  - (b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or
  - (c) in the case of a limited partnership, the general partner is the second-mentioned person or company.
- (3) In this Rule a person or company is considered to be a subsidiary entity of another person or company if
  - (a) it is controlled by,
    - (i) that other, or

- (ii) that other and one or more persons or companies each of which is controlled by that other, or

- (iii) two or more persons or companies, each of which is controlled by that other; or

- (b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

## PART 2 EXEMPTIONS FROM THE REGISTRATION AND PROSPECTUS REQUIREMENTS OF THE ACT

### 2.1 Exemption for a Trade in a Security of a Closely-held Issuer<sup>16</sup> - Sections 25 and 53 of the Act do not apply to a trade in a security of a closely-held issuer if

- (a) following the trade, the issuer will be a closely-held issuer and the aggregate proceeds received by the issuer, and any other issuer engaged in common enterprise with the issuer, in connection with trades made in reliance upon the exemption in this section will not exceed \$3,000,000;
- (b) an information statement substantially similar to Form 45-501F3 is provided to the purchaser of the security at least four days prior to the date of the trade unless, following the trade, the issuer will have not more than five holders of its securities;
- (c) no promoter of the issuer has acted as a promoter of any other issuer that has issued a security in reliance upon this exemption within the twelve months preceding the trade; and
- (d) no advertising is done and no selling or promotional expenses are paid or incurred in connection with the trade.

### 2.2 Exemption for a Trade in a Variable Insurance Contract<sup>17</sup>

- (1) Sections 25 and 53 of the Act do not apply to a trade by a company licensed under the

<sup>16</sup> Section 2.1 is one of two new exemptions created to implement the exemption regime presented in the Concept Paper. It provides an exemption for certain trades in securities of a "closely-held issuer" as defined in the revised Rule.

<sup>17</sup> Section 2.2 of existing Rule 45-501 has been deleted. That section provided exemptions for trades among control persons and trades to the issuer. In the revised Rule, these trades are addressed in clauses (q) and (r) of the definition of "accredited investor".

*Insurance Act* in a variable insurance contract that is

- (a) a contract of group insurance;
  - (b) a whole life insurance contract providing for the payment at maturity of an amount not less than three quarters of the premiums paid up to age 75 for a benefit payable at maturity;
  - (c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds; or
  - (d) a variable life annuity.
- (2) For the purposes of subsection (1), "contract", "group insurance", "life insurance" and "policy" have the respective meanings ascribed to them by sections 1 and 171 of the *Insurance Act*.

**2.3 Exemption for a Trade to an Accredited Investor<sup>18</sup>**  
- Sections 25 and 53 of the Act do not apply to a trade in a security if the purchaser is an accredited investor and is purchasing as principal.

**2.4 Exemption for a Trade to a Family Member of an Officer, Director or Promoter of the Issuer<sup>19</sup>** - Sections 25 and 53 of the Act do not apply to a trade in a security of an issuer if

- (a) the purchaser is a spouse, parent, grandparent or child of an officer, director or promoter of the issuer, or a RRSP or a RRIF established by or for the spouse, parent, grandparent or child or under which the spouse, parent, grandparent or child is a beneficiary;
- (b) the purchaser is purchasing as principal; and
- (c) no advertising is done and no selling or promotional expenses are paid or incurred in connection with the trade.

<sup>18</sup> Section 2.3 of existing Rule 45-501 has been deleted. That section provided an exemption for trades to or among promoters of the issuer or among promoters and control persons. Promoters are now included in the definition of "accredited investor" and therefore the exemption is no longer required.

<sup>19</sup> Section 2.4 of the revised Rule provides an exemption for trades to certain family members of officers, directors and promoters provided that there is no advertising and no selling or promotional expense involved.

**2.5 Exemption for a Trade by a Control Person in a Security Acquired under a Formal Take-Over Bid<sup>20</sup>**

- (1) Section 53 of the Act does not apply to a trade that is a control person distribution in a security that was acquired under a formal bid as defined in Part XX of the Act, if
  - (a) the offeree issuer had been a reporting issuer for at least 12 months at the date of the bid;
  - (b) subject to subsection (2), the intention to make the trade was disclosed in the take-over bid circular for the take-over bid;
  - (c) the trade is made within the period commencing on the date of the expiry of the bid and ending 20 days after that date;
  - (d) a notice of intention and a declaration prepared in accordance with Form 23 to the Regulation are filed by the seller before the trade;
  - (e) an insider report under Form 55-102F2 or 55-102F5 as applicable, is filed by the seller within three days after the completion of the trade; and
  - (f) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission is paid for the trade.
- (2) Paragraph (1)(b) does not apply to a trade to another person or company that made a competing formal bid for securities of the same issuer for a per security price not greater than the per security consideration offered by that other person or company in its take-over bid.

**2.6 Exemption for a Trade in Connection with a Securities Exchange Issuer Bid** - Sections 25 and 53 of the Act do not apply to a trade in a security that is exchanged by or for the account of the offeror with a securityholder of the offeror in connection with an issuer bid as defined in Part XX of the Act, if at the time of the trade, the issuer whose securities are being issued or transferred is a reporting issuer not in default under the Act or the regulations.

<sup>20</sup> Section 2.5 of existing Rule 45-501 has been deleted. That section provided first trade relief for trades among purchasers of seed capital or government incentive securities. The section is no longer required since the seed capital exemption and the government incentive securities exemption have been replaced in the revised Rule.

- 2.7 Exemption for a Trade on an Amalgamation, Arrangement or Specified Statutory Procedure** - Sections 25 and 53 of the Act do not apply to a trade in a security of an issuer in connection with
- (a) a statutory amalgamation or statutory arrangement; or
  - (b) a statutory procedure under which one issuer takes title to the assets of the other issuer that in turn loses its existence by operation of law or under which one issuer merges with one or more issuers, whether or not the securities are issued by the merged issuer.
- 2.8 Exemption for a Trade upon Exercise of Conversion Rights in a Convertible Security** - Sections 25 and 53 of the Act do not apply to a trade by an issuer in an underlying security of its own issue to a holder of a convertible security or multiple convertible security of the issuer on the exercise by the issuer of its right under the convertible security or multiple convertible security to cause the holder to convert into or purchase the underlying security or on the automatic conversion of the convertible security or multiple convertible security, if no commission or other remuneration is paid or given to others for the trade except for administrative or professional services or for services performed by a registered dealer.
- 2.9 Exemption for a Trade upon Exercise of Exchange Rights in an Exchangeable Security** - Sections 25 and 53 of the Act do not apply to a trade by an exchange issuer in an underlying security to a holder of an exchangeable security or multiple convertible security of the issuer on the exercise by the exchange issuer of its right under the exchangeable security or multiple convertible security to cause the holder to exchange for or purchase the underlying security or on the automatic exchange of the exchangeable security or multiple convertible security, if the exchange issuer delivers to the Commission a written notice stating the date, amount, nature and conditions of the proposed trade, including the net proceeds to be derived by the exchange issuer if the underlying securities are fully taken up and either
- (a) the Commission has not informed the exchange issuer in writing within 10 days after the delivery of the notice that it objects to the proposed trade, or
  - (b) the exchange issuer has delivered to the Commission information relating to the underlying security that is satisfactory to and accepted by the Commission.
- 2.10 Exemption for a Trade in a Security under the Execution Act<sup>21</sup>** - Sections 25 and 53 of the Act do not apply to a trade in a security by a sheriff under the *Execution Act*, if
- (a) there is no published market as defined in Part XX of the Act in respect of the security;
  - (b) the aggregate acquisition cost to the purchaser is not more than \$25,000; and
  - (c) each written notice to the public soliciting offers for the security or giving notice of the intended auction of the security is accompanied by a statement substantially as follows:
- These securities are speculative. No representations are made concerning the securities, or the issuer of the securities. No prospectus is available and the protections, rights and remedies arising out of the prospectus provisions of the *Securities Act*, including statutory rights of rescission and damages, will not be available to the purchaser of these securities.
- 2.11 Exemption for a Trade in a Multiple Convertible Security, Convertible Security or Exchangeable Security Acquired under Certain Exemptions<sup>22</sup>** - Section 53 of the Act does not apply to a trade in a multiple convertible security, convertible security or exchangeable security acquired by a holder in a Type 1 trade if the conditions in subsection (2) or (3) of section 2.5 of MI 45-102 are satisfied.
- 2.12 Exemption for a Trade in a Security Acquired in Connection with a Take-over Bid** - Section 53 of the Act does not apply to a trade in a security acquired under the exemption in clause 72(1)(j) of the Act if
- (a) when the exemption was relied upon, a securities exchange take-over bid circular for the securities was filed by the offeror under the Act;
  - (b) the securities take-over bid circular was filed by the offeror in connection with a bid that was made:

<sup>21</sup> Section 2.10 of the revised Rule (section 2.12 of existing Rule 45-501) has been amended by substituting a "no published market" concept instead of referring to "private company" and "private issuer" in clause (a) and by adding a corresponding registration exemption.

<sup>22</sup> Section 2.11 of existing Rule 45-501 has been deleted. The section provided an exemption for basket purchases of securities with an aggregate acquisition cost of at least \$150,000. The exemption is one of the exemptions being replaced under the new exempt market regime.

- (i) in compliance with, and was not exempt from, section 98 of the Act,
  - (ii) in reliance upon clause 93(1)(e) of the Act, or
  - (iii) in reliance upon an order granted under clause 104(2)(c) of the Act and the bid complied with, and was not exempt from, the laws of a jurisdiction recognized by the Commission for purposes of clause 93(1)(e) of the Act;
- (c) the trade is not a control person distribution; and
- (d) the issuer of the securities was a reporting issuer before the securities exchange take-over bid circular was filed.

**2.13 Exemption for a Trade in an Underlying Security Where the Right to Purchase, Convert or Exchange is Qualified by Prospectus** - Section 53 of the Act does not apply to a trade in an underlying security acquired in accordance with the terms of a multiple convertible security, convertible security or exchangeable security if

- (a) a receipt was obtained from the Director for a prospectus qualifying the distribution of the multiple convertible security, convertible security or exchangeable security;
- (b) the trade is not a control person distribution; and
- (c) the issuer of the underlying security acquired in accordance with the terms of an exchangeable security is a reporting issuer at the time of the trade.

**2.14 Exemption for a Trade in Debt of Conseil Scolaire de L'île de Montréal** - Sections 25 and 53 of the Act do not apply to a trade if the security being traded is a bond, debenture or other evidence of indebtedness of the Conseil Scolaire de L'île de Montréal.

**2.15 Exemption for a Trade to a Registered Retirement Savings Plan or a Registered Retirement Income Fund<sup>23</sup>** - Sections 25 and 53 of the Act do not apply to a trade in a security by an individual or an associate of an individual to a RRSP or a RRIF established by or for that individual or under which that individual is a beneficiary.

<sup>23</sup> Section 2.15 of existing Rule 45-501 has been deleted. The section provided relief for the first trade in securities acquired by an incorporator under the exemption in clause 72(1)(o) of the Act if the first trade was to a promoter of the issuer. The exemption is no longer necessary as promoters are included in the definition of "accredited investor" and the accredited investor exemption in section 2.3 will be available.

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### **PART 3 REMOVAL OF CERTAIN EXEMPTIONS FROM THE REGISTRATION AND PROSPECTUS REQUIREMENTS<sup>28</sup>**

**3.1 Removal of Certain Exemptions Generally** - The exemptions from the registration requirement in paragraphs 3, 4, 5, 18 and 21 of subsection 35(1) and paragraph 10 of subsection 35(2) of the Act and the exemptions from the prospectus requirement in clauses (a), (c), (d), (l) and (p) of subsection 72(1) and clause (a) of subsection 73(1) as it relates to paragraph 10 of subsection 35(2) of the Act are not available for a trade in a security.

**3.2 Removal of Exemptions for Bonds, Debentures and Other Evidences of Indebtedness** - The exemption from the registration requirement in subparagraph 1(c) of subsection 35(2) and the corresponding exemption from the prospectus requirement referred to in clause 73(1)(a) of the Act are not available for a trade in a bond, debenture or other evidence of indebtedness that is subordinate in right of payment to deposits held by the issuer or guarantor of the bond, debenture or other evidence of indebtedness.

**3.3 Removal of Exemptions for Securities of a Private Mutual Fund with a Promoter or Manager** - The exemption from the registration requirement in paragraph 3 of subsection 35(2) and the corresponding exemption from the prospectus requirement referred to in clause 73(1)(a) of the Act are not available for trades in a security of a private mutual fund if it is administered by a trust company and there is a promoter or manager of the mutual fund other than the trust company.

<sup>24</sup> Section 2.17 of existing Rule 45-501 has been deleted. The section provided exemptions for trades in securities of "private issuers". The exemption is no longer necessary as it is being replaced by the closely-held issuer exemption. The definition of private issuer has also been deleted.

<sup>25</sup> Subsection 2.18(1) of existing Rule 45-501 has been deleted. The subsection was a corollary to the private company and private issuer exemptions for securities of British Columbia companies. It has been superceded by the closely-held issuer exemption. The first trade exemption in subsection 2.18(3) of existing Rule 45-501 has also been deleted. The exemption is no longer necessary because the proposed Resale Instrument does not include a condition relating to a default in complying with reporting issuer requirements.

<sup>26</sup> Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.10 and 3.11 of existing Rule 45-501 have all been deleted because the exemptions that were referred to in these sections are being eliminated as a result of the implementation of either the new exempt market regime or the proposed Resale Instrument.

**3.4 Removal of Registration Exemptions for Market Intermediaries** - The exemption from the registration requirement in subsection 2.2(1) and sections 2.1, 2.3, 2.4, 2.6, 2.7, 2.8, 2.9, 2.10 and 2.15 are not available to a market intermediary.<sup>27</sup>

#### PART 4 OFFERING MEMORANDUM

**4.1 Application of Statutory Right of Action<sup>28</sup>** - The right of action referred to in section 130.1 of the Act shall apply in respect of an offering memorandum delivered to a prospective purchaser in connection with a trade made in reliance upon an exemption from the prospectus requirement in section 2.1, 2.3 or 2.4.<sup>29</sup>

**4.2 Removal of Exemptions if Statutory Right of Action Not Described in Offering Memorandum** - The exemptions from the prospectus requirement in sections 2.1, 2.3 and 2.4 are not available for a trade where the seller delivers an offering memorandum to the prospective purchaser unless the right of action referred to in section 130.1 of the Act is described in the offering memorandum.<sup>30</sup>

**4.3 Delivery of Offering Memorandum to Commission** - If an offering memorandum is provided to a purchaser of securities in respect of a trade made in reliance upon an exemption from the prospectus requirement in section 2.1, 2.3 or 2.4, the seller shall deliver to the Commission a copy of the offering

<sup>27</sup> Section 3.4 of the revised Rule is intended to extend the scope of the universal registration requirement in section 206 of the Regulation to appropriate registration exemptions in revised Rule 45-501.

<sup>28</sup> Section 4.1 of existing Rule 45-501 has been deleted. That section mandated the delivery of an offering memorandum and the provision of a contractual right of action for advertised private placements under clause 72(1)(d) of the Act and section 2.11 of the existing Rule. The section is not necessary as the exemptions in clause 72(1)(d) and section 2.11 have been replaced and delivery of an offering memorandum is not mandatory for advertised distributions under the new exemption for accredited investors.

<sup>29</sup> Section 4.1 of the revised Rule makes the new statutory right of action in section 130.1 of the Act applicable to an offering memorandum used to effect a trade made in reliance upon the closely-held issuer, accredited investor or family member prospectus exemption. The statutory right is not made applicable to a secondary market trade made only in reliance upon one of the corresponding registration exemptions.

<sup>30</sup> This section is derived from section 4.2 of existing Rule 45-501. References to clauses 72(1)(c), (d), and (p) of the Act and section 2.11 of existing Rule 45-501 have been deleted as the exemptions in those provisions have been replaced. This section now refers to a trade made in reliance upon the closely-held issuer, accredited investor or family member prospectus exemption.

memorandum within 10 days of the date of the trade.<sup>31</sup>

#### PART 5 DEALER REGISTRATION

**5.1 Removal of Exemption unless Dealer Registered for Trade Described in the Exemption** - An exemption from the registration requirement or from the prospectus requirement in the Act or the regulations that refers to a registered dealer is not available for a trade in a security unless the dealer is registered in a category that permits it to act as a dealer for the trade described in the exempting provision.

#### PART 6 RESTRICTIONS ON RESALE OF SECURITIES ACQUIRED UNDER CERTAIN EXEMPTIONS

**6.1 Resale of a Security Acquired by a Promoter<sup>32</sup>** - A trade by a promoter of an issuer in a security of the issuer acquired under an exemption from the prospectus requirement in section 2.1, 2.3 or 2.4 is a distribution unless the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 are satisfied.

**6.2 Resale of a Security Acquired under Section 2.1<sup>33</sup>** - A trade in a security acquired under the exemption from the prospectus requirement in section 2.1, other than a trade referred to in section 6.1, is subject to section 2.6 of MI 45-102.<sup>34</sup>

<sup>31</sup> This section is derived from section 4.3 of existing Rule 45-501. The reference to contractual rights of action has been deleted and the section now requires delivery to the Commission of a copy of an offering memorandum that is provided to a prospective investor in respect of a trade made in reliance upon the closely-held issuer, accredited investor or family member prospectus exemption.

<sup>32</sup> Section 6.1 of existing Rule 45-501 imposes resale restrictions on first trades of securities acquired under the promoter exemptions in sections 2.3 and 2.15 of the existing Rule. Those sections have now been deleted as promoters have been included in the definition of "accredited investor". However, the Commission proposes to require that first trades by promoters be restricted on the same basis as control block distributions. Therefore, this section provides that trades by promoters in securities acquired under a prospectus exemption in section 2.1, 2.3 or 2.4 are subject to the "control distribution" requirements in section 2.8 of the proposed Resale Instrument.

<sup>33</sup> Section 6.2 of existing Rule 45-501 imposes resale restrictions on first trades of securities acquired under exemptions in sections 2.4, 2.5 and 2.11 of the existing Rule. First trade restrictions for securities acquired under the exemptions in sections 2.4, 2.5 and 2.11 of existing Rule 45-501 are provided for in the transitional provisions in Part 8 of the revised Rule. See section 8.1.

<sup>34</sup> This section provides that trades in securities acquired under the closely-held issuer exemption are subject to the "seasoning period" requirements in the proposed Resale Instrument.

**6.3 Resale of a Security Acquired under Section 2.3 or 2.4** - A trade in a security acquired under an exemption from the prospectus requirement in section 2.3 or 2.4, other than a trade referred to in section 6.1, is subject to section 2.5 of MI 45-102.<sup>35</sup>

**6.4 Resale of a Security Acquired under Clause 72(1)(h) of the Act** - A trade in a security acquired under the exemption from the prospectus requirement in clause 72(1)(h) of the Act, other than a trade to which section 6.5 applies, is subject to section 2.6 of MI 45-102.

**6.5 Resale of an Underlying Security of a Multiple Convertible Security, Convertible Security or an Exchangeable Security Acquired under Certain Exemptions<sup>36</sup>** - A trade in an underlying security acquired on conversion or exchange of a multiple convertible security, convertible security or exchangeable security, if the multiple convertible security, convertible security or exchangeable security was acquired in a Type 1 trade, is subject to section 2.5 of MI 45-102.

**6.6 Resale of a Security Acquired under Section 2.8 or 2.9** - A trade in an underlying security acquired under an exemption from the prospectus requirement in section 2.8 or 2.9 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired by the holder in a Type 2 trade or under an exemption from the prospectus requirement in section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of Rule 45-503 Trades to Employees, Executives and Consultants, other than a trade by an associated consultant or investor consultant as defined in Rule 45-503 Trades to Employees, Executives and Consultants, is subject to section 2.6 of MI 45-102.<sup>37</sup>

**6.7 Resale of a Security Acquired under Section 2.6 or 2.7** - A trade in a security acquired under an exemption from the prospectus requirement in section 2.6 or 2.7 is subject to section 2.6 of MI 45-102, unless, in the case of a security acquired under section 2.6:

- (a) a securities exchange issuer bid circular in respect of the securities was filed by the offeror under the Act; and

- (b) the securities exchange issuer bid circular was filed by the offeror in connection with a bid that was made:

- (i) in compliance with, and was not exempt from, section 98 of the Act,
- (ii) in reliance upon clause 93(3)(h) of the Act, or
- (iii) in reliance upon an order granted under clause 104(2)(c) of the Act and the bid complied with, and was not exempt from, the laws of a jurisdiction recognized by the Commission for purposes of clause 93(1)(h) of the Act.

## PART 7 FILING REQUIREMENTS AND FEES

**7.1 Form 45-501F1** - Every report that is required to be filed under subsection 72(3) of the Act or subsection 7.5(1) shall be filed in duplicate and prepared in accordance with Form 45-501F1.

**7.2 Form 45-501F2** - Every report that is required to be filed under subsection 7.5(2) shall be filed in duplicate and prepared in accordance with Form 45-501F2.

### 7.3 Fees for Form 45-501F1

(1) A report filed in Form 45-501F1 shall be accompanied by a fee equal to the greater of

- (a) \$100; and
- (b) subject to subsection (2), the amount calculated using the formula,

$$A + B$$

where

"A" is 0.02 percent of the aggregate gross proceeds realized in Ontario from the distribution of securities, other than special warrants, for which the report filed in Form 45-501F1 is filed, and

"B" is 0.04 percent of the aggregate gross proceeds realized in Ontario from the distribution of special warrants for which the report filed in Form 45-501F1 is filed.

(2) The amount calculated under subsection (1) is considered to be \$100 if the report filed in Form 45-501F1 is filed for,

- (a) a trade in securities if there is no change in beneficial ownership of the securities as a result of the trade;

<sup>35</sup> This section provides that trades in securities acquired under the accredited investor or family member exemption are subject to the "hold period" requirements in the proposed Resale Instrument.

<sup>36</sup> In this context, the underlying security may have been issued or transferred to the security holder.

<sup>37</sup> The Commission is proposing to amend Rule 45-503 Trades to Employees, Executives and Consultants to provide that a further trade in securities acquired under an exemption in Rule 45-503 is subject to the appropriate provisions of the proposed Resale Instrument.



