The Ontario Securities Commission

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Commodity Futures Act of Ontario (R.S.O. 1990, c.C.20)

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

November 3, 2000

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
Suite 1700, Box 55
20 Queen Street West
Toronto, Ontario
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John A. Geller, Q.C.	—	JAG
Robert W. Korthals	—	RWK
Mary Theresa McLeod	—	MTM
R. Stephen Paddon, Q.C	—	RSP

SCHEDULED OSC HEARINGS

Date	Hearing
Date to be announced	**Amalgamated Income Limited Partnership and 479660 B.C. Ltd.** s. 127 & 127.1 Ms. J. Superina in attendance for staff. Panel: TBA
Nov 6/2000 10:00 a.m.	**Mark Bonham, SVC O'Donnell Fund Management Inc. and Bonham & Co. Inc.** s. 127 Mr. T. Graburn in attendance for staff. Panel: TBA
Nov10/2000 10:00 a.m.	**Southwest Securities Inc.** ss. 127(1) and 127.1 Mr. T. Moseley in attendance for staff. Panel: TBA
Nov20/2000 10:00 a.m.	**Wayne S. Umetsu** s. 60, CFA Ms. K. Wootton in attendance for staff. Panel: TBA
Apr16/2001- Apr 30/2001 10:00 a.m.	**Philip Services Corp., Allen Fracassi, Philip Fracassi, Marvin Boughton, Graham Hoey, Colin Soule, Robert Waxman and John Woodcroft** s. 127 Ms. K. Manarin & Ms. K. Wootton in attendance for staff. Panel: TBA

May 7/2001 10:00 a.m.

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

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

Panel: HIW / DB / MPC

ADJOURNED SINE DIE

DJL Capital Corp. and Dennis John Little

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

Irvine James Dyck

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

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

S. B. McLaughlin

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

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

John Bernard Felderhof

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

Courtroom TBA, Provincial Offences Court

Old City Hall, Toronto

Nov 14/2000 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

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

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

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

Jan 29/2001 - Feb 2/2001
Apr 30/2001 - May 7/2001
9:00 a.m.

Einar Bellfield

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 CSA Notice 53-302 - Proposal for a Statutory Civil Remedy for Investors in the Secondary Market and Response to the Proposed Change to the Definitions of "Material Fact" and "Material Change"

Canadian Securities Administrators Notice 53-302
Report of the Canadian Securities Administrators

Proposal for a Statutory Civil Remedy for Investors in the Secondary Market and Response to the Proposed Change to the Definitions of "Material Fact" and "Material Change"

<u>EXECUTIVE SUMMARY</u>

(1) ***<u>Purpose</u>***

The Canadian Securities Administrators (the "CSA") have developed proposed amendments to securities legislation that would give investors in the secondary market the right to sue any public company and key related persons for making public misrepresentations about the company or for failing to make required timely disclosure. The amendments would provide a limit on the amount of money that can be claimed. The proposed amendments are being published for information purposes only. The CSA is not seeking further comment on the proposed amendments. Certain members of the CSA will recommend the amendments to their respective governments. **At this time, the respective governments of the CSA have made no decision to proceed with the amendments.**

(2) ***<u>Key Features of the Proposed Remedies</u>***

(a) ***Scope of remedy***

The proposed legislative remedy would provide secondary market investors with a limited right of action against an issuer of securities, its directors, responsible senior officers, "influential persons" (for example large shareholders with influence over the disclosure), auditors and other responsible experts. Secondary market investors would have the right to seek limited compensation for damages suffered at a time when the issuer had made, and not corrected, public disclosure (either written or oral) that contained an untrue statement of a material fact or failed to make required material disclosure.

(b) ***Reliance***

Investors would have the right to sue whether or not they actually relied on the misrepresentation or failure to make timely disclosure. This provision is intended to remove the necessity to prove reliance and to reflect the fact that they may suffer damage indirectly because of the effect a misrepresentation has on the market price of a security.

(c) ***Standards of proof and potential defences***

The issuer and other potential defendants would have varying defences based on their responsibility for the disclosure. For some types of disclosure, the person has a defence if that person conducted due diligence. For other types of disclosure, the person is not liable unless the plaintiff proves that the person knew about the misrepresentation in the document, deliberately avoided acquiring knowledge or was guilty of gross misconduct in making the statement containing the misrepresentation.