- (b) a subsequent trade in securities acquired under an exemption from the prospectus requirement in clause 72(1)(b) or (q) of the Act or section 2.3 or 2.4; or
- (c) a subsequent trade in securities acquired prior to ●, 2000 under an exemption from the prospectus requirement in clause 72(1)(a), (c), (d), (l) or (p) of the Act or section 2.4, 2.5 or 2.11 of the Previous Rule.<sup>38</sup>

**7.4 Fees for Form 45-501F2** - A report filed in Form 45-501F2 shall be accompanied by a fee of \$100.

**7.5 Exempt Trade Reports**

- (1) Subject to subsection (5), if a trade is made in reliance upon an exemption from the prospectus requirement in section 2.3 or 2.4, the seller shall, within 10 days of the trade, file a report prepared and executed in accordance with section 7.1.
- (2) If a trade is made in reliance upon the conditions in subsection (2) or (3) of section 2.5 of MI 45-102 being satisfied, the seller shall, within 10 days of the trade, file a report prepared and executed in accordance with section 7.2.<sup>39</sup>
- (3) If a trade is made under section 2.8, the issuer shall file the notice and pay the fees prescribed by section 20 of Schedule 1 to the Regulation as if the underlying security had been acquired in a distribution exempt from section 53 of the Act by subclause 72(1)(f)(iii) of the Act.
- (4) If a trade is made under section 2.9, the exchange issuer shall pay the fees prescribed by section 21 of Schedule 1 to the Regulation as if the security had been acquired in a distribution exempt from section 53 of the Act by clause 72(1)(h) of the Act.

- (5) A report is not required under subsection (1) where, by a trade under section 2.3, a bank, loan corporation or trust corporation acquires from a customer an evidence of indebtedness of the customer or an equity investment in the customer acquired concurrently with an evidence of indebtedness.

**7.6 Fees for Trade Made under Section 2.7** - If a trade is made under section 2.7, the issuer shall pay the fees prescribed by section 23 of Schedule 1 to the Regulation as if section 23 referred to section 2.7 instead of clause 72(1)(i) of the Act.

**7.7 Fees for Accredited Investor Application** - An application for recognition, or for renewal of recognition, as an accredited investor shall be accompanied by a fee of \$500.

**PART 8 TRANSITIONAL PROVISIONS**<sup>40</sup>

**8.1 Accredited Investor Definition Includes Exempt Purchaser** - The definition of "accredited investor" in section 1.1 includes, prior to ●, 2001, a person or company that is recognized by the Commission as an exempt purchaser.<sup>41</sup>

**8.2 Resale of a Security Acquired under Section 2.4, 2.5 or 2.11 of the Previous Rule** - A trade in a security acquired under an exemption from the prospectus requirement in section 2.4, 2.5 or 2.11 of the Previous Rule is subject to section 2.5 of MI 45-102.

**8.3 Resale of an Underlying Security of a Multiple Convertible Security, Convertible Security or an Exchangeable Security Acquired under Certain Exemptions**<sup>42</sup> - A trade in an underlying security acquired on conversion or exchange of a multiple convertible security, convertible security or exchangeable security, if any of the multiple convertible security, convertible security or exchangeable security was acquired under an exemption from the prospectus requirement in

<sup>38</sup> References to certain clauses of subsection 72(1) of the Act have been deleted as the exemptions are no longer available and references to sections 2.4, 2.5 and 2.11 of existing Rule 45-501 have been deleted since the exemptions in those sections are being replaced. Paragraph (c) is a transitional provision which ensures that trades in securities acquired under previously available exemptions are only subject to payment of the minimum fee.

<sup>39</sup> The proposed Resale Instrument does not provide for the filing of a report of a trade made in compliance with the "hold period" requirements of that instrument. Section 7.5(2) continues this reporting requirement for trades of this type made in Ontario.

<sup>40</sup> This Part contains sections that impose the appropriate resale restrictions in the proposed Resale Instrument to trades in securities acquired under certain exemptions in existing Rule 45-501 that are being removed in this revised Rule.

<sup>41</sup> This section provides transitional relief to ensure that a person or company recognized by the Commission as an exempt purchaser within the 12 month period preceding the effective date of the revised Rule will be considered an "accredited investor" until the exempt purchaser recognition expires, at which time the person or company will have to consider the need to seek accredited investor recognition under paragraph (t) of the definition in section 1.1 if the person or company does not otherwise qualify as an accredited investor at that time.

<sup>42</sup> In this context, the underlying security may have been *issued* or *transferred* to the security holder.

section 2.4, 2.5 or 2.11 of the Previous Rule, is subject to Section 2.5 of MI 45-102.

- 8.4 Resale of a Security Acquired by a Promoter under Section 2.3 or 2.15 of the Previous Rule** - A trade by a promoter of an issuer in a security of the issuer acquired under an exemption from the prospectus requirement in section 2.3 or 2.15 of the Previous Rule is a distribution unless the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 are satisfied.
- 8.5 Resale of a Security Acquired under Section 2.17 or Subsection 2.18(1) of the Previous Rule** - A trade in a security acquired under an exemption from the prospectus requirement in section 2.17 of the Previous Rule, or in subsection 2.18(1) of the Previous Rule after the issuer has ceased to be a private issuer for purposes of the *Securities Act* (British Columbia), is subject to section 2.6 of MI 45-102.<sup>43</sup>

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<sup>43</sup> Section 2.17 of existing Rule 45-501, which has been deleted, provided exemptions for trades in securities of private issuers. A resale of securities acquired under the private issuer exemption will be subject to the "seasoning period" requirements in the proposed Resale Instrument.

FORM 45-501F1

Securities Act (Ontario)

Report under Section 72(3) of the Act or Section 7.5(1) of Rule 45-501

(To be used for reports of trades made in reliance upon clause 72(1)(b) or (q) of the Act, or Section 2.3 or 2.4 of Rule 45-501)

1. Full name and address of the seller.
2. Full name and address of the issuer of the securities traded.
3. Description of the securities traded.
4. Date of the trade(s).
5. Particulars of the trade(s).

<u>Name of Purchaser and Municipality and Jurisdiction of Residence</u>	<u>Amount or Number of Securities Purchased</u>	<u>Purchaser Price</u>	<u>Total Purchase Price (Canadian \$)</u>	<u>Exemption Relied Upon</u>
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6. The seller has prepared and certified a statement containing the full legal name and the full residential address of each purchaser identified in section 5 and a certified true copy of the list will be provided to the Commission upon request.
7. State the name and address of any person acting as agent in connection with trade(s) and the compensation paid or to be paid to such agent.
8. Calculation of Fees payable upon filing Form 45-501F1: (See section 7.3 of Rule 45-501 Exempt Distributions (Revised)).  
Total Fees payable:       \$
9. Certificate of seller or agent of seller.

The undersigned seller hereby certifies, or the undersigned agent of the seller hereby certifies to the best of the agent's information and belief, that the statements made in this report are true and correct.

DATED at \_\_\_\_\_

this \_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Name of seller or agent - please print)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Official capacity - please print)

(Please print name of individual whose signature appears above, if different from name of seller or agent printed above)

**Notice – Collection and Use of Personal Information**

The personal information prescribed by this form is collected on behalf of and used by the Ontario Securities Commission for purposes of administration and enforcement provisions of the securities legislation in Ontario. All of the information prescribed by this form, except the information contained in the statement required to be prepared and certified by the seller under section 6 of this form, is made available to the public under the securities legislation of Ontario. If you have any questions about the collection and use of this information, contact the Ontario Securities Commission at the address below:

Ontario Securities Commission  
Suite 1900, Box 55,  
20 Queen Street West  
Toronto, Ontario M5H 3S8  
Attention: FOI Coordinator  
Telephone: (416) 593-8314  
Facsimile: (416) 593-8122

**Instructions:**

1. In answer to section 7 give the name of the person or company who has been or will be paid remuneration directly related to the trade(s), such as commissions, discounts or other fees or payments of a similar nature. It is not necessary to include payments for services incidental to the trade such as clerical, printing, legal or accounting services.
2. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referred to the relevant item and properly identified and signed by the person whose signature appears on the report.
3. Cheques must be made payable to the Ontario Securities Commission in the amount determined in section 8 above.
4. Please print or type and file two signed copies with:

Ontario Securities Commission  
Suite 1900, Box 55,  
20 Queen Street West  
Toronto, Ontario M5H 3S8

FORM 45-501F2

Securities Act (Ontario)  
Report under section 7.5(2) of Rule 45-501

1. Full name and address of the seller.

2. Full name and address of reporting issuer whose securities were traded.

3. Particulars of the trade(s).

<u>Date of Trade</u>	<u>Type of Security</u>	<u>Amount or Number of Securities Traded</u>	<u>Selling Price</u>
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4. Full name and municipality of residence of the party from whom the seller acquired the securities and the date of acquisition.

5. Certificate of seller or agent of seller.

The undersigned seller hereby certifies, or the undersigned agent of the seller hereby certifies to the best of the agent's information and belief, that:

- (1) the information given in this report is true and correct,
- (2) (a) no unusual effort has been made to prepare the market or create a demand for the securities, and  
(b) no extraordinary commission or consideration has been or has been agreed to be paid in respect of the trade covered by this report, and
- (3) the trade to which this report relates is an arm's length transaction made in good faith.

Instructions:

- 1. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referred to the relevant item and properly identified and signed by the person whose signature appears on the report.
- 2. Cheques must be made payable to the Ontario Securities Commission in the amount determined in section 7.4 of Rule 45-501 Exempt Distributions (Revised).
- 3. Please print or type and file two signed copies with:

Ontario Securities Commission  
Suite 1900, Box 55,  
20 Queen Street West  
Toronto, Ontario M5H 3S8

DATED at \_\_\_\_\_

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Name of seller or agent - please print)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Official capacity - please print)

\_\_\_\_\_  
(Please print name of individual whose  
signature appears above, if different from name  
of seller or agent printed above)

FORM 45-501F3  
FORM OF INFORMATION STATEMENT

Introduction

Ontario securities laws have been relaxed to make it easier for small businesses to raise start-up capital from the public. Many potential investors may view this change in securities laws as an opportunity to "get in on the ground floor" of emerging businesses and to "hit it big" as these small businesses grow into large ones.

Statistically, most small businesses fail within a few years. Small business investments are among the most risky that investors can make. This information statement suggests matters for you to consider in deciding whether to make a small business investment.

Risks and Investment Strategy

A basic principle of investing in a small business is: **NEVER MAKE A SMALL BUSINESS INVESTMENT THAT YOU CANNOT AFFORD TO LOSE IN ITS ENTIRETY.** Never use funds that might be needed for other purposes, such as a post-secondary education, retirement, loan repayment or medical expenses, and never borrow money to make such an investment. Instead use funds that you already have set aside and that otherwise would be used for a consumer purchase, such as a vacation or a stereo system.

Never let anyone convince you that the investment is not risky. Any such assurance is almost always inaccurate. Among other risk factors, small business investments generally are highly illiquid, even if they are not subject to any legal restrictions on their transferability. This lack of liquidity means that, if the company takes a turn for the worse or if you suddenly need the funds you have invested in the company, you may not be able to sell your securities.

Also, it is important to realize that, just because the proposed offering of securities is permitted under Ontario securities law does not mean that the particular investment will be successful. Neither the Ontario Securities Commission nor any other government agency evaluates or endorses the merits of investments. Anyone who suggests that the Ontario Securities Commission has endorsed the merits of the investment is breaking the law.

If you plan to invest a large amount of money in a small business, you should consider investing smaller amounts in several small businesses. A few highly successful investments can offset the unsuccessful ones. Even when using this strategy, **DO NOT INVEST FUNDS YOU CANNOT AFFORD TO LOSE IN THEIR ENTIRETY.**

Analyzing the Investment

Although there is no magic formula for making successful investment decisions, certain factors are often considered particularly important by professional venture investors. Some questions to consider are as follows:

1. How long has the company been in business? If it is a start-up or has only a brief operating history, are you being asked to pay more than the shares are worth?
2. Consider whether management is dealing unfairly with investors or putting itself in a position where it will be unaccountable to investors. For example, is management taking salaries or other benefits that are too large in light of the company's stage of development? Are outside investors putting up 80% of the money but receiving only 10% of the company's shares? Will outside investors have any voting power to elect representatives to the board of directors?
3. How much experience does management have in the industry and in small business? How successful were the managers in previous businesses?
4. Do you know enough about the industry to be able to evaluate the company and make a wise investment?
5. Does the company have a realistic business plan and do they have the resources to market the product or service successfully?
6. How reliable is the financial information, if any, that has been provided to you by the persons promoting investment in the company?

There are many other questions to be answered, but you should be able to answer these before you consider investing. If you have not been provided with the information needed to answer these and any other questions you may have about the proposed investment, make sure that you obtain the information you need from people authorized to speak on the company's behalf (e.g., management or the directors) before you advance any funds or sign any commitment to advance funds to the company.

Making Money on Your Investment

The two classic methods for making money on an investment in a small business are: (1) resale of the securities in the public securities markets following a public offering; and (2) receiving cash or marketable securities in a merger or other acquisition of the company.

If the company is the type that is not likely to go public or be acquired within a reasonable time (i.e., a family-owned or closely-held corporation), it may not be a good investment for you irrespective of its prospects for success because of the lack of opportunity to cash in on the investment. Management of a successful private company may receive a good return indefinitely through salaries and bonuses but it is unlikely that there will be profits sufficient to pay dividends commensurate with the risk of the investment.

Other Suggestions

It is generally a good idea to meet with management of the company face-to-face to size them up. Focus on experience and track record rather than a smooth sales presentation. If at

all possible, take a sophisticated business person with you to help in your analysis.

Even the best venture offerings are highly risky. If you have a nagging sense of doubt, there is probably a good reason for it. Good investments are based on sound business criteria and not emotions. If you are not entirely comfortable, the best approach is usually not to invest. There will be many other opportunities. Do not let anyone pressure you into making a premature decision.

#### Conclusion

Greater numbers of public investors are "getting in on the ground floor" by investing in small businesses. When successful, these enterprises enhance the economy and provide jobs for its citizens. They also provide investment opportunities. However, an opportunity to invest must be considered in light of the inherently risky nature of small business investments.

In considering a small business investment, you should proceed with caution, and above all, never invest more than you can afford to lose.

## COMPANION POLICY 45-501CP TO ONTARIO SECURITIES COMMISSION RULE 45-501 EXEMPT DISTRIBUTIONS (REVISED)

### PART 1 PURPOSE AND DEFINITIONS

- 1.1 **Purpose** - This policy statement sets forth the views of the Commission as to the manner in which certain provisions of the Act and the rules relating to the exemptions from the prospectus and registration requirements are to be interpreted and applied.
- 1.2 **Definitions** - In this Policy, "private placement exemptions" means the prospectus and registration exemptions available for
- (a) sales of securities of closely-held issuers under section 2.1 of Rule 45-501;
  - (b) sales of securities to accredited investors under section 2.3 of Rule 45-501; and
  - (c) sales of securities to certain family members under section 2.4 of Rule 45-501.

### PART 2 EXEMPTIONS FROM THE REGISTRATION AND PROSPECTUS REQUIREMENTS OF THE ACT

- 2.1 **Interaction of Private Placement Exemptions** - The Commission recognizes that a seller of securities may, in connection with any distribution of securities, rely concurrently on different private placement exemptions except where the seller is advertising the distribution or paying or incurring selling or promotional expenses in connection with the distribution. In these circumstances, a seller may not rely on the exemption in section 2.1 or 2.4.
- 2.2 **Closely-Held Issuer Exemption** - The exemption in section 2.1 relating to securities of closely-held issuers is available to the closely-held issuer itself in respect of an issue of its own securities and to any holder of the issuer's securities in respect of a sale of the securities. A closely-held issuer may issue its own securities in reliance upon the exemption in section 2.1 so long as it is able to meet the criteria for the availability of the exemption in that section. In particular, a closely-held issuer may no longer use the closely-held issuer exemption once it has received aggregate proceeds of \$3,000,000 from trades made in reliance upon the exemption. However, a holder of securities of a closely-held issuer may rely upon the exemption in section 2.1 in connection with any resale of the securities so long as the issuer continues to be a closely-held issuer after the resale. The issuer does not cease to be a closely-held issuer solely because it has raised \$3,000,000 in aggregate proceeds using the exemption.

The Commission notes that a closely-held issuer will be in a position to facilitate the use of the exemption in section 2.1 for the resale of its securities by limiting



the number of its security holders using the share transfer restrictions in its constating documents or in an agreement with its security holders. Once the issuer no longer meets the closely-held issuer definition, a resale of securities acquired under the exemption in section 2.1 may only be made in reliance upon another exemption or by complying with the relevant provisions of Multilateral Instrument 45-102 Resale of Securities.

The Commission also notes that the restriction on the use of the exemption in section 2.1, which refers to aggregate proceeds of \$3,000,000, is based on the aggregate of all proceeds received by the issuer at any time from trades made in reliance upon the exemption in section 2.1. Proceeds received by the issuer from trades made in reliance upon other exemptions, including exemptions available prior to the date when the exemption in section 2.1 first became available, are not relevant. In particular, the proceeds realized by the issuer from trades to accredited investors need not be included in determining whether the \$3,000,000 threshold would be exceeded in respect of any proposed trade under section 2.1. However, if the issuer has not filed a report on Form 45-501F1 in respect of a trade with an accredited investor, it will be presumed that the trade was made in reliance upon section 2.1, in which case the proceeds of that trade must be counted for purposes of the aggregate proceeds limit.

**2.3 Sunset of Pooled Fund Rulings** - For a number of years the Commission has granted rulings under subsection 74(1) of the Act providing exemptive relief from the registration and prospectus requirements to pooled fund issuers in respect of the sale of additional pooled fund interests to investors that have previously purchased pooled fund interests under an exemption. In general, these rulings have contained a "sunset" provision stating that the ruling would terminate following the adoption of a rule regarding trades in securities of pooled funds. The Commission considers that section 2.1 of Rule 45-501 provides the appropriate relief from the registration and prospectus requirements for trades in additional pooled fund interests to existing investors. Accordingly, the Commission takes the view that these rulings will expire following implementation of Rule 45-501.

**2.4 Trades on an Amalgamation, Arrangement or Specified Statutory Procedure** - Clause 72(1)(i) of the Act provides an exemption for trades in securities in connection with a statutory amalgamation or arrangement or other statutory procedure. The Commission is of the view that the reference to statute in that clause refers to any statute of a jurisdiction or foreign jurisdiction under which the amalgamating entities have been incorporated or created and exist and under which the transaction is taking place.

**2.5 Three-Cornered Amalgamations** - Certain corporate statutes permit a so-called "three-cornered merger or amalgamation" under which two

companies will amalgamate or merge and security holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. Section 2.7 of Rule 45-501 exempts these trades as the exemption applies to any trade made in connection with an amalgamation or merger.

**2.6 First Trade Exemptions in Sections 2.11, 2.12 and 2.13** - Sections 2.11, 2.12 and 2.13 of Rule 45-501 provide exemptions for certain first trades in securities acquired under specified prospectus exemptions provided certain conditions are satisfied. The Commission is of the view that holders of securities acquired under the applicable exemptions referred to in these sections need not comply with the resale requirements of Multilateral Instrument 45-102 Resale of Securities if a prospectus exemption in Section 2.11, 2.12 or 2.13 is available in the circumstances.

### PART 3 CERTIFICATION OF FACTUAL MATTERS

**3.1 Seller's Certificate** - The Commission will normally be satisfied that a seller has exercised reasonable diligence for the purposes of the certificate required in Form 45-501F1 if the seller relies on statutory declarations or representations from the purchasers, unless the seller has knowledge that any facts set out in the declarations or representations are incorrect. In circumstances where a seller has recently obtained a statutory declaration or representation from a purchaser with whom a further trade is being made, the seller may continue to rely upon the recently obtained statutory declaration or representation unless the seller has reason to believe that the statutory declaration or representation is no longer valid in the circumstances.

### PART 4 OFFERING MEMORANDA

**4.1 Use of Offering Memoranda in Connection with Private Placements**

- (1) Part 4 of Rule 45-501 provides for the application of the statutory right of action referred to in section 130.1 of the Act if an offering memorandum is delivered to a prospective investor in connection with a trade made in reliance upon a prospectus exemption in section 2.1, 2.3 or 2.4 of Rule 45-501. In this case the statutory right of action must be described in the offering memorandum and copies of the offering memorandum must be delivered to the Commission. Although there is no obligation to prepare an offering memorandum for use in connection with a trade made in reliance upon any prospectus exemption, business practice may dictate the preparation of offering material that is delivered voluntarily to purchasers in connection with exempt trades under section 2.1, 2.3 or 2.4. This offering material may constitute an "offering

memorandum" as defined in the Act. The statutory right of rescission or damages applies when the offering memorandum is provided voluntarily in connection with exempt trades made under section 2.1, 2.3 or 2.4, including an exempt trade to a government or financial institution that is an accredited investor. However, a document delivered in connection with a sale of securities made otherwise than in reliance upon the above-noted exemptions does not give rise to the statutory rights of action or the obligations of Part 4.

- (2) The Commission does not prescribe what an offering memorandum should contain apart from the description of the applicable statutory right of action and the requirements relating to future oriented financial information as contemplated by proposed National Instrument 52-101 Future-Oriented Financial Information (if and when it comes into force).
- (3) The Commission cautions against the practice of providing preliminary offering material to certain prospective investors before furnishing a "final" offering memorandum unless the material contains a description of the statutory right of action available to purchasers in situations when such a right of action and description is required. The only material prepared in connection with the private placement for delivery to investors, other than a "term sheet" (representing a skeletal outline of the features of an issue without dealing extensively with the business and affairs of the issuer), should consist of an offering memorandum describing the statutory right of action and complying in all other respects with Ontario securities laws and rules.

## PART 5 RESTRICTIONS ON FIRST TRADES

**5.1 Incorporation of Multilateral Instrument 45-102 Resale of Securities** - Part 6 of the Rule imposes first trade restrictions on securities acquired under certain exemptions from the prospectus requirements. Different types of resale restrictions are imposed depending upon the nature of the prospectus exemption under which the securities were distributed. In each case, the applicable resale restrictions are incorporated by reference to a specific section of Multilateral Instrument 45-102 Resale of Securities. Sellers of securities are reminded that these resale restrictions need not apply if the seller is able to rely upon another prospectus exemption in the Act or in a Commission rule in respect of the resale of the securities in question.

## PART 6 COMMISSION REVIEW

**6.1 Review of Offering Material** - Although sellers of securities who rely upon the private placement exemptions are required to deliver to the Commission

copies of offering material that they use in connection with the exempt trades if the offering material constitutes an "offering memorandum" as defined in the Act, the offering material is not generally reviewed or commented upon by Commission staff.

**6.2 Other Regulatory Approvals** - Given the self-policing nature of exempt distributions and the fact that offering memoranda are not routinely reviewed by Commission staff, the decision relating to the appropriate disclosure in an offering memorandum rests with the issuer, the selling securityholder and their advisors. If Commission staff becomes aware of an offering memorandum that fails to disclose material information relating to the securities that are the subject of the transaction, staff may seek to intervene to effect remedial action.

## 6.1.2 Multilateral Instrument 45-102 Resale of Securities

### NOTICE OF PROPOSED MULTILATERAL INSTRUMENT 45-102, COMPANION POLICY 45-102CP, AND FORMS 45-102F1, 45-102F2 and 45-102F3

#### RESALE OF SECURITIES

This Notice is accompanied by proposed Multilateral Instrument 45-102 Resale of Securities (the "Instrument"), Forms 45-102F1, 45-102F2 and 45-102F3 (collectively, the "Forms"), and Companion Policy 45-102CP (the "Policy"), all of which are being published for comment.

#### Substance and Purpose of the Instrument, Forms and Policy

##### Introduction

The Instrument, Forms and Policy are initiatives of certain members of the Canadian Securities Administrators (the "CSA"). The Instrument and Forms are expected to be adopted as a rule in each of British Columbia, Alberta, Ontario, Manitoba, Nova Scotia and Newfoundland, as a Commission regulation in Saskatchewan, as a policy in New Brunswick, Prince Edward Island and the Yukon Territory, and as a code in the Northwest Territories and Nunavut. It is expected that the Policy will be implemented as a policy in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut (the "adopting jurisdictions"). The Instrument, Forms and Policy will not be adopted in Quebec.

The purpose of the Instrument is to harmonize certain provincial and territorial resale restrictions imposed on subsequent trades of securities initially acquired under an exemption from the prospectus requirement. The Instrument also takes a harmonized approach to distributions from a control block and to trades in securities of a non-reporting issuer over a foreign exchange or market.

The approach taken in the Instrument is based on the System for Shorter Hold Periods for Issuers Filing an AIF (the "SHAIF System") adopted in each of British Columbia and Alberta in 1998. The SHAIF System provides for a reduced hold period for first trades of securities previously acquired under a prospectus exemption where the issuer has a current Annual Information Form ("AIF") and has satisfied certain other conditions. The general principle underlying both the SHAIF System and the Instrument is that where a reporting issuer provides the market with current information, securities distributed pursuant to an exemption from the prospectus requirement may be traded in the secondary market after a reduced hold period.

##### Summary of the Instrument

The Instrument has five parts.

Part 1 contains the definitions of terms and phrases used in the Instrument that are not defined in or interpreted under a national definition instrument in force in an adopting

jurisdiction. National Instrument 14-101 Definitions sets out definitions for commonly used terms and should be read together with the Instrument.

Part 2 addresses subsequent trades in securities:

- initially distributed under an exemption from the prospectus requirement and which must be resold pursuant to a prospectus, pursuant to a further exemption from the prospectus requirement or after the seller has held the securities for a specified period of time (a "private placement exemption");
- initially distributed under an exemption from the prospectus requirement and which must be resold pursuant to a prospectus, pursuant to a further exemption from the prospectus requirement or upon the issuer having been a reporting issuer for a specified period of time (a "seasoning exemption");
- from the holdings of any person or company or combination thereof holding a sufficient number of voting securities of that issuer to affect materially the control of the issuer (a "control distribution"); and
- of a non-reporting issuer over a foreign exchange or market.

Section 2.1 provides that the sections of Part 2 dealing with resale restrictions applicable to securities: (i) acquired pursuant to a private placement exemption or a seasoning exemption, (ii) acquired by an underwriter acting as purchaser, or (iii) of non-reporting issuers (if the subsequent trade is over a foreign exchange or market), do not apply in Manitoba, New Brunswick, Prince Edward Island or the Yukon Territory. Section 2.8, which deals with resale restrictions in connection with control distributions, applies in all of the adopting jurisdictions.

Section 2.2 removes the provisions currently set out in the securities legislation of British Columbia, Alberta, Saskatchewan, Ontario and Nova Scotia which impose resale restrictions on subsequent trades of securities initially acquired under an exemption from the prospectus requirement. Securities initially acquired under a private placement exemption are subject to section 2.5, and those acquired under a seasoning exemption are subject to section 2.6.

Subsection 2.5(2) provides a four-month hold period for securities acquired under a private placement exemption where the issuer is a qualifying issuer at the time of the initial distribution. A qualifying issuer is any issuer that is a reporting issuer (or equivalent) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec or Nova Scotia, is an electronic filer under SEDAR, has filed a current AIF, and either has a class of equity securities listed or quoted on certain specified exchanges or markets, or outstanding securities that have received an approved rating.

Subsection 2.5(3) provides for a 12-month hold period for securities acquired under a private placement exemption where the issuer is not a qualifying issuer.

Subsection 2.6(2) provides that the prospectus requirement does not apply to subsequent trades in securities acquired

under a seasoning exemption, including the first trade in previously issued securities of an issuer that has ceased to be a private company or private issuer, where the initial distribution was made by a qualifying issuer that has been a reporting issuer or the equivalent in any of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec or Nova Scotia for at least four months.

Subsection 2.6(3) provides for a 12-month seasoning period for securities of an issuer that is not a qualifying issuer.

Section 2.7 mandates the filing of a certificate stating that the issuer was a qualifying issuer at the time of the initial exempt trade referred to in subsections 2.5(2) and 2.6(2).

Subsection 2.8(2) provides an exemption from the prospectus requirement for control distributions as long as the seller, or the creditor, if the distribution is for the purposes of liquidating a debt made in good faith, has held the securities for at least four months and the issuer is a qualifying issuer which has been a reporting issuer or the equivalent in any of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec or Nova Scotia for at least four months.

Subsection 2.8(3) provides for a six or a 12-month hold period for securities of an issuer that is not a qualifying issuer and the securities are sold from a control block.

Section 2.11 provides relief from the prospectus requirement for a subsequent trade in securities initially acquired under a private placement exemption or seasoning exemption from an issuer that is not a reporting issuer in any Canadian jurisdiction. This relief is limited to situations where: (i) at the time of acquisition of the security, no more than 10 percent of the securities (by number of securities and number of holders) were held of record directly or indirectly by residents of Canada, and (ii) the first trade is executed through the facilities of an exchange or market outside Canada. As further clarified in the Policy, the number of securities and of holders held of record directly or indirectly should, to the extent reasonably possible, include beneficial holders.

Part 3 sets out the AIF requirements under the Instrument. It should be noted that a prospectus can qualify as an AIF for the purposes of the Instrument.

Part 4 provides for exemptions from the Instrument.

### Summary of Forms

**Form 45-102F1 - Report Made Under Section 2.6 of Multilateral Instrument 45-102 Resale of Securities with respect to a Person or Company that has Ceased to be a Private Company or Private Issuer**

Form 45-102F1 provides notice to the market that a person or company has ceased to be a private issuer or private company.

**Form 45-102F2 - Certificate Under Subsection 2.7 of Multilateral Instrument 45-102 Resale of Securities**

Form 45-102F2 is a certificate stating that an issuer was a qualifying issuer at the time of the initial exempt trade.

**Form 45-102F3 - Notice of Intention to Distribute Securities and Accompanying Declaration under Section 2.8 of Multilateral Instrument 45-102 Resale of Securities**

Form 45-102F3 provides notice to the market of an intention to sell securities from a control block.

### Summary of the Policy

The purpose of the Policy is to provide information relating to the manner in which the provisions of the Instrument are intended to be interpreted or applied by the securities regulatory authorities of the adopting jurisdictions.

Section 1.1 states that the Instrument has been implemented in all jurisdictions except Quebec. Subsection 1.2(2) clarifies that the Instrument does not restrict the ability of a purchaser to resell securities during a hold period or seasoning period in reliance upon a prospectus or a further exemption from the prospectus requirement.

Section 1.3 reminds market participants that an issuer, or the seller in the case of a control distribution, may be subject to the prospectus requirement in a local jurisdiction even where there are no offerees or purchasers in the jurisdiction as a result of factors connecting the issuer to that jurisdiction. The connecting factors are set out in Companion Policy 72-101CP Distributions Outside of the Local Jurisdiction. This section also reminds market participants that a secondary market trade of securities may be a distribution in a jurisdiction if the initial distribution of the securities was not qualified by a prospectus in that jurisdiction. This may occur even if the securities are freely tradeable in the jurisdiction in which they were originally distributed.

Section 1.4 clarifies that because Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory ("the open system jurisdictions") do not impose resale restrictions on trades in securities distributed under a prospectus exemption, sections 2.5, 2.6 and 2.11 of the Instrument do not apply to trades in the open system jurisdictions. The section provides an illustrative example of the hold period applicable to securities which are traded into an open system jurisdiction from a jurisdiction other than an open system jurisdiction. The section explains that a four or 12-month period would be imposed on the resale of securities whether an issuer distributes securities pursuant to an exemption from the prospectus requirement referred to in the Instrument or pursuant to an exemption under Multilateral Instrument 72-101 Distributions outside of the Local Jurisdiction ("MI 72-101"). Finally, section 1.6 explains that the Instrument and MI 72-101 permit a "tacking" of the hold period under the Instrument and MI 72-101.

Section 1.9 clarifies that, for the purposes of section 2.11 of the Instrument, (i) the securities held of record by brokers, dealers, banks, trust companies or nominees for the accounts of their customers, and (ii) the securities beneficially owned by Canadian residents as reported on reports of beneficial ownership, are to be included in determining the number and holders of securities that are directly or indirectly held of record in Canada.

Part 2 clarifies the AIF requirements under the Instrument, including when AIFs may be filed, AIF form requirements, and review procedures.

Part 3 clarifies the application of fee requirements.

#### **Authority for the Instrument - Ontario**

In those adopting jurisdictions in which the Instrument and Forms are to be adopted or made as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Instrument and Forms.

In Ontario, the following provisions of the Securities Act (Ontario) (the "Act") provide the Ontario Securities Commission (the "Ontario Commission") with authority to adopt the Instrument.

Paragraph 143(1)20 authorizes the Ontario Commission to make rules providing for exemptions from the prospectus requirements under the Act and for the removal of exemptions from those requirements.

Paragraph 143(1)22 authorizes the Ontario Commission to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of an annual information form.

Paragraph 143(1)48 authorizes the Ontario Commission to specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

Paragraph 143(1)54 authorizes the Ontario Commission to make rules respecting exemptions from or varying the requirements of subsections 72(4), (5), (6) and (7) of the Act.

#### **Alternatives Considered**

The adopting jurisdictions considered maintaining the current system regulating resale restrictions for certain trades in securities. However, in light of the problems encountered by stakeholders in dealing with the differing requirements across Canada, they have determined it was advisable to develop a more harmonized approach to restrictions on resale. The adopting jurisdictions also note that the SHAI System was well received by market participants and that it has successfully implemented shortened hold periods for securities previously acquired under a prospectus exemption in British Columbia and Alberta.

#### **Related Instruments**

The Instrument, Forms, and Policy are related to each other. In Ontario, the Instrument is related to subsections 72(4), (5), (6) as it relates to clause 72(1)(r), and (7) of the Act and Rule 45-501 Exempt Distributions.

The CSA, other than the Commission des valeurs mobilières du Québec, will be simultaneously publishing for comment Multilateral Instrument 72-101 Distributions Outside of the

Local Jurisdiction ("MI 72-101"). MI 72-101 regulates the requirements governing the sale of securities outside of the local jurisdiction by providing exemptions from the registration and prospectus requirements and imposing certain resale restrictions.

#### **Unpublished Materials**

In proposing the Instrument and Policy, the adopting jurisdictions have not relied on any significant unpublished study, report, decision or other written materials.

#### **Anticipated Costs and Benefits**

The principal benefit of the Instrument and Forms will be to more effectively harmonize the approach of securities regulatory authorities in the adopting jurisdictions and provide for more regulatory certainty. In addition, because the hold periods commence once an issuer becomes a reporting issuer in one of the specified jurisdictions, most security holders will be subject to the same restrictions on resale, regardless of the reporting issuer status in the local jurisdiction.

The costs associated with the Instrument and Forms are the costs associated with filing AIFs and continuous disclosure materials in a jurisdiction. Issuers may also incur greater costs in the preparation of current AIFs.

In the view of the adopting jurisdictions, the benefits outweigh the costs.

#### **Regulations to be Revoked or Amended**

It is intended that the Instrument will replace the resale provisions of the various jurisdictions listed in Appendix C of the Instrument. The method of implementing this will vary in accordance with the requirements of the local jurisdiction.

In Ontario, the adoption of the Instrument requires subsection 69(1) and section 70 of Regulation 1015 (the "Regulation"), sections 26 and 27 of Schedule I and Forms 22 and 23 made under the Regulation to be revoked.

The Instrument also makes unavailable subsections 72(4), (5), (6) as it relates to clause 72(1)(r), and (7) of the Act.

#### **Specific Request for Comment**

In addition to welcoming submissions on any provision in the Instrument, Forms, and Policy, the adopting jurisdictions seek comment on the specific matters referred to below.

#### **Requirement that a Legended Certificate Representing the Securities Distributed Under Section 2.5 be Provided to Investors**

Part 2 of the Instrument provides that in order to reduce the hold period, if securities are distributed in reliance on a private placement exemption, the certificate representing the securities must carry a legend stating that, subject to securities legislation, the holder of the securities shall not trade the securities before the expiry of the appropriate hold period. In many jurisdictions, there is currently no requirement to legend certificates. Under the SHAI System, certificates must bear

a legend stating that the securities may not be traded during the hold period.

The adopting jurisdictions believe that, while the legending requirement may represent a change in current commercial practice in some jurisdictions, it will ensure better regulation of the exempt market.

**Provision for a Four-Month Hold Period for Investment Grade Securities**

The Instrument provides for a four-month hold period for investment grade securities (i.e., debt, asset-backed securities, preferred shares) acquired under exemptions from the prospectus requirement. This goes beyond the SHAI System and moves away from the "legal for life" criteria of some jurisdictions.

**Comments**

Interested parties are invited to make written submissions with respect to the Instrument, Forms and Policy. Submissions received by December 8, 2000 will be considered.

Submissions should be sent to the securities regulatory authorities listed below in care of the Saskatchewan Securities Commission, in duplicate, as indicated below:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Securities Commission  
The Manitoba Securities Commission  
Nova Scotia Securities Commission  
Ontario Securities Commission

c/o Dean Murrison, Committee Chair  
Saskatchewan Securities Commission  
800, 1920 Broad Street  
Regina, Saskatchewan S4P 3V7  
Telephone: 306-787-5879  
E-mail: dmurrison@ssc.gov.sk.ca

A diskette containing the submission (in DOS or Windows format, preferably WordPerfect) should also be submitted to the Chair of the Committee.

Comment letters submitted in response to requests for comments are placed on the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated amongst the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed on the public file, freedom of information legislation in certain jurisdictions may require the securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to the Chair and/or any of the following members of the Committee:

Margaret Sheehy or Brenda Leong  
British Columbia Securities Commission  
865 Hornby Street, 2nd Floor  
Vancouver, British Columbia V6Z 2H4  
Telephone: (604) 899-6650/(604) 899-6642 or  
(800)373-6393 (in B.C.)  
E-mail: msheehy@bcsc.bc.ca  
bleong@bcsc.bc.ca

Marsha Manolescu  
Alberta Securities Commission  
20th Floor, 10025 Jasper Avenue  
Edmonton Alberta T5J 3Z5  
Telephone: (780) 422-1914  
E-mail: Marsha.Manolescu@seccom.ab.ca

Chris Besko  
The Manitoba Securities Commission  
1130 - 405 Broadway  
Winnipeg, Manitoba R3C 3L6  
Telephone: (204) 945-2561  
E-mail: cbesko@cca.gov.mb.ca

Margo Paul or Jean-Paul Bureaud  
Ontario Securities Commission  
20 Queen Street West, Suite 1900, Box 55  
Toronto, Ontario M5H 3S8  
Telephone: (416) 593-8136/(416)593-8131  
E-mail: mpaul@osc.gov.on.ca  
jbureaud@osc.gov.on.ca

Shirley Lee  
Nova Scotia Securities Commission  
1690 Hollis Street  
P.O. Box 458  
Halifax, Nova Scotia B3J 3J9  
Telephone: (902) 424-5441  
E-mail: leespl@gov.ns.ca

**Instrument and Policy**

The text of the Instrument and Policy follow, together with footnotes that are not part of the Instrument or Policy, but have been included to provide background and explanation.

**Dated:** September 8, 2000

**MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES**

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**MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES**

**PART 1 DEFINITIONS**

**1.1 Definitions - In this Instrument**

"AIF" means

- (a) an annual information form of an issuer prepared in accordance with Form 44-101F<sup>1</sup>, whether or not the issuer is permitted under NI 44-101 to file a short form prospectus, or
- (b) an alternative form of annual information form permitted under section 3.2;

"approved rating"<sup>2</sup> means, for a security, a rating at or above one of the following rating categories issued by an approved rating organization for the security or a rating category that replaces a category listed below:

Approved Rating Organization	Long Term Debt	Short Term Debt	Preferred Shares
CBRS Inc.	B++	A-2	P-3
Dominion Bond Rating Service Limited	BBB	R-2	Pfd-3
Duff & Phelps Credit Rating Co.	BBB-	D-3	BBB-
Fitch IBCA, Inc.	BBB	F3	BBB
Moody's Investors Service, Inc.	Baa	Prime-3	baa
Standard & Poor's Corporation	BBB	A-3	BBB
Thomson BankWatch, Inc.	BBB	TBW-3	BBB

"approved rating organization"<sup>3</sup> means each of CBRS Inc., Dominion Bond Rating Service Limited, Duff &

<sup>1</sup> Proposed National Instrument 44-101 Short form Prospectus Distributions which is being adopted by all jurisdictions, will implement the short form prospectus system across Canada.

<sup>2</sup> National Instrument 14-101 Definitions may be amended to add the term "approved rating". If so amended, the "approved rating" definition would be deleted from this instrument.

<sup>3</sup> National Instrument 14-101 Definitions may be amended to add the term "approved rating organization". If so amended, the "approved rating organization" definition would be deleted from this instrument.

Phelps Credit Rating Co., Fitch IBCA, Inc., Moody's Investors Service, Inc., Standard & Poor's Corporation, Thomson BankWatch, Inc., and any of their successors;

"control distribution" means a trade described in the provisions of securities legislation listed in Appendix A;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of the same issuer;<sup>4</sup>

"CPC" means a capital pool company as defined in a CPC instrument and, in Manitoba, a keystone company;

"CPC information circular" means an information circular filed by an issuer and accepted under a CPC instrument in connection with a qualifying transaction;

"CPC instrument" means a rule or regulation of a jurisdiction, or a rule, regulation or policy of an exchange in Canada, that applies only to CPCs;

"current AIF" means

- (a) an AIF that is a current AIF filed under NI 44-101, or
- (b) an AIF filed under section 3.1, if the AIF has been filed within the time periods prescribed by NI 44-101 for a current AIF;

"distribution date" means the date the securities that are the subject of the trade were initially distributed in reliance on an exemption from the prospectus requirement by the issuer, or by the seller in the case of a control distribution;

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of another issuer;

"multiple convertible security" means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

"NI 13-101" means National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);

"NI 43-101" means National Instrument 43-101 Standards of Disclosure for Mineral Products;

"NI 44-101" means National Instrument 44-101 Short Form Prospectus Distributions;

"NPS 2-B" means National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators;

"private company" has the meaning ascribed to that term in securities legislation;

"private issuer" has the meaning ascribed to that term in securities legislation;

"qualifying issuer" means an issuer

- (a) that is a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix B,
- (b) that is an electronic filer under NI 13-101,
- (c) that has a current AIF,
- (d) that either
  - (i) has a class of equity securities<sup>5</sup> listed or quoted on a qualifying market, meets the requirements to maintain that listing or quotation and is not designated inactive, suspended or the equivalent, or
  - (ii) has a class of securities outstanding that has received an approved rating,
- (e) if it is not qualified to file a short form prospectus under NI 44-101, and has oil and gas operations or exploration, development or production activities on a mineral property, has filed with its current AIF, as if the AIF were a prospectus, technical reports in accordance with, as applicable, NI 43-101 or the successor instrument to NPS 2-B, once in force, and until that time, a technical report or certificate on each material property prepared in accordance with NPS 2-B,
- (f) that, if it has received a notice in writing from any regulator that its AIF, including any technical reports, does not comply with the instrument prescribing the content of the AIF,

<sup>4</sup> National Instrument 14-101 Definitions may be amended to add the terms "convertible security", "exchangeable security", "multiple convertible security" and "underlying security". If so amended, these definitions would be deleted from this instrument.

<sup>5</sup> The term "equity security" is defined in National Instrument 14-101 Definitions as having the meaning ascribed to that term in securities legislation.



has satisfied the regulator that its AIF is acceptable, and

- (g) that, if it is a CPC, has filed a CPC information circular that has been accepted under a CPC instrument;

"qualifying market" means any of

- (a) The Toronto Stock Exchange,
- (b) Tier 1 or Tier 2 of the Canadian Venture Exchange,
- (c) The Montreal Exchange,
- (d) the American Stock Exchange,
- (e) the Nasdaq National Market System,
- (f) the Nasdaq Small Cap Market,
- (g) the New York Stock Exchange,
- (h) the London Stock Exchange Limited, and
- (i) any successor to any of the exchanges or markets referred to in paragraphs (a) through (h);

"qualifying transaction" means a transaction that, if completed, would result in the issuer no longer being a CPC;

"reporting issuer equivalent" means an issuer that is subject to the continuous disclosure requirements of a jurisdiction listed in Appendix B under the heading "Reporting Issuer Equivalent";

"SEDAR" has the meaning ascribed to that term in NI 13-101; and

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.