(d) ***Liability cap***

The proposal is primarily directed to providing an effective deterrent to misrepresentations and failures to make timely disclosure. Providing compensation for investor damages is a secondary objective, which should be balanced against the interests of long term security holders of the issuer, who effectively pay the cost of any damage awards. In order to achieve this balance, the proposed legislation would limit the potential exposure of issuers and other potential defendants. The limits vary between different categories of defendants. For an issuer, the liability cap is set at the greater of $1 million or 5% of market capitalization. For potential defendants other than the issuer, the liability caps do not apply if the person "knowingly" made the misrepresentation or "knowingly" failed to make required timely disclosure.

(e) ***National application of liability cap***

To ensure that the liability cap is not exceeded when there are multiple actions regarding the same misrepresentation or failure to make timely disclosure across Canada, the statutory limit on the total amount of damages received considers damage awards in other jurisdictions. Specifically, the amount of damages a defendant must pay are reduced by the amount of any prior award made against, or settlement paid by, the defendant relating to the same misrepresentation or failure to make timely disclosure under a similar action in any Canadian jurisdiction.

(f) ***Screening mechanism***

One of the risks of creating statutory liability for misrepresentations or failures to make timely disclosure is the potential for investors to bring actions lacking any real basis in the hope that the issuer will pay a settlement just to avoid the cost of litigation. To limit unmeritorious litigation or strike suits, plaintiffs would be required to obtain leave of the court to commence an action. In granting leave, the court would have to be satisfied that the action (i) is being brought in good faith, and (ii) has a reasonable possibility of success.

(g) ***Court approval of settlement agreements***

A further discouragement to abusive litigation would be the requirement for court approval of any proposed settlement of an action under these provisions. The court would be expected to refuse approval where the terms or circumstances of the settlement indicate that the litigation was a "strike suit".

(h) ***Proportionate liability***

Another concern about securities litigation is the prospect of defendants with "deep pockets" being forced to pay for damages caused primarily by others. The proposed legislation would make the liability of each defendant proportionate to that defendant's share of responsibility for the misrepresentation or

the failure to make timely disclosure. However, in the case of a "knowing" misrepresentation or failure to make timely disclosure, the liability would be joint and several.

(3) Responses to 1998 Published Proposal

In May 1998, certain members of the CSA published its first civil remedies proposal, which was designed to implement the main recommendations of the Final Report of the Toronto Stock Exchange Committee on Corporate Disclosure. The comments received expressed two main concerns:

- the need for civil remedies for secondary market investors has not been demonstrated; and
- these remedies would produce costs that outweigh its benefits, primarily by forcing public companies and others to settle unmeritorious litigation commonly known as "strike suits".

The new proposal as described above attempts to address these concerns.

(4) The Rationale for Limited Secondary Market Civil Remedies

(a) Need for improved continuous disclosure

The quality of continuous disclosure in Canada can and should be improved. Institutional investors have characterized the quality of continuous disclosure in Canada as inadequate and inferior to that in the United States. As most trading now takes place in the secondary market in reliance upon continuous disclosure documents, it is important to proceed with civil remedies for investors in the secondary market. The CSA's proposal complements and supports other CSA initiatives aimed at improving the quality of continuous disclosure. These include the proposed integrated disclosure system and the CSA's increased focus on continuous disclosure review.

(b) Combined public and private enforcement

The CSA disagree with the comment that deficient continuous disclosure is not an appropriate subject for a civil remedy and should be dealt with only through regulatory enforcement measures.

Private enforcement and public regulation together provide effective and complementary incentives to public companies and others involved with their disclosure to ensure accurate and reliable primary and continuous disclosure.

A statutory right of action for secondary market investors, which is comparable to that already available to primary market prospectus investors, is desirable and appropriate.

(c) Limited compensation model

The CSA's new proposal is based on the belief that significant but limited liability would be an effective deterrent to misrepresentations and would significantly improve the quality of corporate disclosure. The new proposal keeps the limited compensation model, except in the case of a "knowing" misrepresentation or failure to make timely disclosure. In those cases, the liability caps do not apply.