## PART 2 FIRST TRADES

- 2.1 **Application** - Except for sections 2.1, 2.8 and 2.9, this Part does not apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.<sup>6</sup>

<sup>6</sup> These jurisdictions have never imposed resale restrictions on securities distributed under a prospectus exemption.

2.2 **Removal of Resale Provisions** - The provisions in securities legislation listed in Appendix C do not apply.<sup>7</sup>

2.3 **Section 2.5 Applies** - Any trade of securities initially distributed under an exemption from the prospectus requirement listed in Appendix D is subject to section 2.5.

2.4 **Section 2.6 Applies** - Any trade of securities initially distributed under an exemption from the prospectus requirement listed in Appendix E is subject to section 2.6.

## 2.5 Hold Period

(1) A trade that is specified by section 2.3 or other securities legislation<sup>8</sup> to be subject to this section is a distribution unless the conditions in subsection (2) or (3) are satisfied.

(2) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix B for the four months immediately preceding the trade.

2. At least four months have elapsed from the distribution date.

3. The certificate representing the securities carries a legend stating:

"Subject to securities legislation, the holder of the securities shall not trade the securities before [insert the date that is four months and a day after the distribution date]."

4. The trade is not a control distribution.

5. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.

6. No extraordinary commission or consideration is paid to a person or company in respect of the trade.

<sup>7</sup> It is intended that this Instrument will replace the resale provisions of the various jurisdictions listed in Appendix C. The method of implementing this will vary in accordance with requirements of the local jurisdiction.

<sup>8</sup> The implementation of this Instrument will require consequential amendments to local rules that contain exemptions that are subject to resale restrictions, for example, Ontario's Rule 45-501 Exempt Distributions.

7. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.
- (3) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:
1. The issuer is and has been a reporting issuer or a reporting issuer equivalent for the 12 months immediately preceding the trade either
    - (a) in a jurisdiction listed in Appendix B; or
    - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
  2. At least 12 months have elapsed from the distribution date.
  3. The issuer either
    - (a) is an electronic filer under NI 13-101; or
    - (b) is a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
  4. The certificate representing the securities carries a legend
    - (a) if the issuer is a reporting issuer or a reporting issuer equivalent at the distribution date in a jurisdiction listed in Appendix B, stating:

"Subject to securities legislation, the holder of the securities shall not trade the securities before [insert the date that is 12 months and a day after the distribution date]."; or
    - (b) if the issuer is not a reporting issuer or a reporting issuer equivalent at the distribution date in a jurisdiction listed in Appendix B, stating:

"Subject to securities legislation, the holder of the securities shall not trade the securities before the earlier of (i) the date that is 12 months and a day after the date the issuer first becomes a

reporting issuer in Alberta, British Columbia, Nova Scotia, Ontario, Quebec or Saskatchewan or a reporting issuer equivalent in Manitoba; and (ii) the date that is 12 months and a day after the later of (A) the distribution date; and (B) the date the issuer became a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade."

5. The trade is not a control distribution.
6. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
7. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
8. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.

## 2.6 Seasoning Period

- (1) The following trades are distributions unless the conditions in subsections (2) or (3) are satisfied:
  1. A trade that is specified by section 2.4 or other securities legislation<sup>9</sup> to be subject to this section.
  2. The first trade of previously issued securities of a person or company that has ceased to be a private company or a private issuer.
- (2) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:
  1. The issuer is and has been a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix B for the four months immediately preceding the trade.

<sup>9</sup> The implementation of this Instrument will require consequential amendments to local rules that contain exemptions that are subject to resale restrictions, for example, Ontario's Rule 45-503 Trades to Employees, Executives and Consultants.

2. The trade is not a control distribution.
  3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
  4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
  5. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.
  6. In the case of the first trade of previously issued securities of a person or company that has ceased to be a private company or a private issuer, the issuer has filed Form 45-102F1.
- (3) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:
1. The issuer is and has been a reporting issuer or a reporting issuer equivalent for the 12 months immediately preceding the trade either
    - (a) in a jurisdiction listed in Appendix B; or
    - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
  2. The issuer either
    - (a) is an electronic filer under NI 13-101; or
    - (b) is a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
  3. The trade is not a control distribution.
  4. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
  5. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
  6. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that

the issuer is not in default of any requirement of securities legislation.

7. In the case of the first trade of previously issued securities of a person or company that has ceased to be a private company or a private issuer, the issuer has filed Form 45-102F1.

**2.7 Qualifying Issuer Certificate** - The issuer of the securities, or the seller of the securities in the case of a control distribution, shall file Form 45-102F2 on or before the tenth day after the distribution date of a trade of securities subject to subsection 2.5(2) and of a trade of securities subject to subsection 2.6(2).

**2.8 Trades by Control Persons**

- (1) The prospectus requirement does not apply to a control distribution, or a distribution by a lender, pledgee, mortgagee or other encumbrancer for the purpose of liquidating a debt made in good faith by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt if such security was acquired by the lender, pledgee, mortgagee or other encumbrancer in a control distribution, if the conditions in subsections (2) or (3) are satisfied.

- (2) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix B for the four months immediately preceding the trade.
2. The seller, or the creditor if the distribution is for the purpose of liquidating a debt made in good faith, has held the securities for at least four months.
3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
5. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.

- (3) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer or a reporting issuer equivalent for the 12 months immediately preceding the trade either
- (a) in a jurisdiction listed in Appendix B; or
  - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
2. The issuer either
- (a) is an electronic filer under NI 13-101, or
  - (b) is a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
5. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.
6. The seller, or the creditor if the distribution is for the purpose of liquidating a debt made in good faith, has held the securities for
- (a) at least 12 months, if the securities were distributed to the seller under an exemption listed in Appendix D, and
  - (b) in all other cases, at least six months.
- (4) The seller of the securities under subsection (2) or (3) shall
- (a) sign and file with each securities regulatory authority, other than the Commission des valeurs mobilières du Québec, and the exchange in Canada on which the securities that are the subject of the trade are listed Form 45-102F3 within the time periods set out in subsection (5), and
  - (b) file, within three days after the completion of any trade, a report of the trade in the form required to be filed by a person or company in order to comply with the insider reporting requirements.
- (5) A person or company that files Form 45-102F3 shall sign the form no earlier than one business day before its filing and shall file the form at least seven days and not more than 14 days before the first trade that forms part of the distribution and shall again sign and file the form at the end of 60 days after the original date of filing, and thereafter at the end of each 28 day period, so long as any of the securities specified under the original form have not been sold or until a form has been filed which states that the securities so specified or any part thereof are no longer for sale.

## 2.9 Determining Time Periods

- (1) In determining the period of time that the issuer has been a reporting issuer or a reporting issuer equivalent for the purposes of section 2.5, 2.6 or 2.8, in the case of securities distributed under the exemptions from the prospectus requirement listed in Appendix F, add the period of time that one of the amalgamating, merged or continuing corporations was a reporting issuer or a reporting issuer equivalent to the period of time that the issuer has been a reporting issuer or a reporting issuer equivalent.
- (2) In determining the period during which the seller has held a security for the purposes of sections 2.5 and 2.8,
- (a) if the security was acquired by the seller from an affiliate of the seller, the period of time that the security had been held by the affiliate before the transfer to the seller shall be included; and
  - (b) if the security is an underlying security, the period of time shall run from the date that the convertible security, exchangeable security or multiple convertible security was first acquired.
- (3) In determining the period of time that a creditor has held a security under paragraph 2 of subsection (2) or paragraph 6 of subsection (3) of section 2.8, the period of time the security has been held by the pledgor, mortgagor or encumbrancer shall be included.

**2.10 Trades by Underwriters** - A trade by an underwriter of securities distributed under an exemption from the prospectus requirement listed in Appendix G is a distribution.

**2.11 Trades in Securities of a Non-reporting Issuer Distributed under a Prospectus Exemption**

- (1) The prospectus requirement does not apply to a trade of a security initially distributed under an exemption from the prospectus requirement if
  - (a) the issuer of the security was not a reporting issuer or a reporting issuer equivalent in any jurisdiction at the distribution date;
  - (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
    - (i) did not hold of record directly or indirectly more than 10 percent of the outstanding securities of the class or series, and
    - (ii) did not represent in number more than 10 percent of the total number of holders of record directly or indirectly of securities of the class or series; and
  - (c) the trade is executed through the facilities of an exchange or market outside Canada;
- (2) The prospectus requirement does not apply to a trade of an underlying security if the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was initially distributed under an exemption from the prospectus requirement if
  - (a) the issuer of the underlying security was not a reporting issuer or a reporting issuer equivalent in any jurisdiction at the distribution date;
  - (b) the conditions in paragraph (1)(b) would have been satisfied for the underlying security at the time of the initial distribution of the convertible security, exchangeable security or multiple convertible security that entitled or required the holder to acquire the underlying security; and
  - (c) the condition in paragraph (1)(c) is satisfied.

**PART 3 AIF FILING REQUIREMENTS**

**3.1 Current AIF**

- (1) A qualifying issuer that has not filed an AIF under NI 44-101 may file an AIF at any time under this section in order to have a current AIF under this Instrument.
- (2) If an issuer uses an alternative form of AIF permitted under section 3.2, the issuer shall file a notice through SEDAR
  - (a) advising that it has filed an alternative form of AIF under this section, and
  - (b) identifying the SEDAR project number under which the alternative form of AIF was filed.

**3.2 Alternative Form of AIF**

- (1) An issuer that has obtained a receipt for a prospectus in any jurisdiction, other than a short form prospectus or a prospectus filed under the CPC instrument, may elect to use that prospectus as an alternative form of AIF for its most recently completed financial year if the prospectus includes audited financial statements for that financial year.
- (2) An issuer may elect to use a CPC information circular as an alternative form of AIF for its most recently completed financial year if the information circular includes audited financial statements for that financial year.
- (3) An issuer that has securities registered under section 12 of the 1934 Act or has a reporting obligation under section 15(d) of the 1934 Act may file a current annual report on Form 10-K or Form 20-F under the 1934 Act as an alternative form of AIF.

**PART 4 EXEMPTION**

**4.1 Exemption**

- (1) The regulator or the securities regulatory authority may grant an exemption from this Multilateral Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

**PART 5 EFFECTIVE DATE**

- 5.1 Effective Date** - This Multilateral Instrument comes into force on ●, 2000.

**APPENDIX A  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES  
CONTROL DISTRIBUTIONS**

<b>JURISDICTION</b>	<b>SECURITIES LEGISLATION REFERENCE</b>
Alberta	Sections 1(c.2) and 1(f)(iii) of the <i>Securities Act</i> (Alberta)
British Columbia	Paragraph (c) of the definition of "distribution" contained in section 1(1) of the <i>Securities Act</i> (British Columbia)
Manitoba	Paragraph (b) of the definition of "primary distribution to the public" contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
Newfoundland	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Newfoundland)
Northwest Territories	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Nova Scotia	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Ontario	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
Saskatchewan	Subclauses 2(1)(r)(iii), (iv) and (v) of <i>The Securities Act, 1988</i> (Saskatchewan)

APPENDIX B  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES

QUALIFYING ISSUER JURISDICTIONS

REPORTING ISSUER

REPORTING ISSUER EQUIVALENT

Alberta

Manitoba

British Columbia

Nova Scotia

Ontario

Quebec

Saskatchewan

**APPENDIX C  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES  
NON-APPLICABLE RESALE PROVISIONS  
(Section 2.2)**

**JURISDICTION**

**SECURITIES LEGISLATION REFERENCE**

Alberta	Sections 109, 109.1, 110, 111 with respect to underwriters and 112 of the <i>Securities Act</i> (Alberta)
British Columbia	Sections 128(d), 140, 141, 142 and 143 of the <i>Securities Rules</i> (British Columbia)
Nova Scotia	Subsections 77(5), 77(6), 77(7), 77(7A), 77(7B), 77(8), 77(9), 77(10)(a) and 77(11) of the <i>Securities Act</i> (Nova Scotia)
Ontario	Subsections 72(4), 72(5), 72(6) as it relates to clause 72(1)(r), and 72(7) of the <i>Securities Act</i> (Ontario)
Saskatchewan	Subsections 81(6), (7), (8), (8.1) and (10) of <i>The Securities Act, 1988</i> (Saskatchewan)



APPENDIX D  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES

HOLD PERIOD TRADES  
(Section 2.3)

**JURISDICTION**

**SECURITIES LEGISLATION REFERENCE**

Alberta	Sections 107(1)(a), (b), (c), (d), (f)(iii) as applicable, (l), (m), (p), (q), (t), (t.1), (u) and (z) of the <i>Securities Act</i> (Alberta)
British Columbia	Sections 74(2)(1) to (6), (16), (18), (19), (23) and (25) of the <i>Securities Act</i> (British Columbia)  Sections 128(a), (b), (c), (e), (f) and (h) of the <i>Securities Rules</i> (British Columbia)
Newfoundland	Clause 73(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the <i>Securities Act</i> (Newfoundland)
Northwest Territories	Paragraph 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) or (z), or clause 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities
Nova Scotia	Clause 77(1)(a), (b), (c), (d), (f)(iii) as applicable, (l), (m), (p), (q), (u), (w), (y), (ab), or (ad) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Paragraph 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) or (z), or clause 3(e)(iii) of Blanket Order No.1 of the Registrar of Securities
Ontario	Clauses 72(1)(a), (b), (c), (d), (f)(iii) as applicable, (l), (m), (p) and (q) of the <i>Securities Act</i> (Ontario)
Saskatchewan	Clauses 81(1)(a), (b), (c), (d), (m), (n), (s), (t), (v), (w), (z), (bb), (ee) and subclauses 81(1)(f)(iii) and (iv) if the convertible security, exchangeable security or multiple convertible security was acquired under one of the above listed exemptions of <i>The Securities Act, 1988</i> (Saskatchewan)

APPENDIX E  
TO  
MULTILATERAL INSTRUMENT 45-102  
REALE OF SECURITIES

SEASONING PERIOD TRADES  
(Section 2.4)

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Sections 107(1)(f), as applicable, (i), (j), (j.1), (k), (k.1), and (n) of the <i>Securities Act</i> (Alberta)
British Columbia	Sections 74(2)(7) to (10), (13), (22) and (24) of the <i>Securities Act</i> (British Columbia)  Section 128(g) of the <i>Securities Rules</i> (British Columbia)  Section 74(2)(11) of the <i>Securities Act</i> (British Columbia) other than a security acquired by the seller under section 74(1)(iii) in accordance with the terms and conditions of a previously issued security if that previously issued security was distributed under a prospectus or an exchange offering prospectus  Section 74(2)(12) of the <i>Securities Act</i> (British Columbia), if the security acquired by the seller under the realization on collateral was initially acquired by a person or company under any of the sections of the <i>Securities Act</i> (British Columbia) or the <i>Securities Rules</i> (British Columbia) referred to in this Appendix
Newfoundland	Clause 73(1)(f), (i), (j), (k), or (n) of the <i>Securities Act</i> (Newfoundland)
Northwest Territories	Clause 3(e)(i) or (ii) or paragraph 3(f), (g), (h), (i), (n), (x), (y) or (mm) of Blanket Order No. 1 of the Registrar of Securities
Nova Scotia	Clauses 77(1)(f), as applicable, (h), (i), (j), (k), (n), (v), (va), (ac), (ae), (af) or 78(1)(a) as it relates to 41(2)(j) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Clause 3(e)(i) or (ii) or paragraph 3(f), (g), (h), (i), (n), (x), (y) or (mm) of Blanket Order No. 1 of the Registrar of Securities
Ontario	Clauses 72(1)(f), (i), (j) and (k) of the <i>Securities Act</i> (Ontario)
Saskatchewan	Clauses 81(1)(a.1), (f) if not included in Appendix D, (f.1), (g), (h), (i), (i.1) (j), (k), (o), (cc), (dd) of <i>The Securities Act, 1988</i> (Saskatchewan)

APPENDIX F  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES

AMALGAMATIONS OR MERGERS  
(Section 2.9)

JURISDICTION

PROSPECTUS EXEMPTION

Alberta

Section 107(1)(i) of the *Securities Act* (Alberta)

British Columbia

Section 74(2)(8) of the *Securities Act* (British Columbia)

Manitoba

Clause 58(1)(b) of the *Securities Act* (Manitoba)

Newfoundland

Clause 73(1)(i) of the *Securities Act* (Newfoundland)

Northwest Territories

Paragraph 3(g) of Blanket Order No.1 of the Registrar of Securities

Nova Scotia

Clause 77(1)(i) of the *Securities Act* (Nova Scotia)

Nunavut

Paragraph 3(g) of Blanket Order No. 1 of the Registrar of Securities

Ontario

Clause 72(1)(i) of the *Securities Act* (Ontario); section 2.8 of Rule 45-501 Exempt Distributions

Prince Edward Island

Clause 2(3)(k) of the *Securities Act* (Prince Edward Island)

Saskatchewan

Clause 81(1)(i) of *The Securities Act, 1988* (Saskatchewan)

APPENDIX G  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES

UNDERWRITERS  
(Section 2.10)

**JURISDICTION**

**PROSPECTUS EXEMPTION**

Alberta	Sections 107(u.1) of the <i>Securities Act</i> (Alberta)
British Columbia	Section 74(2)(15) of the <i>Securities Act</i> (British Columbia)
Newfoundland	Clause 73(1)(r) of the <i>Securities Act</i> (Newfoundland)
Northwest Territories	Paragraph 3(v) of Blanket Order No.1 of the Registrar of Securities
Nova Scotia	Clause 77(1)(r) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities
Ontario	Clause 72(1)(r) of the <i>Securities Act</i> (Ontario)
Prince Edward Island	Clause 2(3)(g) of the <i>Securities Act</i> (Prince Edward Island)
Saskatchewan	Clause 81(1)(u) of <i>The Securities Act, 1988</i> (Saskatchewan) (Under <i>The Securities Act, 1988</i> (Saskatchewan) a trade by an underwriter is included in the definition of distribution.)

FORM 45-102F1

**Report Made Under Section 2.6 of Multilateral Instrument 45-102 Resale of Securities with respect to a Person or Company that has Ceased to Be a Private Company or Private Issuer**

1. Name and address of person or company that has ceased to be a private company or a private issuer
2. Date when the person or company ceased to be a private company or a private issuer
3. Jurisdiction of incorporation or continuation of the company
4. List as of the time immediately before the company or issuer ceased to be a private company or a private issuer, the number or amount and designation of the authorized and outstanding securities of each class of securities of the company or issuer.
5. List the name, address and the number or amount and designation of securities of the company or issuer held by each person or company who was a beneficial or a registered owner of securities of the company or issuer immediately before the company or issuer ceased to be a private company or a private issuer and where it is not possible to identify the beneficial owner, explain why.  
  
(Make certain the totals as to beneficial and as to registered owners given in this item reconcile, in each case, with the totals given in item 4.)
6. Certifies that the information given in this report is true and complete in every respect.

Date .....

.....  
(name of company or issuer that has ceased to be a private company or a private issuer)

By:.....  
(signature)

.....  
(official capacity)

.....  
(name of individual whose signature appears above)

FORM 45-102F2

**Certificate Under Subsection 2.7 of  
Multilateral Instrument 45-102 Resale of Securities**

*[Name of Person or Company]* hereby certifies that in respect of a trade on *[date]* of *[amount or number and type of securities]* of *[Name of Issuer]*, *[Name of Issuer]* was a qualifying issuer within the meaning of Multilateral Instrument 45-102 Resale of Securities at the time of the trade.

DATED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

*[Name of Person or Company]*

By: \_\_\_\_\_  
*[type name]*  
*[title]*

**INSTRUCTION:**

1. File this form with the securities regulatory authority in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan within ten days of the distribution date of a trade referred to subsection 2.5(2) and of a trade referred to in subsection 2.6(2) of Multilateral Instrument 45-102.

FORM 45-102F3

Notice of Intention to Distribute Securities and Accompanying  
Declaration under Section 2.8 of Multilateral Instrument 45-102 Resale of Securities

1. Name and address of reporting issuer or reporting issuer equivalent .
2. Date and jurisdictions where issuer became a reporting issuer or reporting issuer equivalent  

<u>Date</u>	<u>Jurisdiction</u>
.....	.....
.....	.....
3. Name and address of selling securityholder
4. State whether the selling securityholder is an insider or officer of the issuer. (if an officer state title).
5. Amount or number and designation of securities of the issuer beneficially owned, directly or indirectly, by the selling securityholder.
6. Amount or number and designation of securities of the issuer proposed to be sold by the selling securityholder.
7. State, to the extent known to the selling securityholder, the following particulars about the control position of the issuer: name(s), securities of the issuer held, offices or positions with the issuer or selling securityholder and any other material particular regarding such control position.
8. State whether the securities will be sold privately or on an exchange or market (state name of exchange or market).
9. Proposed date of sale or date of commencement of sale.
10. If the selling securityholder is a lender, pledgee, mortgagee or other encumbrancer selling securities distributed under an exemption in securities legislation from the prospectus requirement for a trade to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person for the purpose of giving collateral for a debt made in good faith, state the date and amount of the loan, pledge, mortgage or other encumbrance, reasons for liquidating the debt and the circumstances of default.
11. State the date that the selling shareholder acquired the securities and, in the case of a sale by a creditor, the date the creditor foreclosed on the securities or decided to sell the securities.
12. If this Form is not an initial filing, provide the following information:
  - (a) date of filing the original Form 45-102F3
  - (b) date of the most recently filed renewal Form 45-102F3
  - (c) number of securities proposed to be sold in the initial Form 45-102F3
  - (d) number of securities sold from the date of the initial Form 45-102F3 to the date of this renewal Form 45-102F3
  - (e) number of securities proposed to be sold in the initial Form 45-102F3 that are no longer for sale
  - (f) number of securities remaining for sale

*Declaration, Certificate and Undertaking*

The seller for whose account the securities to which this certificate relates are to be sold hereby:

- (1) represents that the seller has no knowledge of a material fact or material change with respect to the issuer of the securities that has not been generally disclosed;
- (2) represents that to the best of the seller's information and belief:
  - (a) no unusual effort has been and undertakes that no unusual effort will be made to prepare the market or to create a demand for the securities to be sold and no extraordinary commission or other consideration has been or had been agreed to be paid in respect of such trade,

**Request for Comments**

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- (b) the transaction to which this notice of intention and declaration relate is an arm's length transaction made in good faith, and
- (c) the securities have been held for the period of time required under section 2.8 of Multilateral Instrument 45-102 Resale of Securities and the other conditions of the applicable subsection of that section have been met.
- (3) undertakes that this Form shall be renewed and filed at the end of 60 days after the original date of filing this Form and thereafter at the end of each 28 day period so long as any of the securities specified under this Form have not been sold or until notice has been filed that the securities so specified or any part thereof are no longer for sale; and
- (4) certifies that the information given in the answers to the questions in this Form are true.

Date .....

.....  
(name of selling securityholder)

By:.....  
(signature of selling securityholder, and if a company, signature of authorised signatory)

.....  
(name and office of authorised signatory)



**COMPANION POLICY 45-102CP  
TO MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES**

**PART 1 APPLICATION**

**1.1 Application** - Multilateral Instrument 45-102 ("MI 45-102") has been implemented in all jurisdictions except Quebec.

**1.2 Purpose**

- (1) MI 45-102 provides that a trade of securities initially distributed under an exemption from the prospectus requirement is a distribution unless certain conditions are met. The conditions impose restrictions on the resale of the securities. If the securities were initially distributed under a private placement or other exemption listed in Appendix D to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a specified period and that a specified period of time has elapsed from the date of the initial distribution. If the securities were initially distributed under an exemption listed in Appendix E to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a specified period. If the issuer is a qualifying issuer, MI 45-102 reduces the hold periods and seasoning periods. MI 45-102 also provides an exemption for a control distribution and a sale by a pledgee of pledged securities if the sale would be a distribution for the purposes of securities legislation.
- (2) Nothing in MI 45-102 is intended to restrict the ability of a purchaser to resell securities during the hold period or seasoning period in reliance upon a prospectus or an exemption from the prospectus requirement.

**1.3 Distribution**

- (1) An issuer, or the seller in the case of a control distribution, distributing securities may be subject to a requirement to file a prospectus in a jurisdiction because either the securities are distributed to purchasers in the jurisdiction or, as a result of the factors connecting the issuer to the jurisdiction, the offering constitutes a distribution in the jurisdiction even though there are no offerees or purchasers in the jurisdiction. The connecting factors that may result in an issue or sale of securities to purchasers outside of a jurisdiction being subject to the securities legislation of the jurisdiction are set out in section 2.2 of Companion Policy 72-101CP Distributions Outside of the Local Jurisdiction.
- (2) The definition of "distribution" in securities legislation in effect in most jurisdictions includes any transaction or series of

transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution. A secondary market trade of securities into a jurisdiction may be a distribution if the securities have not been qualified by a prospectus in that jurisdiction by virtue of the definition of distribution even if the securities are freely tradeable in another jurisdiction in which they were distributed under a prospectus or a prospectus exemption.

**1.4 Open System Jurisdictions**

- (1) Sections 2.5 and 2.6 of MI 45-102, which provide that a trade of securities initially distributed under an exemption from the prospectus requirement is a distribution unless certain conditions are satisfied, and section 2.11 of MI 45-102, which provides an exemption from the prospectus requirement, do not apply to trades in the provinces of Manitoba, New Brunswick and Prince Edward Island and in the Yukon Territory as those jurisdictions do not impose resale restrictions on trades in securities distributed under an exemption from the prospectus requirement.
- (2) For example, if an issuer with its executive office in British Columbia distributes securities to a purchaser in Manitoba, the issuer must file a prospectus or rely upon a prospectus exemption under the securities legislation of Manitoba and British Columbia. If the issuer relies upon the British Columbia \$97,000 exemption, section 74(2)(4) of the *Securities Act* (British Columbia), subject to securities legislation, section 2.5 of MI 45-102 imposes a four or 12 month hold period on resale of the securities into each jurisdiction other than Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory. Alternatively, the issuer may rely in British Columbia upon an exemption from the prospectus requirement under section 2.4 of Multilateral Instrument 72-101 Distributions Outside of the Local Jurisdiction ("MI 72-101") for a distribution of securities to a purchaser in Manitoba, in which case section 2.6 of MI 72-101 would impose a four or 12 month restricted period on resales into each jurisdiction other than Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.

**1.5**

**Qualifying Issuer** - In order to be a qualifying issuer, among other conditions, an issuer must be a reporting issuer or a reporting issuer equivalent in one of the jurisdictions listed in Appendix B to MI 45-102. The reporting issuer jurisdictions are Alberta, British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan. The reporting issuer equivalent jurisdiction is Manitoba.

**1.6 Tacking of Hold Period and Restricted Period** - A purchaser of securities that were initially distributed under a prospectus exemption listed in Appendix D to MI 45-102 and consequently are subject to a hold period under section 2.5 of MI 45-102 may resell those securities during the hold period outside the local jurisdiction under section 2.4 of MI 72-101. Section 2.6 of MI 72-101 imposes a restricted period on the resale of the securities that commences on the later of the date the issuer became a reporting issuer or a reporting issuer equivalent and the distribution date. The distribution date is the date the securities that are the subject of the trade were initially distributed in reliance on an exemption from the prospectus requirement by the issuer, or by the seller in the case of a control distribution. The restricted period begins on the date the securities were initially distributed under a prospectus exemption listed in Appendix D to MI 45-102. In effect, MI 45-102 and MI 72-101 permit a "tacking" of the hold period under MI 45-102 and the restricted period under MI 72-101.

**1.7 Underlying Securities** - The hold period or seasoning period applicable to trades in underlying securities is calculated from the distribution date of the convertible security, exchangeable security or multiple convertible security.

**1.8 Pledges by Control Persons** - In addition to the provisions of MI 45-102, in particular section 2.8, the provisions of National Instrument 62-101 Control Block Distribution Issues may also apply to a trade of securities upon the exercise of a pledge or other security interest in securities acquired in a control distribution.

**1.9 Resales of Securities of a Non-Reporting Issuer**

- (1) For the purposes of section 2.11 of MI 45-102, in determining the percentage of the outstanding securities of the class or series that are directly or indirectly held of record by residents of Canada and the number of holders of record directly or indirectly in Canada
  - (a) include securities held of record by a broker, dealer, bank, trust company or nominee for any of them for the accounts of customers resident in Canada;
  - (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership; and
  - (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

(2) Lists of beneficial owners of securities maintained by intermediaries pursuant to SEC Rule 14a-13 under the 1934 Act or other securities law analogous to National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer may be useful in determining the percentages referred to in subsection (1).

**1.10 Filing of Form 45-102F1, Form 45-102F2 and Form 45-102F3**

(1) Paragraph 2.6(1)2. of MI 45-102 provides that the first trade of previously issued securities of a person or company that has ceased to be a private company or a private issuer is a distribution unless the conditions in subsections (2) or (3) are satisfied. The conditions include that the issuer has filed Form 45-102F1. In order for the seasoning period to expire and the securities to be freely tradeable in each jurisdiction in which Section 2.6 of MI 45-102 has been implemented, being Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan, Form 45-102F1 must be filed in each of those jurisdictions.

(2) Section 2.7 of MI 45-102 provides that the issuer, or the seller in the case of a control distribution, shall file Form 45-102F2 within ten days of the distribution date of a trade referred to in subsection 2.5(2) and of a trade referred to in subsection 2.6(2) of MI 45-102. Form 45-102F2 must be filed in each jurisdiction in which 2.7 of MI 45-102 has been implemented, being Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan.

(3) Section 2.8 of MI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in subsection (2) or (3) of section 2.8 are met. Subsection 2.9(4) provides that the seller of the securities must file Form 45-102F3 with each securities regulatory authority, other than the Commission des valeurs mobilières du Québec, and the exchange in Canada on which the securities that are the subject of the trade are listed.

**PART 2 AIF REQUIREMENTS**

**2.1 Filing of AIF** - Issuers that want to allow their securityholders to take advantage of a provision of MI 45-102 that requires an issuer to have a current AIF can file an AIF at any time. An issuer filing an AIF for the purposes of MI 45-102 should file the AIF or notice under "Continuous Disclosure - MI 45-102" selecting the appropriate filing subtype/document type (i.e. either an AIF, amended AIF or notice). A filer that elects to use an alternative form of AIF that

has previously been filed on SEDAR is not required to refile the document for the purposes of MI 45-102.

**2.2 Form of AIF** - Issuers do not need to be qualified to file a short form prospectus under NI 44-101 in order to file an AIF under MI 45-102, even though the AIF filed under MI 45-102 is to be prepared in accordance with the requirements of Form 44-101F1.

**2.3 Current AIF** - Paragraph (b) of the definition of "current AIF" provides that an AIF filed under section 3.1 of MI 45-102 is a current AIF if filed within the time periods for an AIF to be a current AIF under NI 44-101. This paragraph only refers to time periods.

**2.4 Most Recent Financial Year** - The reference in section 2.3 of this Companion Policy to the time periods required for a current AIF under NI 44-101 includes the provisions of the definition of "current AIF" dealing with AIFs filed during the period of 140 days after the issuer's most recently completed financial year. Accordingly issuers wishing to file an alternative form of annual information form permitted by section 3.2 of MI 45-102 before they have filed their audited financial statements for the most recently completed financial year may include the audited financial statements for the financial year preceding the most recently completed financial year. For example, an issuer with a December 31 financial year end could continue to use an alternative form of AIF containing or incorporating by reference audited annual financial statements for the year ended December 31, 1999 during the first 140 days of 2001, until such time as annual audited financial statements for the year ended December 31, 2000 have been prepared and filed in accordance with securities legislation.

**2.5 Loss of Eligibility** - If an issuer does not file an AIF within the time periods specified under NI 44-101, the issuer will no longer have a current AIF until it again files an AIF. If the issuer does not have a current AIF, securityholders of the issuer that acquire securities of the issuer will not be able to utilize the provisions of MI 45-102 that require that the issuer have a current AIF. However, securities that were distributed while the issuer had a current AIF and otherwise met the conditions in subsections 2.5(2) or 2.6(2) of MI 45-102 may be sold in accordance with those provisions.

**2.6 Review of AIF** - An issuer's AIF is subject to review in each jurisdiction, and, as a result of this review, changes may need to be made to the AIF. If an issuer is advised by any regulator that its AIF does not comply with the appropriate instrument, any of a wide range of compliance action may be taken by the securities regulatory authorities, from requiring the next AIF to be filed correctly, or a clarifying press release to be issued, to more serious actions such as issuing a cease trade order against the issuer's securities, or initiating appropriate enforcement proceedings against the issuer or its directors and officers.

**2.7 Review before Distribution** - If the AIF is reviewed before a distribution of securities and an issuer is advised by any regulator that its AIF does not comply with the appropriate instrument, an issuer will not be a qualifying issuer until the issuer has made the necessary changes to the AIF. Securityholders that acquire securities under the distribution will not be able to take advantage of subsections 2.5(2), 2.6(2) and 2.8(2) of MI 45-102.

**2.8 Review after Distribution** - If the AIF is reviewed after a distribution of securities, and an issuer is advised by any regulator that its AIF does not comply with the applicable instrument, securities that were distributed while the issuer was a qualifying issuer may be sold in accordance with subsections 2.5(2), 2.6(2) and 2.8(2) of MI 45-102 if the other conditions in those subsections are met.

### PART 3 FEES

**3.1 Fees** - An issuer filing an AIF under section 3.1 of MI 45-102 must pay the filing fees required by securities legislation, unless the AIF is in the form of a prospectus for which the regulator has issued a receipt, as permitted under subsection 3.2(1) of MI 45-102.

### 6.1.3 Multilateral Instrument 72-101 - Distributions Outside of the Local Jurisdiction

#### NOTICE OF PROPOSED MULTILATERAL INSTRUMENT 72-101, COMPANION POLICY 72-101CP AND FORM 72-101F1

#### Substance and Purpose of Proposed Multilateral Instrument, Form and Companion Policy

##### General

The substance and purpose of proposed Multilateral Instrument 72-101 Distributions Outside of the Local Jurisdiction (the "Multilateral Instrument") is to harmonize the exemptions from the prospectus requirement and the registration requirement under securities legislation in Canada for a distribution of securities to purchasers not in the local jurisdiction. The substance and purpose of proposed Companion Policy 72-101CP (the "Companion Policy") is to provide guidance to issuers and selling securityholders regarding the application of securities legislation to a distribution of securities to purchasers not in the local jurisdiction. Form 72-101F1 (the "Form") is a report of a distribution of securities to purchasers outside of the local jurisdiction.

The Multilateral Instrument, Form and Companion Policy are proposed to be implemented in all jurisdictions except Quebec. The proposed Multilateral Instrument and Form are expected to be adopted as a rule in each of British Columbia, Alberta, Ontario, Manitoba, Newfoundland and Nova Scotia, as a Commission regulation in Saskatchewan, as a policy in New Brunswick, Prince Edward Island and the Yukon Territory, and as a code in the Northwest Territories and Nunavut. It is expected that the Companion Policy will be implemented as a policy in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut (the "implementing jurisdictions").

##### Background

#### 1. Jurisdiction

The jurisdictional scope of securities legislation in respect of a distribution of securities is not expressly addressed in the *Securities Act* (Ontario) or the regulations. The limited jurisprudence in Canada on the issue of the jurisdiction of securities legislation does make clear that it extends to activities outside Ontario on the basis of their effects within Ontario. Justice LaForest stated as follows in *Libman v the Queen*, [1985] 2 S.C.R. 178, 207, a securities fraud action brought under the Criminal Code (Canada)

The jurisdictional scope of the Act, having as its principal purpose the protection of the public interest, similarly should be viewed as covering activities taking place outside Ontario on the basis of their consequence within Ontario.

In *Quebec (Sa Majesté du Chef) v Ontario Securities Commission*, [1992] 10 O.R. (3d) 577 (C.A.) McKinlay J.A. wrote at p. 595

...I am of the view that territorial jurisdiction of the OSC under s.124 does not depend solely upon the province or country in which relevant transactions may have taken place, but rather upon whether or not persons availing themselves of the benefits of trading in the Ontario capital markets act in a manner consistent with the provisions of the Act.

Consequently, whether or not a distribution of securities outside of Ontario also constitutes a distribution in Ontario depends on the effects or consequence in Ontario of the distribution.

#### 2. Interpretation Note

The Ontario Securities Commission stated its views on the application of the *Securities Act* (Ontario) to distributions of securities outside of Ontario in Interpretation Note (formerly Ontario Securities Commission Policy 1.5). It commented that a distribution outside Ontario by an Ontario or non-Ontario issuer, might also, depending on the connecting factors with Ontario, be a distribution in the province requiring a prospectus to be filed or an exemption to be relied upon. However, if reasonable steps are taken by the issuer, underwriter and other participants effecting such distribution to ensure that such securities come to rest outside Ontario, the Commission takes the view that a prospectus is not required under the Act, nor is an exemption from the prospectus requirement necessary.

The Interpretation Note stated the principle that, in determining whether a distribution outside of Ontario also constitutes a distribution in Ontario, an issuer or selling shareholder must consider the factors that connect the distribution with Ontario. The Interpretation Note listed factors such as class and nature of the securities being distributed, the attractiveness to Ontario investors of such securities, the likelihood that, absent restrictions, the securities would come to rest in Ontario, whether a market for the class of securities being distributed or any other securities of the issuer already exists in Ontario, the likelihood of the development in the future of a market in Ontario for the securities being distributed, the way in which the distribution is proposed to be effected, the relationship between the capital markets of Ontario and the jurisdiction in which the securities are being distributed and the ease of access of one to the other, whether or not the underwriters and other participants in the distribution are, or are affiliated with, investment dealers that conduct substantial activities in Ontario, and the presence of the issuer in Ontario (whether through the conduct of business in Ontario, a number of shareholders resident in Ontario, the issuer being closed followed by Ontario investors or otherwise).

Even if the connecting factors are sufficient such that the distribution might constitute a distribution in Ontario, a prospectus would not be required nor would an exemption from the prospectus requirement be necessary if reasonable steps are taken to ensure that the securities come to rest outside of Ontario. The restrictions or precautions varied with

the connecting factors with Ontario and the nature of the distribution and included restrictions in documents governing the distribution against market participants distributing the securities to Ontario residents and a covenant by the transfer agent not to register securities in the name of any Ontario resident for a period of time (e.g. ninety days) from the date of closing.

The Interpretation Note did not seek to establish bright line tests to determine when a distribution outside of Ontario also constitutes a distribution in Ontario but rather sought to provide guidance to assist issuers and selling securityholders in structuring transactions. The Interpretation Note is not securities legislation, does not grant exemptions from the registration requirement and prospectus requirement but, in effect, outlines safe harbours in which a distribution is not subject to Ontario securities laws. The principal drawback of the Interpretation Note is that both market participants and Commission staff have found it difficult to administer because of its uncertainty.

### 3. Developments in Other Jurisdictions

#### (a) BC NIN 97/48 and ASC Policy 45-601

British Columbia Securities Commission NIN 97/48 provides guidance regarding the application of local securities legislation when an issuer distributes securities to a person outside of the province. The underlying premise is that "a distribution of securities by an issuer with connections to British Columbia may, depending on the facts and circumstances surrounding the transaction, be subject to the *Securities Act* even if the initial purchaser is not located in British Columbia". In essence an issuer must be aware that a trade may occur in more than one jurisdiction and satisfy itself that it is in compliance with the applicable laws of each relevant jurisdiction.

The NIN identifies three factors which would generally indicate that the distribution is made from British Columbia. Issuers are cautioned that these factors are merely indicative of the factors that should be considered by an issuer when determining whether it is making a distribution from British Columbia. The NIN also outlines precautions to be taken by issuers "not located in British Columbia" but having a significant connection to the province or its capital markets to address flow-back concerns arising from indirect distributions back into the province. The Alberta Securities Commission has also issued similar interpretation guidelines in ASC Policy 45-601.

#### (b) SEC Regulation S

The U.S. Securities and Exchange Commission ("SEC") adopted Regulation S in 1990 to clarify the extraterritorial application of the registration requirements of the *Securities Act of 1933*. The regulation contains a general statement providing that the registration requirement does not apply to offers or sales of securities that occur outside the U.S. as well as two non-exclusive safe harbours. One safe harbour applies to offers and sales by issuers, distribution participants and affiliates and the other applies to resales by persons other than issuers, distribution participants and affiliates.

An offer or sale of securities that satisfies all the conditions of the applicable safe harbour is deemed outside the U.S. and is therefore not subject to the registration requirement. However, neither the safe harbour nor the general statement is available for a transaction that, although in technical compliance with the regulation, is part of a plan or scheme to evade the registration requirements of the *Securities Act of 1933*.

The safe harbours provide specific guidance to issuers and other market participants regarding the circumstances under which securities may be sold offshore without registration. The issuer safe harbour distinguishes between three categories of securities offerings on the basis of factors such as nationality and whether the issuer files periodic reports with the SEC under the *Securities Exchange Act of 1934*.

Generally, the restrictiveness of the conditions imposed on an issuer in each category depends on (i) the degree to which the U.S. markets are the issuer's primary trading market; (ii) the amount of information available in the U.S. regarding the issuer; and (iii) the likelihood that securities sold offshore by an issuer will flow back into the U.S.

Securities of an issuer with little or no connection to the U.S. markets are clearly less likely to flow back into the U.S. following an offshore offering and are therefore subject to the least restrictive requirements.

In 1998, the SEC adopted amendments to Regulation S designed to stop abusive practices relating to sales of equity securities by U.S. issuers that file periodic reports with the SEC under the *Securities Exchange Act of 1934*. The amendments classified the equity securities of U.S. issuers as restricted securities within the meaning of SEC Rule 144 and lengthened the applicable restricted period or distribution compliance period from 40 days to one year.

The purpose of the distribution compliance period is to ensure that the persons relying on the safe harbour are not engaged in an unregistered, non-exempt distribution into the U.S. capital markets and that the securities will come to rest offshore. All equity securities sold by U.S. issuers under Regulation S must carry a legend stating that the transfer of securities is prohibited other than in accordance with the *Securities Act* and that hedging transactions involving the securities may not be conducted except in compliance with the *Securities Act of 1933*.<sup>1</sup>

### 4. Achieving Harmonization and Clarity

The Multilateral Instrument harmonizes the approach of Canadian securities regulatory authorities to distributions outside of the local jurisdiction. It represents a new approach for Ontario in that it grants registration and prospectus exemptions for distributions outside of the province rather than setting out safe harbours in which a transaction would not be subject to those requirements. The Multilateral Instrument has been structured as a grant of exemptions rather than a safe harbour in order to provide greater certainty to issuers and selling securityholders in structuring transactions. It sets out

<sup>1</sup> See Muglia, R. and Tierney, A. SEC tightens Regulation S rules for U.S. issuers May 1998 International Financial Law Review 27

the circumstances in which a distribution of securities to purchasers outside of the local jurisdiction is exempt from the prospectus requirement of securities legislation in the local jurisdiction. However, it does not establish bright line tests for determining when a distribution outside of the local jurisdiction also constitutes a distribution in the local jurisdiction to which a prospectus requirement applies. Rather, the Companion Policy states that the Canadian securities regulatory authorities are of the view that the issue, or a sale that is a control distribution, of securities may be subject to the securities legislation of the local jurisdiction if one or more connecting factors to the local jurisdiction exist. Consequently, whether or not a distribution to purchasers outside of the local jurisdiction also constitutes a distribution in the local jurisdiction depends upon the facts and circumstances of the distribution.

Once an issuer or selling securityholder has determined that a trade outside of the jurisdiction constitutes a distribution under the securities legislation of one or more jurisdictions, the issuer or securityholder would evaluate whether the transaction can be structured in accordance with the registration and prospectus exemptions provided by the Multilateral Instrument.

The Multilateral Instrument sets out the terms of the exemptions from the registration requirement and the prospectus requirement, whether a restricted period applies, and the length of the restricted period (40 days, four months or 12 months). The four and 12 month restricted periods are harmonized with the hold periods applicable to privately placed securities under proposed Multilateral Instrument 45-102 Resale of Securities ("MI 45-102").