Questions may be referred to any of:

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I. INTRODUCTION

In May 1998 certain members of the Canadian Securities Administrators (the "CSA") published for comment proposed amendments to securities legislation (the "1998 Draft Legislation") which would create a limited statutory civil liability regime for continuous disclosure. These amendments, if implemented, would enable investors who purchase securities in the secondary markets to bring a civil action against issuers and other responsible parties for misrepresentations in disclosure documents and other statements relating to the issuer or its securities or for failure to make timely disclosure when required.[1] The 1998 Draft Legislation arose out of the CSA's review and support of The Toronto Stock Exchange Committee on Corporate Disclosure's (the "Allen Committee") final report issued in March 1997 (the "Final Report"). The Allen Committee was established to review continuous disclosure by public companies in Canada and assess the adequacy of such disclosure. The Allen Committee was also asked to consider whether additional remedies ought to be available, either to regulators or to investors, if companies fail to observe the continuous disclosure rules.

The 1998 Draft Legislation also included proposed changes to the definitions of "material fact" and "material change". The amended definitions were first published for comment on November 7, 1997[2] (the "Request for Comment") and did not form part of the recommendations contained in the Final Report.[3] The CSA received several submissions in response to this Request for Comment. At the time the 1998 Draft Legislation was published, the CSA were still considering the comments received on the proposed amended definitions and no decision had been made to revise the definitions as proposed. In the meantime, a decision was made to reflect the proposed revised definitions in the 1998 Draft Legislation and publish the entire package for comment.

The CSA received 28 comment letters on the 1998 Draft Legislation. A summary, in tabular form, of the comments received and the CSA's response to those comments is contained in Appendix A. A summary of the comments received on the Request for Comment is contained in Appendix B.

As a result of these comments and further deliberation by the CSA, the CSA have made a number of changes to the 1998 Draft Legislation. This report (the "CSA Report") provides a background discussion on the proposal to introduce civil liability for continuous disclosure. In addition to those comments summarized in Appendix A, this CSA Report also summarizes the major concerns raised by the commenters, the CSA's responses and the substantive changes, if any, that have been made to the 1998 Draft Legislation in response to these concerns.

The summary of public comments and CSA responses in Appendix A is supplemented by Appendix C which sets out, for information only, the consolidated revised text of the prosposed amendments to securities legislation (the "2000 Draft Legislation"). The CSA is not soliciting further comment on the proposed amendements.

Certain members of the CSA will recommend the 2000 Draft Legislation to their respective governments and are hopeful that it will be tabled for legislative consideration at the first opportunity. **At this time, however, the respective governments of the CSA have made no decision to proceed with the amendments.**

II. BACKGROUND

(i) The Allen Committee

The Toronto Stock Exchange (the "TSE") established the Allen Committee to review continuous disclosure by public companies in Canada and to comment on the adequacy of such disclosure and determine whether additional remedies ought to be available, either to regulators or to investors, if companies fail to observe the rules. The TSE initiative to establish the Allen Committee was the result of a number of factors. These included several high profile and well publicized incidents of alleged misrepresentations and questionable disclosure by public companies in Canada which illustrated the anomalous gap between statutory civil liability for prospectus disclosure and the absence of such liability for continuous disclosure. This gap was underscored by the fact that primary issuances of securities under a prospectus accounted for only about 6% of all capital markets trading while secondary market trading constituted the remaining 94% of such activity. Also, there was a growing recognition that private rights of action were a necessary complement to the enforcement activities of securities regulators. In addition, the primary focus on the prospectus as the cornerstone of issuer communication was becoming an increasingly outmoded notion in today's electronic media-driven environment. Lastly, there were perceived differences between the Canadian and U.S. liability regimes as well as perceived gaps in the standard and quality of disclosure in the two countries.[4]

The Allen Committee began its deliberations based on the accepted premise that continuous disclosure is necessary to ensure that investors receive meaningful, timely, complete and accurate information concerning public companies.

---

1 The 1998 Draft Legislation was published for comment by the British Columbia, Alberta, Saskatchewan and Ontario Securities Commissions. In Ontario, at (1998) 21 O.S.C.B. 3367.

2 In Ontario, Request for Comments #51-901, (1997) 20 OSCB 5751 ("Request for Comment").

3 With the exception of one aspect of the proposed change to the definition of "material fact" to remove the retroactive aspect of the current definition which was recommended by the Allen Committee.

4 The Allen Committee determined that empirical research was needed to establish whether those who receive, use and rely on disclosure in making investment decisions believe there is a problem with continuous disclosure. To assist the Allen Committee, the TSE commissioned two surveys of investor groups, entitled "Corporate Disclosure Survey Conducted for The Toronto Stock Exchange", February 1995 (the "Analysts Survey") and "Survey of Retail Investors", February 1995. The Analysts Survey results indicated that of those respondents that also analysed firms subject to U.S. reporting requirements, 88% found that disclosure was better in the U.S.

> "The entire capital market system in Canada is built on a foundation of information - full, true and plain disclosure of all material facts in a prospectus and continuous disclosure of material changes and information...Information is really the lifeblood of trading on securities markets".[5]

Following an extensive series of meetings with market participants and their advisers (including securities regulators) and research, analysis and discussion, the Allen Committee released its Interim Report (the "Interim Report") in December 1995. The Interim Report made several recommendations including that a limited statutory regime be created whereby issuers and others responsible for misleading continuous disclosure could be held liable in civil actions brought by injured investors to recover their damages.[6]

The reaction by market participants to the Interim Report was strong. With some exceptions, issuers tended to feel that a problem with disclosure did not exist, or that, if there was a problem, statutory civil liability was an excessive remedy. On the other hand, representatives of the investor community tended to feel, also with some exceptions, that there was a disclosure problem and that those who are responsible for misleading disclosure should be accountable.

In the summer of 1996, after the comment period, the Allen Committee resumed its meetings with, as stated in the Final Report, the objective of "testing the validity of the conclusions reached against the submissions, to obtain evidence that would either validate or refute the conclusions reached and to listen with care to the concerns expressed -- both the concern that the Committee had erred in going too far and the concern that it had erred in not going far enough".[7]

Having engaged in this process, the Allen Committee concluded in the Final Report that its original recommendations should remain, with certain changes to reflect some of the concerns expressed by market participants in their letters of comment. The Allen Committee found that there was evidence of a significant number of incidents of disclosure violations and a perception that problems existed with the adequacy of disclosure in Canada. The Allen Committee expressed concern that these circumstances could result in the capital markets falling into disrepute with attendant loss of investor confidence. The risk of this happening would have direct cost of capital implications for all companies that participate in our capital markets. Specifically, the Allen Committee concluded that:

> "(i) There is a sufficient degree of non-compliance with the current continuous disclosure rules in Canada to cause concern.
>
> (ii) The current sanctions available to regulators charged with the task of monitoring and enforcing compliance with Canada's continuous disclosure rules provide inadequate deterrent.
>
> (iii) Similarly, the remedies available to investors in secondary trading markets who are injured by misleading disclosure are so difficult to pursue and to establish, that they are as a practical matter largely academic.
>
> (iv) We believe that civil liability should attach to issuers and others for their continuous disclosure to investors in secondary markets, subject to reasonable limitations.
>
> (v) Faced with the task of designing recommendations from the perspective of strengthening deterrence (conclusion (ii)) or creating a route to meaningful compensation of injured investors (conclusion (iii)), the Committee has adopted improved deterrence as its goal in the belief that effective deterrence will logically reduce the need for investor compensation.
>
> (vi) The rules by which class actions are conducted in those provinces where class actions are permitted are sufficiently