#### **Summary of the Proposed Multilateral Instrument, Form and Companion Policy**

##### ***Characterization as Distribution***

Part 2 of the Companion Policy provides guidance to assist issuers and control block sellers in determining whether a trade outside of the local jurisdiction would be a distribution under local securities legislation. Subsection 2.1(3) states that a distribution of securities of an issuer with a connection to a local jurisdiction may be subject to the prospectus requirement of securities legislation of the local jurisdiction even if none of the purchasers are in the local jurisdiction. If the distribution is subject to local securities legislation, either a prospectus will have to be filed in the local jurisdiction or a prospectus exemption relied upon.

Section 2.2 of the Companion Policy sets out the connecting factors to be considered when determining if a trade would be subject to the local securities legislation. The connecting factors include: (i) where the mind and management of the issuer are primarily located; (ii) whether a significant percentage of the outstanding securities of the class of securities being distributed are directly or indirectly held of record by residents of the local jurisdiction; (iii) the location of the principal register of the equity securities of the issuer; and (iv) where the operations of the issuer are principally conducted. Not all of the connecting factors are of equal weight. The Canadian securities regulatory authorities recognize that if the jurisdictional connection of the distribution to the local jurisdiction is merely incidental, the distribution

would not be subject to local securities legislation. The Manitoba Securities Commission does not agree that the percentage of the outstanding securities of the class being distributed that are held of record by residents of the local jurisdiction is a relevant connecting factor.

##### ***Exemptions from the Registration Requirement and Prospectus Requirement***

If the connecting factors are sufficient for a trade to constitute a distribution in the local jurisdiction, an issuer or selling securityholder would then evaluate whether the exemptions provided by the Multilateral Instrument would be available. The Multilateral Instrument provides an exemption from the registration requirement and prospectus requirement for a distribution outside of the local jurisdiction in two situations: (i) a distribution made under a public offering document; and (ii) a distribution made other than under a public offering document. The restrictions that must be taken to ensure the securities to come to rest outside of the jurisdiction differ depending upon whether the distribution outside the local jurisdiction is a public offering or a private placement. The objective of the restrictions is to ensure that the out of jurisdiction transaction is bona fide and is not a backdoor underwriting (a transaction that is really intended for investors in the local jurisdictions but has been structured to avoid the requirements of the local jurisdiction). If the offering is made under a public offering document and subject to substantive requirements in another jurisdiction then a backdoor underwriting is less likely. For this reason there are fewer restrictions and no restricted period applicable to a public offering. Further, secondary market purchasers in the local jurisdiction will have access to the public offering document.

A "public offering document" is defined as a prospectus filed and receipted in any jurisdiction in Canada, a U.K. prospectus or a U.S. prospectus. U.S. and U.K. public offering documents were included because of historical acceptance of these documents by Canadian securities regulatory authorities and the level of regulatory oversight in those foreign jurisdictions.

Part 1 contains the definitions of other terms and phrases used in the Multilateral Instrument that are not defined in or interpreted under a national definition instrument in force in an adopting jurisdiction. National Instrument 14-101 Definitions sets out definitions for commonly used terms and should be read together with the Multilateral Instrument.

The prospectus exemption in section 2.1 of the Multilateral Instrument is subject to the following conditions: (i) the distribution is made under a public offering document; (ii) all purchasers of the securities are outside of the local jurisdiction; (iii) any underwriting agreement prohibits the distributors from distributing the securities to any person or company in the local jurisdiction; and (iv) neither the issuer, the selling securityholder nor a distributor takes any actions to prepare the market or create a demand in the local jurisdiction for the securities being distributed. Part 4 of the Companion Policy provides guidance as to which activities would be considered preparing the market.

The prospectus exemption for distributions made under a public offering document is not available if another securities regulator is relying upon the prospectus review conducted by the securities regulator in the local jurisdiction. Section 2.2 of

the Multilateral Instrument states that the exemption from the prospectus requirement provided by section 2.1 is unavailable if the issuer of the securities uses the mutual reliance review system implemented by National Policy 43-201 Mutual Reliance Review System for Prospectuses and AIFs ("NP 43-201") and the principal regulator of the issuer under NP 43-201 is in the local jurisdiction. Section 2.3 states that the exemption from the prospectus requirement provided by section 2.1 is unavailable for a U.S. only distribution under the multijurisdictional disclosure system implemented by the SEC if the review jurisdiction of the issuer under section 4.2 of Companion Policy 72-101CP The Multijurisdictional Disclosure System is in the local jurisdiction.

Section 2.4 of the Multilateral Instrument provides a prospectus exemption for distributions outside of the local jurisdiction made other than under a public offering document if the following conditions are met: (i) all purchasers are outside of the local jurisdiction; (ii) any underwriting agreement prohibits the distributors from the distributing the securities to any person or company in the local jurisdiction; (iii) the underwriting agreement prohibits hedging transactions if equity securities are being distributed; (iv) neither the issuer, the selling securityholder nor a distributor takes any actions to prepare the market or create a demand in the local jurisdiction for the securities being distributed; (v) the securities are legended; and (vi) any offering document contains a statement describing the resale restrictions to which the securities are subject.

Paragraph 2.4(e) of the Multilateral Instrument imposes a condition that the certificate representing the securities carry a legend stating that, subject to securities legislation, the holder shall not trade the securities before the expiry of the restricted period.

Section 2.7 provides that an issuer, or the seller in the case of a control distribution, that relies on the exemption in Section 2.4 must file a report of a trade in Form 72-101F1 which is analogous to a Form 45-501F1.

#### ***Resale of Securities Distributed Other than Under a Public Offering Document***

Section 2.6 of the Multilateral Instrument provides that any trade of securities distributed under section 2.4 is a distribution unless: (i) the issuer of the securities is a reporting issuer or a reporting issuer equivalent; (ii) the restricted period has expired; (iii) the trade is not a control distribution; (iv) no unusual effort is made to prepare the market or create a demand for the securities that are the subject of the trade; and (v) if the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.

Section 2.7 provides that section 2.6 does not apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory. These jurisdictions do not impose resale restrictions on securities distributed under a prospectus exemption.

#### ***Restricted Period***

No restrictions are imposed on resale of securities distributed under section 2.1 of the Multilateral Instrument. The rationale for not imposing a restricted period is that given that the securities were distributed under a public offering document, there should be appropriate disclosure in the marketplace concerning the securities. Further, resale restrictions would not be workable as securities distributed under a public offering document are sold on the basis that resale is not restricted.

Resale of securities distributed under section 2.4 of the Multilateral Instrument would be restricted for: (i) 40 days if the securities are sold in the Eurobond Market; (ii) four months if the issuer is a qualifying issuer; and (iii) 12 months if the issuer is not a qualifying issuer. A qualifying issuer is any issuer that is a reporting issuer (or equivalent) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec or Nova Scotia, is an electronic filer under SEDAR, has filed a current AIF, and either has a class of equity securities listed or quoted on certain specified exchanges or markets or has outstanding securities that have received an approval rating.

#### ***Exemption from the Registration Requirement***

Section 3.1 of the Multilateral Instrument provides that the registration requirement does not apply to a distribution that is exempt from the prospectus requirement under section 2.1 or 2.4 of the Multilateral Instrument.

#### ***Interplay of Prospectus Exemptions***

Subsection 3.1(2) of the Companion Policy outlines that an issuer or a selling securityholder may concurrently rely in the local jurisdiction on section 2.4 of the Multilateral Instrument and in the jurisdiction or foreign jurisdiction in which there are purchasers of the securities being distributed, on a prospectus or registration exemption under securities legislation of that jurisdiction or foreign jurisdiction.

Subsection 3.1(3) of the Companion Policy clarifies that an issuer or selling securityholder may make a concurrent private placement in the local jurisdiction and a distribution outside of the local jurisdiction under section 2.4 of the Multilateral Instrument.

Subsection 3.1(7) clarifies that nothing in the Multilateral Instrument is intended to restrict the ability of a purchaser to resell securities during the restricted period in reliance upon a prospectus or an exemption from the prospectus requirement.

Subsection 3.1(8) cites an example of the application of resale restrictions and clarifies that the Multilateral Instrument does not impose any restrictions on resales in the United States or to another foreign jurisdiction.

Subsection 3.1(10) explains that "tacking" of a hold period under MI 45-102 and a restricted period under MI 72-101 is permitted.

### ***Discretionary Authority***

Part 5 of the Companion Policy states that the Multilateral Instrument does not alter the discretionary authority of a security regulatory authority to halt a distribution, remove an exemption or cease trade securities if it determines that it is necessary to do so to preserve the integrity of the capital market of the local jurisdiction.

### ***Summary of Form 72-101F1***

Form 72-101F1 Report of a trade under section 2.4 of Multilateral Instrument 72-101 Distributions Outside of the Local Jurisdiction provides notice to the market of a distribution outside of the local jurisdiction under section 2.4 of the Multilateral Instrument.

### **Authority for the Multilateral Instrument - Ontario**

In those jurisdictions in which the Multilateral Instrument and Form are to be adopted or made as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Multilateral Instrument and Form.

In Ontario, the following provisions of the Securities Act (Ontario) (the "Act") provide the Ontario Securities Commission (the "Ontario Commission") with authority to adopt the Multilateral Instrument.

Paragraph 143(1)8 authorizes the Ontario Commission to make rules providing for exemptions from the registration requirements under the Act and for the removal of exemptions from those requirements.

Paragraph 143(1)18 authorizes the Ontario Commission to make rules designating activities, including the use of documents or advertising in which registrants or issuers are permitted to engage or prohibited from engaging in connection with distributions.

Paragraph 143(1)20 authorizes the Ontario Commission to make rules providing for exemptions from the prospectus requirements under the Act and for the removal of exemptions from those requirements.

Paragraph 143(1)22 authorizes the Ontario Commission to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of an annual information form.

Paragraph 143(1)48 authorizes the Ontario Commission to specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

### **Alternatives Considered**

The implementing jurisdictions considered maintaining the current system regulating distributions outside of the local jurisdiction. However, in light of the problems encountered by stakeholders in dealing with uncertainty as to the application

of securities legislation and with the differing requirements across Canada, they have determined it was advisable to develop a more certain and harmonized approach to distributions outside of the local jurisdiction.

### **Related Instruments**

The Multilateral Instrument, Form, and Companion Policy are related to each other.

The Canadian Securities Administrators (the "CSA"), other than the Commission des valeurs mobilières du Québec, will be publishing MI 45-102 at the same time as the Multilateral Instrument, Form and Companion Policy. MI 45-102 imposes resale restrictions on securities initially distributed under an exemption from the prospectus requirement. In addition, the CSA intends to publish shortly for further comment proposed National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer ("NI 54-101"). To the extent that NI 54-101 bears on the determination of the number of securities and of holders that are directly or indirectly held of record in a local jurisdiction, it is related to the Companion Policy.

### **Unpublished Materials**

In proposing the Multilateral Instrument, Form and Companion Policy, the implementing jurisdictions have not relied on any significant unpublished study, report, decision or other written materials.

### **Anticipated Costs and Benefits**

The principal benefit of the Multilateral Instrument and Form will be to more effectively harmonize the approach of securities regulatory authorities in the implementing jurisdictions and provide for more regulatory certainty. In addition, because the restricted period commences once an issuer becomes a reporting issuer in one of the specified jurisdictions, most security holders will be subject to the same restrictions on resale, regardless of the reporting issuer status in the local jurisdiction.

The costs associated with the Multilateral Instrument and Form are the costs associated with filing AIFs and continuous disclosure materials in a jurisdiction. Issuers may also incur greater costs in the preparation of current AIFs.

In the view of the implementing jurisdictions, the benefits outweigh the costs.

### **Specific Requests for Comment**

In addition to welcoming submissions on any provision in the Multilateral Instrument, Form and Companion Policy, the implementing jurisdictions seek comment on the specific matters referred to below.

#### **1. Connecting Factors**

Subsection 2.2(1) of the Companion Policy provides that a distribution of securities to purchasers outside of the local jurisdiction may constitute a distribution in the local jurisdiction if one or more connecting factors to the local jurisdiction exist. Comment is sought as to whether the connecting factors



enumerated in subsection 2.2(1) are the most relevant factors for determining whether a distribution in the local jurisdiction exists. Should "a substantial market for the securities being distributed exists in the local jurisdiction" be added as a connecting factor?

2. Public Offering Document

The CSA requests comments on the definition of public offering document in the Multilateral Instrument including whether prospectuses filed in any other foreign jurisdictions should be included in the definition.

3. Requirement that the Certificate Representing the Securities Distributed Under Section 2.4 be Legended

Part 2 of the Multilateral Instrument provides that if the securities are distributed in reliance on the exemption for distributions other than under a public offering document, the certificate representing the securities must carry a legend stating that, subject to securities legislation, the holder of the securities shall not trade the securities before the expiry of the appropriate restricted period. In many jurisdictions, there is currently no requirement to legend certificates for private placements either in or outside the jurisdiction. Under the System for Shorter Hold Periods for Issuers Filing an AIF (the "SHAIF System") implemented in British Columbia and Alberta in 1998, certificates must bear a legend stating that the securities may not be traded during the hold period and legended certificates are proposed to be required under MI 45-102.

The implementing jurisdictions believe that, while the legending requirement may represent a change in current commercial practice in some jurisdictions, it will ensure better regulation of the exempt market.

Comment is sought as to whether the legending requirement is workable. Should the Multilateral Instrument specify that issuers of securities in uncertificated form could satisfy the legending requirements by any means reasonably designed to notify holders and subsequent purchasers of the applicable resale restrictions, such as notices of the restriction to investors on confirmations, use of global securities held in a depository and restrictions on trading through the use of restricted CUSIP numbers?

4. Provision for 40 Day and Four-Month Restricted Periods

The Multilateral Instrument provides for a 40 day restricted period for securities distributed in the Eurobond Market. The 40 day period has been structured to correspond to the 40 day distribution compliance period for Category 2 issuers under Regulation S. The Multilateral Instrument also provides a four-month restricted period for investment grade securities (i.e., debt, asset-backed securities, preferred shares) distributed under an exemption from the prospectus requirement. This is broader than the application of the four month hold period under the SHAIF System and moves away from the "legal for life" criteria for private placement hold periods in some jurisdictions.

## Comments

Interested parties are invited to make written submissions with respect to the Multilateral Instrument, Form and Companion Policy. Submissions received by December 8, 2000 will be considered.

Submissions should be sent to the securities regulatory authorities listed below in care of the Saskatchewan Securities Commission, in duplicate, as indicated below:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Securities Commission  
The Manitoba Securities Commission  
Nova Scotia Securities Commission  
Ontario Securities Commission  
c/o Dean Murrison, Committee Chair  
Saskatchewan Securities Commission  
800, 1920 Broad Street  
Regina, Saskatchewan S4P 3V7  
Telephone: (306) 787-5879  
E-mail: dmurrison@ssc.gov.sk.ca

A diskette containing the submission (in DOS or Windows format, preferably WordPerfect) should also be submitted to the Chair of the Committee.

Comment letters submitted in response to requests for comments are placed in the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated among the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed on the public file, freedom of information legislation in certain jurisdictions may require the securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to the Chair and/or any of the following members of the Committee.

Margaret Sheehy or Brenda Leong  
British Columbia Securities Commission  
865 Hornby Street, 2nd Floor  
Vancouver, British Columbia V6Z 2H4  
Telephone: (604) 899-6650/(604) 899-6642 or (800) 373-6393 (in B.C.)  
E-mail: msheehy@bcsc.bc.ca or bleong@bcsc.bc.ca

Marsha Manolescu  
Alberta Securities Commission  
20th Floor, 10025 Jasper Avenue  
Edmonton, Alberta T5J 3Z5  
Telephone: (780) 422-1914  
E-mail: marsha.manolescu@seccom.ab.ca

Chris Besko  
The Manitoba Securities Commission  
1130 - 405 Broadway  
Winnipeg, Manitoba R3C 3L6  
Telephone: (204) 945-2561  
E-mail: cbesko@cca.gov.mb.ca

Randee Pavalow, Iva Vranic or Jean-Paul Bureaud  
Ontario Securities Commission  
Suite 800, Box 55  
20 Queen Street West  
Toronto, Ontario M5H 3S8  
Telephone: (416) 593-8257/(416) 593-8115/(416) 593-8131  
E-mail: rpavalow@osc.gov.on.ca or ivranic@osc.gov.on.ca or jpbureaud@osc.gov.on.ca

Shirley Lee  
Nova Scotia Securities Commission  
1690 Hollis Street  
P.O. Box 458  
Halifax, Nova Scotia B3J 3J9  
Telephone: (902) 424-5441  
E-mail: leespl@gov.ns.ca

**MULTILATERAL INSTRUMENT 72-101  
DISTRIBUTIONS OUTSIDE OF THE LOCAL  
JURISDICTION**

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**Multilateral Instrument, Form and Companion Policy**

The text of the Multilateral Instrument, Form and Companion Policy follow, together with footnotes that are not part of the Multilateral Instrument, Form or Policy, but have been included to provide background and explanation.

Dated: September 8, 2000

**MULTILATERAL INSTRUMENT 72-101  
DISTRIBUTIONS OUTSIDE OF THE LOCAL  
JURISDICTION**

**PART 1 DEFINITIONS <sup>1</sup>****1.1 Definitions**

"AIF" means

- (a) an annual information form of an issuer prepared in accordance with Form 44-101F1, whether or not the issuer is permitted under NI 44-101 to file a short form prospectus, or
- (b) an alternative form of annual information form permitted under section 3.2 of MI 45-102;

"approved rating"<sup>2</sup> means, for a security, a rating at or above one of the following rating categories issued by an approved rating organization for the security or a rating category that replaces a category listed below:

Approved Rating Organization	Long Term Debt	Short Term Debt	Preferred Shares
CBRS Inc.	B++	A-2	P-3
Dominion Bond Rating Service Limited	BBB	R-2	Pfd-3
Duff & Phelps Credit Rating Co.	BBB-	D-3	BBB-
Fitch IBCA, Inc.	BBB	F3	BBB
Moody's Investors Service, Inc.	Baa	Prime-3	baa
Standard & Poor's Corporation	BBB	A-3	BBB
Thomson BankWatch, Inc.	BBB	TBW-3	BBB;

<sup>1</sup> A national instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of terms used in more than one national instrument or multilateral instrument. National Instrument 14-101 also provides that a term used in a national instrument or multilateral instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning given to it in the statute relating to securities of that jurisdiction. National Instrument 14-101 also provides that a provision in a national instrument or multilateral instrument that specifically refers by name to a jurisdiction, other than the local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the provision.

<sup>2</sup> National Instrument 14-101 Definitions may be amended to add the term "approved rating". If so amended, the "approved rating" definition would be deleted from this instrument.

"approved rating organization"<sup>3</sup> means each of CBRS Inc., Dominion Bond Rating Service Limited, Duff & Phelps Credit Rating Co., Fitch IBCA, Inc., Moody's Investors Service, Inc., Standard & Poor's Corporation, Thomson BankWatch, Inc., and any of their successors;

"commencement date" means the later of

- (a) the date the issuer
- (i) first became a reporting issuer or a reporting issuer equivalent in a jurisdiction<sup>4</sup> listed in Appendix A, if the issuer is an electronic filer under NI 13-101, or
- (ii) became a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101, and
- (b) the distribution date;

"Companion Policy 71-101CP The Multijurisdictional Disclosure System" means Companion Policy 71-101CP to National Instrument 71-101 The Multijurisdictional Disclosure System;

"control distribution" has the meaning ascribed to that term in MI 45-102 Resale of Securities;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of the same issuer;<sup>5</sup>

"CPC" means a capital pool company as defined in a CPC instrument and, in Manitoba, a keystone company;

"CPC information circular" means an information circular filed by an issuer and accepted under the

<sup>3</sup> National Instrument 14-101 Definitions may be amended to add the term "approved rating organization". If so amended, the "approved rating organization" definition would be deleted from this instrument.

<sup>4</sup> The term "jurisdiction" is defined in National Instrument 14-101 Definitions as meaning a province or territory of Canada except when used in the term foreign jurisdiction.

<sup>5</sup> National Instrument 14-101 Definitions may be amended to add the terms "convertible security", "exchangeable security", "multiple convertible security" and "underlying security". If so amended, these definitions would be deleted from this instrument.

CPC instrument in connection with a qualifying transaction;

"CPC instrument" means a rule or regulation of a jurisdiction, or a rule, regulation or policy of an exchange in Canada, that applies only to CPCs;

"current AIF" means

- (a) an AIF that is a current AIF filed under NI 44-101, or
- (b) an AIF filed under section 3.1 of NI 45-102, if the AIF has been filed within the time periods prescribed by NI 44-101 for a current AIF;

"distribution date" means the date the securities that are the subject of the trade were initially distributed in reliance on an exemption from the prospectus requirement by the issuer, or by the seller in the case of a control distribution;

"distributor", for a distribution, means the underwriter of the distribution, its affiliates and any other person or company that participates in the distribution under a contractual arrangement;

"Eurobond Market" means the market for trading of securities regulated by the International Securities Market Association;

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of another issuer;

"FSA" means the Financial Services Act, 1986 of the United Kingdom of Great Britain and Northern Ireland;

"MI 45-102" means Multilateral Instrument 45-102 Resale of Securities;

"MRRS" means the mutual reliance review system implemented by NP 43-201;

"multiple convertible security" means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

"NI 13-101" means National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);

"NI 43-101" means National Instrument 43-101 Standards of Disclosure for Mineral Products;

"NI 44-101" means National Instrument 44-101 Short Form Prospectus Distributions;

"NP 43-201" means National Policy 43-201 Mutual Reliance Review System for Prospectuses and AIFs;

"NPS 2-B" means the National Policy Statement entitled Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators;

"public offering document" means

- (a) a prospectus filed and received in any jurisdiction,
- (b) a U.K. prospectus, or
- (c) a U.S. prospectus;

"qualifying issuer" means an issuer

- (a) that is a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix A,
- (b) that is an electronic filer under NI 13-101,
- (c) that has a current AIF,
- (d) that either
  - (i) has a class of equity securities<sup>6</sup> listed or quoted on a qualifying market, meets the requirements to maintain that listing or quotation and is not designated inactive, suspended or the equivalent, or
  - (ii) has a class of securities outstanding that has received an approved rating,
- (e) if it is not qualified to file a short form prospectus under NI 44-101, and has oil and gas operations or exploration, development or production activities on a mineral property, has filed with its current AIF, as if the AIF were a prospectus, technical reports in accordance with, as applicable, NI 43-101 or the successor instrument to NPS 2-B, once in force, and until that time, a technical report or certificate on each material property prepared in accordance with NPS 2-B,
- (f) that, if it has received a notice in writing from any regulator that its AIF, including any technical reports, does

<sup>6</sup> The term "equity security" is defined in National Instrument 14-101 Definitions as having the meaning ascribed to that term in securities legislation.

not comply with the instrument prescribing the content of the AIF, has satisfied the regulator that its AIF is acceptable, and

- (g) that if it is a CPC, has filed a CPC information circular that has been accepted under a CPC instrument;

"qualifying market" means any of

- (a) The Toronto Stock Exchange,
- (b) Tier 1 or Tier 2 of the Canadian Venture Exchange,
- (c) The Montreal Exchange,
- (d) the American Stock Exchange,
- (e) the Nasdaq National Market System,
- (f) the Nasdaq Small Cap Market,
- (g) the New York Stock Exchange,
- (h) the London Stock Exchange Limited, and
- (i) any successor to any of the exchanges or markets referred to in paragraphs (a) through (h);

"reporting issuer equivalent" means an issuer that is subject to the continuous disclosure requirements of a jurisdiction listed in Appendix A under the heading "Reporting Issuer Equivalent";

"restricted period" means the period that begins on the commencement date and ends

- (a) 40 days after the commencement date if the securities are distributed in the Eurobond Market,
- (b) four months after the commencement date if the issuer of the securities is a qualifying issuer, and
- (c) 12 months after the commencement date if the issuer of the securities is not a qualifying issuer;

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security;

"U.K. prospectus" means

- (a) a prospectus prepared and filed in accordance with the FSA, or

- (b) listing particulars within the meaning of section 144(2A) of the FSA; and

"U.S. prospectus" means a prospectus included in a registration statement prepared in accordance with the requirements of the 1933 Act that has been filed with the SEC and become effective.

## **PART 2 PROSPECTUS EXEMPTION FOR DISTRIBUTIONS TO PURCHASERS OUTSIDE OF THE LOCAL JURISDICTION**

### **2.1 Distribution Under Public Offering Document - The prospectus requirement does not apply to a distribution if**

- (a) a public offering document is filed in a jurisdiction, the United States of America or the United Kingdom in connection with the distribution;
- (b) the purchasers of the securities being distributed are outside of the local jurisdiction;
- (c) for securities being distributed by an underwriter, the agreement between the issuer, selling securityholder, if any, and the underwriter prohibits the distributors from distributing the securities to any person or company in the local jurisdiction; and
- (d) neither the issuer, the selling securityholder, if any, nor a distributor, takes any actions, for the purpose of, or that could reasonably be expected to have the effect of, preparing the market in the local jurisdiction, or creating a demand in the local jurisdiction, for the securities being distributed.

### **2.2 Distribution Using MRRS - Despite section 2.1, the exemption from the prospectus requirement provided by section 2.1 is unavailable in a local jurisdiction for a distribution of securities outside of the local jurisdiction if the issuer of the securities uses MRRS and the principal regulator of the issuer under NP 43-201 is in the local jurisdiction.**

### **2.3 Distribution Under U.S. MJDS - Despite section 2.1, the exemption from the prospectus requirement provided by section 2.1 is unavailable in a local jurisdiction for a distribution of securities in the United States of America under the multijurisdictional disclosure system implemented by the SEC if the review jurisdiction of the issuer of the securities under section 4.2 of Companion Policy 71-101CP The Multijurisdictional Disclosure System is in the local jurisdiction.**

**2.4 Distribution Other than Under Public Offering Document** - The prospectus requirement does not apply to a distribution if

- (a) the purchasers of the securities being distributed are outside of the local jurisdiction;
- (b) for securities being distributed by an underwriter, the agreement between the issuer, the selling securityholder, if any, and the underwriter prohibits a distributor from distributing the securities to any person or company in the local jurisdiction;
- (c) for equity securities that are being distributed by an underwriter, the agreement between the issuer, the selling securityholder, if any, and the underwriter prohibits a distributor from engaging in hedging transactions for equity securities of the issuer until any resale restrictions to which the securities being distributed are subject no longer apply;
- (d) neither the issuer, the selling securityholder, if any, nor a distributor, takes any actions for the purpose of, or that could reasonably be expected to have the effect of, preparing the market in the local jurisdiction, or creating a demand in the local jurisdiction, for the securities being distributed;
- (e) the certificate representing the securities carries a legend stating that, subject to securities legislation, the holder of the securities shall not trade the securities before the expiration of the restricted period; and
- (f) any document concerning the distribution provided to the purchaser contains a clear and prominent statement as to the resale restrictions to which the securities are subject.

**2.5 Filing Report of Trade** - An issuer, or the seller in the case of a control distribution, that relies on the exemption in section 2.4 shall, on or before the tenth day after the distribution date, file a report of trade prepared and executed in accordance with Form 72-101F1.

**2.6 Resale of Securities Distributed Other than Under Public Offering Document** - Any trade of securities distributed under section 2.4 is a distribution unless

- (a) the issuer of the securities is
  - (i) a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix A, if the issuer

is an electronic filer under NI 13-101, or

- (ii) a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101;

- (b) the restricted period has expired;
- (c) the trade is not a control distribution;
- (d) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
- (e) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
- (f) if the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.

**2.7 Application** - Section 2.6 does not apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.

**2.8 Determining Time Periods**

- (1) In determining the period of time that the issuer has been a reporting issuer or a reporting issuer equivalent for the purposes of section 2.6, in the case of securities distributed under the exemptions from the prospectus requirement listed in Appendix F to MI 45-102, add the period of time that one of the amalgamating, merged or continuing corporations was a reporting issuer or a reporting issuer equivalent to the period of time that the issuer has been a reporting issuer or a reporting issuer equivalent.
- (2) In determining the period during which the seller has held a security for the purposes of section 2.6,
  - (a) if the security was acquired by the seller from an affiliate of the seller, the period of time that the security had been held by the affiliate before the transfer to the seller shall be included; and
  - (b) if the security is an underlying security, the period of time shall run from the date that the convertible security, exchangeable security or multiple convertible security was first acquired.

**PART 3 EXEMPTION FROM THE REGISTRATION REQUIREMENT**

**3.1 Exemption from the Registration Requirement -**  
The registration requirement does not apply to a distribution that is exempt from the prospectus requirement under section 2.1 or 2.4.

**PART 4 EXEMPTION**

**4.1 Exemption**

- (1) The regulator or the securities regulatory authority may grant an exemption from this Multilateral Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

**PART 5 EFFECTIVE DATE**

**5.1 Effective Date -** This Multilateral Instrument comes into force on \_\_\_\_\_, 2000.

**APPENDIX A  
TO  
MULTILATERAL INSTRUMENT 72-101  
DISTRIBUTIONS OUTSIDE OF THE LOCAL  
JURISDICTION**

<u>REPORTING ISSUER</u>	<u>REPORTING ISSUER EQUIVALENT</u>
Alberta	Manitoba
British Columbia	
Nova Scotia	
Ontario	
Quebec	
Saskatchewan	

FORM 72-101F1

Report of a trade under section 2.4 of Multilateral Instrument 72-101  
Distributions Outside of the Local Jurisdiction

Note: This report is not required where a bank listed in Schedule I or II to the *Bank Act (Canada)* or a loan corporation or trust corporation registered under the *Loan and Trust Corporation Act* acquires from a customer an evidence of indebtedness of the customer or an equity investment in the customer acquired concurrently with an evidence of indebtedness.

1. Full name, address and telephone number of the Issuer/Selling Securityholder.
2. Describe the type of security, the aggregate number or amount distributed and the aggregate purchase price.
3. State whether or not the issuer of the security distributed is a qualifying issuer as defined in Multilateral Instrument 72-101.
4. Date of distribution(s).
5. State the name and address of each purchaser, the number or amount of securities purchased and the purchase price paid by each purchaser. Attach list if necessary.
6. State the name and address of any person acting as agent in connection with the distribution(s) of the securities and the compensation paid or to be paid to the agent and the name(s) of the purchaser(s) in respect of which the compensation was paid or is to be paid.
7. After exercising reasonable diligence in its enquiries, the issuer/selling securityholder believes that the issuer/selling securityholder is eligible to use section 2.4 of Multilateral Instrument 72-101.

Certificate of Issuer/Selling Securityholder

The undersigned hereby certifies that the statements made in this report are true.

DATED: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Name of Issuer/Selling Securityholder)

\_\_\_\_\_  
(Signature of Authorized Signatory)

\_\_\_\_\_  
(Name and Office of Authorized Signatory)

**Instruction:**

1. In answer to question 6 compensation includes commissions, discounts or other fees or payments of a similar nature directly related to the distribution of the securities. It is not necessary to include payments for services incidental to the distribution such as clerical, printing, legal or accounting services.



**COMPANION POLICY 72-101CP  
TO MULTILATERAL INSTRUMENT 72-101  
DISTRIBUTIONS OUTSIDE OF THE LOCAL  
JURISDICTION**

**2.2 Connecting Factors**

**PART 1 APPLICATION AND PURPOSE**

- 1.1 **Application** - Multilateral Instrument 72-101 Distributions Outside of the Local Jurisdiction ("MI 72-101") has been implemented in all jurisdictions except Quebec.
- 1.2 **Purpose** - This Policy is intended to provide guidance to issuers and selling securityholders regarding the application of
- (a) securities legislation to a distribution of securities to a person or company not in the local jurisdiction; and
  - (b) MI 72-101.

**PART 2 CHARACTERIZATION AS DISTRIBUTION**

**2.1 General Principles**

- (1) Securities legislation requires a person or company that distributes securities in the local jurisdiction to file a prospectus in the local jurisdiction and obtain a receipt for the prospectus or rely on an exemption from the prospectus requirement.
- (2) The definition of "distribution" in securities legislation in effect in most jurisdictions includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution. A secondary market trade of securities into a jurisdiction may be a distribution if the securities have not been qualified by prospectus in that jurisdiction by virtue of the definition of distribution even if the securities are freely tradeable in another jurisdiction in which they were distributed under a prospectus or a prospectus exemption.
- (3) An issue, or a sale by a person or company that is a control distribution, of securities of an issuer with a connection to the local jurisdiction may, depending on all the facts and circumstances, constitute a distribution in the local jurisdiction for which a prospectus is required to be filed or a prospectus exemption relied upon even if none of the offerees or purchasers of the securities are in the local jurisdiction. The connecting factors that may result in an issue or sale of securities being subject to the securities legislation of the local jurisdiction are discussed in section 2.2.

- (1) The Canadian securities regulatory authorities are of the view that an issue, or a sale by a person or company that is a control distribution, of securities of an issuer to purchasers outside of the local jurisdiction may be subject to the securities legislation of the local jurisdiction if one or more connecting factors to the local jurisdiction exist, such as the following:
  - 1. The issuer's mind and management is primarily located in the local jurisdiction as evidenced by the head office of the issuer and by the residence of the directors and senior officers of the issuer.
  - 2. A significant percentage of the outstanding securities of the class of securities being distributed are directly or indirectly held of record by residents of the local jurisdiction.
  - 3. The principal register of the equity securities of the issuer is located in the local jurisdiction.
  - 4. The operations of the issuer are principally conducted in the local jurisdiction.
- (2) In determining the percentage of the outstanding securities of the class of securities being distributed that are directly or indirectly held of record by residents of the local jurisdiction
  - (a) include securities held of record by a broker, dealer, bank, trust company or nominee for any of them for the accounts of customers resident in the local jurisdiction;
  - (b) count securities beneficially owned by residents of the local jurisdiction
    - (i) reported on reports of beneficial ownership, and
    - (ii) included on a non-objecting beneficial owner list maintained by an intermediary for the purposes of National Instrument 54-101 Communications with Beneficial Owners of Securities of a Reporting Issuer; and
  - (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of

residence of the customer is unavailable.

**2.3 Distribution Using MRRS** - Section 2.2 of MI 72-101 provides that the exemption from the prospectus requirement provided by section 2.1 of MI 72-101 is unavailable in a local jurisdiction for a distribution of securities outside of the local jurisdiction if the issuer of the securities uses MRRS and the principal regulator of the issuer under NP 43-201 is in the local jurisdiction.

**2.4 Distribution Under U.S. MJDS** - Section 2.3 of MI 72-101 provides that the exemption from the prospectus requirement provided by section 2.1 of MI 72-101 is unavailable in a local jurisdiction for a distribution of securities in the United States of America under the multijurisdictional disclosure system implemented by the SEC if the review jurisdiction of the issuer of the securities under section 4.2 of Companion Policy 71-101CP The Multijurisdictional Disclosure System is in the local jurisdiction.

### **PART 3 EXEMPTIONS FROM THE SECURITIES LAW REQUIREMENTS**

#### **3.1 Exemptions from the Securities Law Requirements**

- (1) MI 72-101 provides an exemption from the registration requirement and the prospectus requirement to an issuer or a selling securityholder for a sale of securities that is considered to be a distribution in the local jurisdiction, if the purchasers of the securities are not in the local jurisdiction and the other conditions to the exemptions are satisfied.
- (2) In connection with a distribution of securities to purchasers outside of the local jurisdiction, an issuer or a selling securityholder may concurrently rely
  - (a) in the local jurisdiction on an exemption from the prospectus requirement provided for in section 2.4 of MI 72-101 if the purchasers of the securities being distributed are not in the local jurisdiction and the other conditions in section 2.4 of MI 72-101 are met; and
  - (b) in the other jurisdiction or foreign jurisdiction in which there are purchasers of the securities being distributed, on an exemption from the requirement to file a prospectus or a registration statement provided by the securities legislation of that jurisdiction or foreign jurisdiction.

- (3) In connection with a concurrent distribution in the local jurisdiction and a distribution outside of the local jurisdiction, an issuer or a selling securityholder may concurrently rely
  - (a) in the local jurisdiction on an exemption from the prospectus requirement for the distribution of securities to purchasers in the local jurisdiction; and
  - (b) in the local jurisdiction on an exemption provided for in section 2.1 or 2.4 of MI 72-101 for the distribution of securities outside of the local jurisdiction if the purchasers of the securities being distributed under MI 72-101 are not in the local jurisdiction and the other conditions in section 2.1 or 2.4 of MI 72-101 are met.
- (4) Section 2.6 of MI 72-101 provides that any trade of securities distributed under section 2.4 of MI 72-101 is a distribution unless the restricted period has expired and the other conditions in section 2.6 are met.
- (5) The length of the restricted period is
  - (a) 40 days if the securities are distributed in the Eurobond Market,
  - (b) four months if the issuer of the securities is a qualifying issuer, and
  - (c) 12 months if the issuer is not a qualifying issuer.
- (6) In order to be a qualifying issuer, among other conditions, an issuer must be a reporting issuer or a reporting issuer equivalent in one of the jurisdictions listed in Appendix A to MI 72-101. The reporting issuer jurisdictions are Alberta, British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan. The reporting issuer equivalent jurisdiction is Manitoba. In effect, the restricted period is indefinite if the issuer is not a reporting issuer or a reporting issuer equivalent in any jurisdiction as the restricted period commences on the later of the date the issuer became a reporting issuer or a reporting issuer equivalent and the distribution date as set out in the definition of "commencement date".
- (7) Nothing in MI 72-101 is intended to restrict the ability of a purchaser to resell securities during the restricted period in reliance upon a prospectus or an exemption from the prospectus requirement.
- (8) For example, if an issuer with its head office in Ontario distributes securities under section 2.4 of MI 72-101 to purchasers in the United States, section 2.6 of MI 72-101 imposes a

four or 12 month restricted period on resale of the securities into each implementing jurisdiction other than Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory. Resale into those named jurisdictions is not precluded as section 2.7 of MI 72-101 provides that section 2.6 does not apply in those jurisdictions. Securities legislation in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory does not impose resale restrictions on trades of securities distributed under an exemption from the prospectus requirement. MI 72-101 does not impose any restrictions on resales in the United States or to another foreign jurisdiction.

- (9) It is a condition to the exemption in section 2.4 of the Multilateral Instrument that the certificate representing the securities carries a legend as to resale restrictions and that any document concerning the distribution provided to a purchaser contain a clear and prominent statement as to the resale restrictions. The securities legislation of the jurisdiction of the purchaser to whom the securities are distributed that provides the exemption described in paragraph (2)(b) may impose resale restrictions on the securities distributed in addition to those imposed by section 2.6 of MI 72-101.
- (10) A purchaser of securities that were initially distributed under a prospectus exemption listed in Appendix D to MI 45-102 and consequently are subject to a hold period under section 2.5 of MI 45-102 may resell those securities during the hold period outside the local jurisdiction under section 2.4 of MI 72-101. Section 2.6 of MI 72-101 imposes a restricted period on the resale of the securities that commences on the later of the date the issuer became a reporting issuer or a reporting issuer equivalent and the distribution date. The distribution date is the date the securities that are the subject of the trade were initially distributed in reliance on an exemption from the prospectus requirement by the issuer, or by the seller in the case of a control distribution. The restricted period begins on the date the securities were initially distributed under a prospectus exemption listed in Appendix D to MI 45-102. In effect, MI 45-102 and MI 72-101 permit a "tacking" of the hold period under MI 45-102 and the restricted period under MI 72-101.

#### **PART 4 PREPARING THE MARKET OR CREATING A DEMAND FOR THE SECURITIES**

- 4.1 **Actions** - The following actions are not considered to be actions of the type referred to in paragraph (d) of section 2.1 and of section 2.4 of MI 72-101:

1. Publishing information required to be published by applicable law, or under rules or regulations of a Canadian or foreign regulatory or self-regulatory authority, if the publication contains no more information than legally required and includes a statement setting out the jurisdictions in which the securities have been qualified for distribution and stating that the securities may not be distributed in any jurisdiction absent compliance with the prospectus requirement or an exemption from the prospectus requirement.
2. Publishing information in any publication, if
  - (a) the information contains a statement setting out the jurisdictions in which the securities have been qualified for distribution and stating that the securities may not be distributed in any jurisdiction absent compliance with the prospectus requirement or an exemption from the prospectus requirement, and
  - (b) the information that appears is limited to
    - (i) the issuer's name,
    - (ii) the amount and designation of the securities being sold,
    - (iii) a brief indication of the issuer's type of business,
    - (iv) the price of the securities,
    - (v) the yield of the securities, if the securities are debt securities with a fixed, non-contingent interest provision,
    - (vi) the name and address of the person or company placing the advertisement, and whether the person or company is participating in the distribution,
    - (vii) the names of any underwriters for the distribution,
    - (viii) the dates, if any, upon which the sales commenced and concluded,
    - (ix) if the securities are distributed or were distributed by rights issued to securityholders and, if so, the class of securities that are entitled or were entitled to subscribe, the subscription ratio, the record date, the dates, if any, upon which the rights were

issued and expired, and the subscription price, and

- (x) any legend required by law or any foreign or Canadian regulatory or self-regulatory authority.
3. Visits to real estate, plants or other facilities located in the local jurisdiction by, and any tours of the real estate, plants or other facilities conducted for, a prospective investor resident outside of the local jurisdiction by the issuer, an underwriter for the distribution, a distributor, any of their respective affiliates or a person or company acting on behalf of any of the issuer, underwriter or any of their respective affiliates.
  4. Distribution by a third party in the local jurisdiction of price quotations for the securities of the issuer through a system that disseminates price quotations if
    - (i) transactions for the purchase or sale of those securities cannot be executed between persons or companies in the local jurisdiction through the system, and
    - (ii) participants in the system do not initiate or accept contacts with persons or companies in the local jurisdiction.
  5. Providing any journalist in the local jurisdiction with access, to press conferences held outside of the local jurisdiction, to meetings with the issuer or selling securityholder or their representatives conducted outside the local jurisdiction, or to written press-related materials released outside the local jurisdiction, at or in which a present or proposed distribution of securities is discussed.

## PART 5 DISCRETIONARY AUTHORITY

- 5.1 **Public Interest Jurisdiction** - MI 72-101 does not alter the discretionary authority of Canadian securities regulatory authorities to halt a distribution, remove an exemption or cease trade securities. A securities regulatory authority may make orders in the public interest if it determines that it is necessary to do so in order to preserve the integrity of the capital market of the local jurisdiction.

## Chapter 7

# Insider Reporting

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This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see [www.carswell.com](http://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](http://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

<u>Trans. Date</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
14Aug00	Advanced Interface Technologies, Inc. - Convertible Series A Preferred Stock	US\$10,000	20,000
28Jul00	Arena Pharmaceuticals, Inc. - Shares of Common Stock	US\$23,400	1,300
28Jul00	Arena Pharmaceuticals, Inc. - Shares	US\$3,600	200
14Aug00	Autotote Corporation - 12½% Senior Subordinated Notes due 2010	\$4,454,400	\$3,000,000
18Aug00	Bonham & Co. Inc. American High Risk Fund - Units	500,000	35,285
18Aug00	Bonham & Co. Inc. Canadian Equity Fund - Units	500,000	48,923
18Aug00	Bonham & Co. Inc. Canadian Small Companies Fund - Units	500,000	48,402
31Jul00	C.I. Trident Fund - Units	150,000	893
Jul00	Connor Clark Private Trust -	US\$1,742,085	1,742,085
Jul00	Connor Clark Private Trust -	17,505,541	17,505,541
10Aug00	Crowflight Minerals Inc. - Units	320,000	1,000,000
10Aug00	Crowflight Minerals Inc. - Common Shares	41,600	130,000
18Jul00	Granada Media plc - Ordinary Shares	£128,750	25,000
23Aug00	Hope Bay Gold Corporation Inc. - Common Shares	963,090	2,439,000
03Aug00	MagiCorp Inc. - Special Warrants	421,383	67
21Aug00	Media Ventures Production Limited Partnership - Limited Partnership Units	16,518,318	16,098
03Aug00	Morgain Minerals Inc. - Units	600,000	2,000,000
03Aug00	Morgain Minerals Inc. - Units	650,000	1,000,000
21Aug00	My Music Factory, Inc. - Common Shares	150,000	2,142,857
21Aug00	N5R.com Inc. - Common Shares	750,000	1,250,000
15Aug00	Net3F Inc. - Units	150,000	428,572
07Jul00	Newbridge Asia III, L.P. - Limited Partnership Interest	52,286,500	1
18Aug00	OZ Optics Limited - Units	8,484,082	1,693,767
14Apr00	Rebel.com Inc. - Common Shares	4,126,650	412,665
16Aug00	Sentinel Hill Alliance Atlantis Equicap Millennium Limited Partnership - Units	11,041,558	11,041
22Aug00	Sextant Entertainment Group Inc. - Common Shares	.375,000	150,000

**Notice of Exempt Financings**

<u>Trans. Date</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
17Aug00	Supratek Pharma Inc. - Special Warrants	1,353,000	270,000
17Aug00	Tellamon Photonic Networks Inc. - Class B Preference Shares	10,213,290	2,335,000
21Aug00 to 25Aug00	Trimark Mutual Funds - Units (See Filing Document For Individual Fund Name)	1,779,629	195,348
16Aug00	Tullaree Resources Ltd. - Convertible Debenture	10,000,000	10,000,000
29Jun00	Unirom Technologies Inc. - Shares Purchase Warrants	65,000	1,300,000
17Aug00	Viracocha Energy Inc. - Special Warrants	2,300,000	1,150,000
24Aug00	VISTA Midstream Solutions Ltd. - Class A Common Shares	8,894,100	8,894,100
30Mar00	VMI Medical Inc. - Shares	187,562	15,000
15Aug00	WAMCO Resources Limited - Units	500,000	500,000
15Aug00	WAMCO Resources Limited - Units	150,000	500,000
15Aug00	WAMCO Resources Limited - Units	249,999	409,836
22Aug00	Xantrex Technologies Inc. - Common Shares	1,139,630	502,040

**Notice of Intention to Distribute Securities Pursuant to Subsection 7 of Section 72 - (Form 23)**

<u>Seller</u>	<u>Security</u>	<u>Amount</u>
Gastle, Susan M. S.	Microbix Biosystems Inc. - Common Shares	295,000
Malion, Andrew J.	Spectra Inc. - Common Shares	154,500
Faye, Michael R.	Spectra Inc. - Common Shares	154,500
Mourin, Barbara	Western Troy Capital Resources Inc. - Common Shares	40,000
Mourin, Stanley	Western Troy Capital Resources Inc. - Common Shares	60,000

**Chapter 9**  
**Legislation**

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THERE IS NO MATERIAL FOR THIS CHAPTER  
IN THIS ISSUE



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## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

Algonquin Power Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated August 31st, 2000  
Mutual Reliance Review System Receipt dated September 1st, 2000

**Offering Price and Description:**

\$27,450,000 - 3,000,000 Trust Units

**Underwriter(s), Agent(s) or Distributor(s):**

BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
Merrill Lynch Canada Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
CIBC World Markets Inc.  
Scotia Capital Inc.  
Trilon Securities Corporation

**Promoter(s):**

N/A

Project #295478

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**Issuer Name:**

Astral Media Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated August 28th, 2000  
Mutual Reliance Review System Receipt dated August 28, 2000

**Offering Price and Description:**

\$96,250,000 - 2,500,000 Class A Non-Voting Shares

**Underwriter(s), Agent(s) or Distributor(s):**

Scotia Capital Inc.  
CIBC World Markets Inc.  
Griffiths McBurney & Partners  
National Bank Financial Inc.  
Newcrest Capital Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
Yorkton Securities Inc.  
Trilon Securities Corporation

**Promoter(s):**

N/A

Project #293047

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**Issuer Name:**

Bema Gold Corporation  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated August 30th, 2000  
Mutual Reliance Review System Receipt dated August 31st, 2000

**Offering Price and Description:**

\*Common Shares - 3,571,429 Common Shares Issuable on Conversion of CDN \$2,000,000 Principal Amount Convertible Promissory Note

**Underwriter(s), Agent(s) or Distributor(s):**

Registered Dealer

**Promoter(s):**

N/A

Project #295162

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**Issuer Name:**

Canadian Financial Services NT Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 30th, 2000  
Mutual Reliance Review System Receipt dated August 31st, 2000

**Offering Price and Description:**

\$\* - Capital Shares and \$\* - Preferred Shares

**Underwriter(s), Agent(s) or Distributor(s):**

BMO Nesbitt Burns Inc.

**Promoter(s):**

BMO Nesbitt Burns Inc.

Project #295283

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**Issuer Name:**

Cogeco Cable Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated August 28th, 2000  
Mutual Reliance Review System Receipt dated August 28th, 2000

**Offering Price and Description:**

\$100,000,000 - 2,500,000 Subordinate Voting Shares

**Underwriter(s), Agent(s) or Distributor(s):**

BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
National Bank Financial Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
TD Securities Inc.

**Promoter(s):**

N/A

Project #292924

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**Issuer Name:**

Dynex Power Inc.

**Type and Date:**

Preliminary Prospectus dated August 28th, 2000

Received August 30th, 2000

**Offering Price and Description:**

1,833,334 Common Shares and 916,667 Common Share Purchase Warrants issuable upon the exercise of previously issued Special Warrants

**Underwriter(s), Agent(s) or Distributor(s):**

Gromme Capital.com Inc.

**Promoter(s):**

Michael LeGoff

Mark Scott

Gavin Garburtt

Project #294661

**Issuer Name:**

Eiger Technology, Inc.

Principal Jurisdiction - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated August 29th, 2000

Mutual Reliance Review System Receipt dated August 30th, 2000

**Offering Price and Description:**

\$22,000,000 - 4,840,000 Common Shares

**Underwriter(s), Agent(s) or Distributor(s):**

Dundee Securities Corporation

Canaccord Capital Corporation

BMO Nesbitt Burns Inc.

**Promoter(s):**

N/A

Project #294259

**Issuer Name:**

Ford Credit Canada Limited

Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Shelf Prospectus dated August 31st, 2000

Mutual Reliance Review System Receipt dated September 1st, 2000

**Offering Price and Description:**

Debt Securities (Unsecured)

**Underwriter(s), Agent(s) or Distributor(s):**

Registered Dealer

**Promoter(s):**

N/A

Project #295621

**Issuer Name:**

Gaz Métropolitain, inc.

Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated August 24th, 2000

Mutual Reliance Review System Receipt dated August 24th, 2000

**Offering Price and Description:**

\$250,000,000 - Series I First Mortgage Bonds guaranteed by Gaz Métropolitain and Company, Limited Partnership

**Underwriter(s), Agent(s) or Distributor(s):**

Registered Dealer

**Promoter(s):**

N/A

Project #292228

**Issuer Name:**

General Motors Acceptance Corporation of Canada, Limited

Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Shelf Prospectus dated August 25<sup>th</sup>, 2000

Mutual Reliance Review System Receipt dated August 25<sup>th</sup>, 2000

**Offering Price and Description:**

Variable Denomination Adjustable Rate Demand Notes

**Underwriter(s), Agent(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

Project #292509

**Issuer Name:**

Grenville Gold Corporation

**Type and Date:**

Preliminary Prospectus dated August 30th, 2000

Received September 1st, 2000

**Offering Price and Description:**

\$350,000 - 311,111 Units (1,555,555 Shares)

**Underwriter(s), Agent(s) or Distributor(s):**

Goepel McDermid Inc.

**Promoter(s):**

Timothy John Beesley

Campbell James Laidlaw

Vern Edward Schwarz

Project #295528

**Issuer Name:**

Innova LifeSciences Corporation

**Type and Date:**

Preliminary Prospectus dated August 24th, 2000

Received August 25th, 2000

**Offering Price and Description:**

\$4,925,000 - 7,823,718 Common Shares (Upon the exercise of 7,823,718 previously issued Special Warrants)

**Underwriter(s), Agent(s) or Distributor(s):**

Registered Dealer

**Promoter(s):**

N/A

Project #292177

**Issuer Name:**

Mediagrif Interactive Technologies Inc.  
Principal Regulator - Quebec

**Type and Date:**

Amended Preliminary Prospectus dated August 25th, 2000  
Mutual Reliance Review System Receipt dated August 28th, 2000

**Offering Price and Description:**

\$\* - \* Common Shares

**Underwriter(s), Agent(s) or Distributor(s):**

RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.

**Promoter(s):**

N/A

Project #284560

**Issuer Name:**

North American Palladium Ltd.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 30th, 2000  
Mutual Reliance Review System Receipt dated August 31st, 2000

**Offering Price and Description:**

\$\* - \* Common Shares

**Underwriter(s), Agent(s) or Distributor(s):**

BMO Nesbitt Burns Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
National Bank Financial Inc.

**Promoter(s):**

N/A

Project #295014

**Issuer Name:**

Pro-AMS U.S. Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 23rd, 2000  
Mutual Reliance Review System Receipt dated August 25th, 2000

**Offering Price and Description:**

\$\* (Max) - \$25.00 per Unit

**Underwriter(s), Agent(s) or Distributor(s):**

RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
Merrill Lynch Canada Inc.  
CIBC World Markets Inc.  
National Bank Financial Inc.  
Canaccord Capital Corporation  
Goepel McDermid Inc.  
HSBC Securities (Canada) Inc.  
Yorkton Securities Inc.  
Trilon Securities Corporation

**Promoter(s):**

Mulvihill Capital Management Inc.

Project #292184

**Issuer Name:**

SNC - Lavalin Group Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated August 24th, 2000  
Mutual Reliance Review System Receipt dated August 25th, 2000

**Offering Price and Description:**

\$\* - \*% Debentures due 2010 (unsecured)

**Underwriter(s), Agent(s) or Distributor(s):**

RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.

**Promoter(s):**

N/A

Project #292435

**Issuer Name:**

Xplore Technologies Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 30th, 2000  
Mutual Reliance Review System Receipt dated August 30th, 2000

**Offering Price and Description:**

\$4,000,000 Aggregate Principal Amount of Series A 2000  
Convertible Unsecured Subordinated Debentures Issuable  
upon the Conversion of an Equal Principal Amount of Series  
A 2000 Convertible Unsecured Subordinated Notes

**Underwriter(s), Agent(s) or Distributor(s):**

Thomson Kernaghan & Co. Limited

**Promoter(s):**

N/A

Project #294841

**Issuer Name:**

Burgundy Partners' Fund  
Burgundy Partners' RSPFund  
Principal Regulator - Ontario

**Type and Date:**

Amended Simplified Prospectus and Annual Information Form  
dated August 8th, 2000 Amending and Restating the Simplified  
Prospectus and Annual Information Form dated June 19th, 2000

Mutual Reliance Review System Receipt dated 28th day of  
August, 2000

**Offering Price and Description:**

Mutual Fund Units - Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

N/A

**Promoter(s):**

Burgundy Asset Management Ltd.

Project #263004

**Issuer Name:**

Aderes Focused Canadian Fund  
Aderes Focused American Fund  
Aderes Diversified Canadian Fund  
Aderes Diversified American Fund  
Aderes Money Market Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated August 17th, 2000 to Simplified Prospectus and Annual Information Form dated January 12th, 2000

Mutual Reliance Review System Receipt dated 24th day of August, 2000

**Offering Price and Description:**

Mutual Fund Units - Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

Registered Dealer

**Promoter(s):**

Aderes Portfolio Management Limited  
Berkshire Securities Inc.  
Project #224940

**Issuer Name:**

Cundill Recovery Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #2 dated August 18th, 2000 to Simplified Prospectus and Annual Information Form dated October 19th, 1999

Mutual Reliance Review System Receipt dated 29th day of August, 2000

**Offering Price and Description:**

Mutual Fund Units - Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

Registered Dealer

**Promoter(s):**

Mackenzie Financial Corporation  
Project #192402

**Issuer Name:**

Navigator American Value Investment Fund  
Navigator Asia-Pacific Fund  
Navigator Canadian Focused Growth Portfolio  
Navigator Canadian Growth Fund  
Navigator Canadian Income Fund  
Navigator Canadian Technology Fund  
Navigator European Equity Fund  
Navigator Japan Fund  
Navigator Money Market Fund  
Navigator SAMI Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated August 9th, 2000 to Simplified Prospectus and Annual Information Form dated August 24th, 1999

Mutual Reliance Review System Receipt dated 5th day of September, 2000

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

Registered Dealer

**Promoter(s):**

Navigator Fund Company Ltd.  
Project #193660

**Issuer Name:**

NOVA Balanced Fund  
NOVA Bond Fund  
NOVA Canadian Equity Fund  
NOVA International Equity Fund  
NOVA Short Term Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated August 9th, 2000 to Simplified Prospectus and Annual Information Form dated June 15th, 1999

Mutual Reliance Review System Receipt dated 6th day of September, 2000

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

Nova Bancorp Mutual Fund Services Ltd.

**Promoter(s):**

Nova Bancorp Investment Management Ltd.  
Project #174454

**Issuer Name:**

Strategic Value World Balanced RSP Fund  
Strategic Value Europe RSP Fund  
O'Donnell World Equity RSP Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #3 dated August 9th, 2000 to Simplified Prospectus and Annual Information Form dated November 29th, 1999

Mutual Reliance Review System Receipt dated 29th day of August, 2000

**Offering Price and Description:**

Mutual Fund Units - Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

Brownstone Securities Inc.

**Promoter(s):**

SVC O'Donnell Funds Management Inc.  
Project #211352

**Issuer Name:**

Strategic Value Money Market Fund  
Strategic Value Government Bond Fund  
Strategic Value Income Fund  
Strategic Value Canadian Balanced Fund  
Strategic Value Global Balanced RSP Fund  
Strategic Value World Balanced Fund  
Strategic Value Commonwealth Fund Ltd.  
Strategic Value Canadian Equity Fund Ltd.  
Strategic Value Canadian Equity Value Fund  
Strategic Value Canadian Small Companies Fund  
Strategic Value American Equity Fund Ltd.  
Strategic Value International Fund Ltd.  
Strategic Value Europe Fund  
Strategic Value Asia and Emerging Markets Fund

O'Donnell Money Market Fund

O'Donnell High Income Fund

O'Donnell U.S. High Income Fund

O'Donnell Balanced Fund

O'Donnell Canadian Emerging Growth Fund

O'Donnell Canadian Large-Cap Fund

O'Donnell American Sector Growth Fund

O'Donnell World Equity Fund

O'Donnell Growth Fund

Principal Regulator - Ontario

**Type and Date:**

Amendment #3 dated August 9th, 2000 to Simplified Prospectus and Annual Information Form dated December 29th, 1999

Mutual Reliance Review System Receipt dated 28th day of August, 2000

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

**Promoter(s):**

Project #232107

**Issuer Name:**

Corriente Resources Inc.

Principal Regulator - British Columbia

**Type and Date:**

Final Prospectus dated August 1st, 2000

Mutual Reliance Review System Receipt dated 2nd day of August, 2000

**Offering Price and Description:**

**Underwriter(s), Agent(s) or Distributor(s):**

Haywood Securities Inc.

Loewen, Ondaatje, McCutcheon Limited

**Promoter(s):**

N/A

Project #274314

**Issuer Name:**

Immune Network Research Ltd.

Principal Regulator - British Columbia

**Type and Date:**

Final Prospectus dated August 10th, 2000

Mutual Reliance Review System Receipt dated 11th day of August, 2000

**Offering Price and Description:**

N/A

**Underwriter(s), Agent(s) or Distributor(s):**

Groome Capital.Com Inc.

**Promoter(s):**

N/A

Project #274645

**Issuer Name:**

TD Split Inc.

Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated August 31st, 2000

Mutual Reliance Review System Receipt dated 31st day of August, 2000

**Offering Price and Description:**

N/A

**Underwriter(s), Agent(s) or Distributor(s):**

TD Securities Inc.

Scotia Capital Inc.

**Promoter(s):**

TD Securities Inc.

Project #287548

**Issuer Name:**

NCE Petrofund

Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated August 22nd, 2000

Mutual Reliance Review System Receipt dated 23rd day of August, 2000

**Offering Price and Description:**

Up to \$45,000,000 - Up to 9,000,000 Trust Units

**Underwriter(s), Agent(s) or Distributor(s):**

Dundee Securities Corporation

National Bank Financial Inc.

Canaccord Capital Corporation

Goepel McDermid Inc.

Yorkton Securities Inc.

**Promoter(s):**

N/A

Project #285760

**Issuer Name:**

Manulife Financial Corporation  
The Manufacturers Life Insurance Company  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Shelf Prospectus dated September 1st, 2000  
Mutual Reliance Review System Receipt dated 5th, day of September, 2000

**Offering Price and Description:**

N/A

**Underwriter(s), Agent(s) or Distributor(s):**

Registered Dealer

**Promoter(s):**

N/A

Project #290701 & 290705

**Issuer Name:**

Keystone Premier Global Elite 100 Fund  
Keystone Premier RSP Global Elite 100 Fund  
Keystone Premier Euro Elite 100 Fund  
Keystone Premier RSP Euro Elite 100 Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated September 1st, 2000  
Mutual Reliance Review System Receipt dated 5th day of September, 2000

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

N/A

**Promoter(s):**

Mackenzie Financial Corporation

Project #284511

**Issuer Name:**

LLIM Canadian Bond Fund (LFC)  
LLIM Income Plus Fund (LFC)  
LLIM Balanced Strategic Growth Fund (LFC)  
LLIM Canadian Diversified Equity Fund (LFC)  
Templeton Canadian Equity Fund (LFC)  
Templeton International Equity Fund (LFC)  
Scudder US Growth and Income Fund (LFC)  
Scudder Canadian Equity Fund (LFC)  
Scudder Greater Europe Fund (LFC)  
Scudder Pacific Fund (LFC)  
Scudder Emerging Markets Fund (LFC)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated August 29th, 2000  
Mutual Reliance Review System Receipt dated 6th day of September, 2000

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

London Financial Centre Limited

**Promoter(s):**

Maxxum Fund Management Inc.

Project #284574

**Issuer Name:**

MD Balanced Fund  
MD Bond Fund  
MD Bond and Mortgage Fund  
MD Canadian Tax Managed Pool  
MD Dividend Fund  
MD Equity Fund  
MD Global Bond Fund  
MD Global Equity RSP Fund  
MD Growth Investments Limited  
MD Growth RSP Fund  
MD International Growth Fund  
MD International Growth RSP Fund  
MD Money Fund  
MD Select Fund  
MD US Large Cap Growth Fund (Formerly MD US Equity Fund)  
MD US Large Cap Growth RSP Fund (Formerly MD US Equity RSP Fund)  
MD US Large Cap Value Fund  
MD US Large Cap Value RSP Fund  
MD US Small Cap Growth Fund  
MD US Tax Managed Pool  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated August 9th, 2000  
Mutual Reliance Review System Receipt dated 24th, day of August, 2000

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

MD Management Limited

**Promoter(s):**

MD Private Trust Company

Project #264741

**Issuer Name:**

MAXXUM Money Market Fund  
MAXXUM Income Fund  
MAXXUM Canadian Balanced Fund  
MAXXUM Dividend Fund  
Janus American Equity Fund (Formerly MAXXUM American Equity Fund)  
MAXXUM Canadian Equity Growth Fund  
Janus Global Equity Fund (Formerly MAXXUM Global Equity Fund )  
MAXXUM Natural Resource Fund  
MAXXUM Precious Metals Fund  
Janus RSP American Equity Fund  
Janus RSP Global Equity Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated August 29th, 2000  
Mutual Reliance Review System Receipt dated 6th day of September, 2000

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

London Financial Centre Limited

**Promoter(s):**

Scudder Maxxum Co.

Project #284373

**Issuer Name:**

Scudder Global Fund  
Scudder US Growth and Income Fund  
Scudder Greater Europe Fund  
Scudder Pacific Fund  
Scudder Emerging Markets Fund  
Scudder Canadian Equity Fund  
Scudder Canadian Small Company Fund  
Scudder Canadian Bond Fund  
Scudder Canadian Short Term Bond Fund  
Scudder Canadian Money Market Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated August 29th, 2000  
Mutual Reliance Review System Receipt dated 6th, day of September, 2000

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

Scudder Maxxum Co.

**Promoter(s):**

Scudder Maxxum Co.

Project #284546

**Issuer Name:**

Scudder Global Fund  
Scudder US Growth and Income Fund  
Scudder Greater Europe Fund  
Scudder Pacific Fund  
Scudder Emerging Markets Fund  
Scudder Canadian Equity Fund  
Scudder Canadian Small Company Fund  
Scudder Canadian Bond Fund  
Scudder Canadian Short Term Bond Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated August 29th, 2000  
Mutual Reliance Review System Receipt dated 6th, day of September, 2000

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

Registered Dealers

**Promoter(s):**

Scudder Maxxum Co.

Project #284566

**Issuer Name:**

Universal RSP U.S. Blue Chip Fund  
Universal RSP U.S. Emerging Growth Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated September 1st, 2000  
Mutual Reliance Review System Receipt dated 6th day of September, 2000

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

**Underwriter(s), Agent(s) or Distributor(s):**

N/A

**Promoter(s):**

Mackenzie Financial Corporation

Project #284639



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## Chapter 12

# Registrations

### 12.1.1 Securities

Type	Company	Category of Registration	Effective Date
Change in Category	Retrocom Investment Management Inc. Attention: John Roger Keane 89 The Queensway West Suite 400 Mississauga, ON L5B 2V2	From: Investment Counsel and Portfolio Manager  To: Limited Market Dealer Investment Counsel & Portfolio Manager	Sept 5/00
Change of Name	University Asset Management Inc. Attention: Robert Gavin Boaz 40 University Avenue Main Floor Toronto, ON M5J 1T1	From: Goodreid Investment Counsel Inc.  To: University Asset Management Inc.	June 2/00
Change of Name	BMO Investorline Inc./BMO Ligne D'Action Inc. Attention: Bruce Stephen Schwenger One First Canadian Place 20 <sup>th</sup> Floor Toronto, ON M5X 1A1	From: Bank of Montreal Investor Services Limited  To: BMO Investorline Inc./BMO Ligne D'Action Inc.	Mar 31/00
Change of Name	UBS Bunting Warburg Inc. Attention: James Mackinnon Estey 161 Bay Street Suite 4100 BCE Place, P.O. Box 617 Toronto, ON M5J 2S1	From: Bunting Warburg Dillon Read Inc.  To: UBS Bunting Warburg Inc.	May 1/00

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Chapter 13  
**SRO Notices and Disciplinary Proceedings**

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