---

5 Interim Report, page iii.

6 A number of proposals to extend statutory civil liability to continuous disclosure preceded the recommendations of the Allen Committee. In 1979, a Task Force released a report entitled "Federal Proposals for a Securities Market Law of Canada" (P. Anisman, J. Howard, W. Grover & J.P. Williamson, "Proposals for a Securities Market Law for Canada", 1979). The authors of this report proposed, among other things, a statutory civil liability regime with respect to continuous disclosure (the "Federal Proposal"). These proposals were followed some years later by a proposal of the Ontario Securities Commission in 1984 which was published for comment (the "OSC Proposal") and which also suggested the adoption of a liability regime for continuous disclosure ("Civil Liability for Continuous Disclosure Documents Filed under the Securities Act - Request for Comments", 7 OSCB 4910 (1984)). While both the Federal Proposal and the OSC Proposal stimulated a considerable amount of public debate at the time and elicited significant public comment (most of which were opposed to the idea of civil liability for continuous disclosure) neither led to legislative change. Finally, in 1993, the Québec Government recommended a limited version of the proposed regime aimed at small investors (*Quinquennial Report on the Implementation of the Securities Act*, Minister of Finance, Louise Robic, Gouvernement du Québec, ministère des Finances, December 1993), whereas in 1994, the B.C. Government also developed a proposal to introduce a limited scheme of civil liability for certain disclosure in response to the Matkin Inquiry and recommendations reflected in the Matkin Report (J.G. Matkin & D.G. Cowper, *Restructuring for the Future; Towards a Fairer Venture Capital Market*, Report of the Vancouver Stock Exchange & Securities Regulation Commission (1994)). However, by this point in time, the Allen Committee had been established and so the Québec and B.C. Governments agreed to await the outcome of their report in the hopes that any eventual recommendations could be adopted nationally.

7 Final Report, page ii.

different from those in the United States that there is no practical risk that the establishment of statutory civil liability in Canada will facilitate extortionate class action in Canada.

(vii) Capital markets are moving to a fully integrated disclosure system in which companies will be able to issue new securities at any time based on the information in their continuous disclosure record rather than information in a prospectus connected with a particular transaction."[8]

In sum, the majority of the Allen Committee members approached the task of designing a statutory civil liability regime for continuous disclosure from a "deterrence" perspective. Moreover, the Allen Committee felt that their recommendations, if implemented, would significantly deter misleading disclosure by providing a remedy for injured investors to obtain some measure of compensation for disclosure violations, without unduly penalizing remaining shareholders in the company or other innocent market participants and without adding unreasonably to the cost of good disclosure.

(ii) The CSA Civil Remedies Committee

Following the release of the Final Report, the CSA Chairs publicly indicated their support of the Allen Committee's recommendations and established a committee comprised of staff from the securities commissions of British Columbia, Alberta, Saskatchewan, Ontario and Québec (the "CSA Civil Remedies Committee") to consider the Allen Committee recommendations and draft legislation (which resulted in the 1998 Draft Legislation).[9]

The 1998 Draft Legislation differed from the existing prospectus remedy found in provincial securities legislation in its focus on deterring misrepresentations and encouraging good disclosure practices without necessarily providing full compensation to aggrieved investors. In this context, the 1998 Draft Legislation followed closely the model that had been adopted by the Allen Committee. The Allen Committee sought to create a system of statutory liability which would contain enough checks and balances (through the availability of due diligence defences and through limitations on liability by means of damage caps) so that issuers and their directors and officers would be deterred from inadequate or untimely disclosure without, at the same time, creating a regime that would favour short term over long term investor interests. This focus on deterrence rather than compensation of secondary market investors was, in part, a recognition of who ultimately bears the economic burden of providing compensation.[10]

The CSA Civil Remedies Committee has been reconsidering the 1998 Draft Legislation, taking into account both formal and informal comments received since its publication.[11] While a number of significant changes have been made to the legislation, the 2000 Draft Legislation continues to be based on a deterrence model.

III. SUMMARY OF COMMENTS AND SUBSTANTIVE CHANGES TO THE 1998 DRAFT LEGISLATION

The CSA received submissions from 28 commenters on the 1998 Draft Legislation. This section describes the main issues that were raised by the commenters, the CSA's responses, and the substantive changes, if any, that have been made to the 1998 Draft Legislation in response to these comments.[12]

There were several recurring themes in the comments received by the CSA on the 1998 Draft Legislation:

- the need for a statutory civil liability regime with respect to continuous disclosure (the "Proposal") has not been demonstrated;
- the Proposal would produce costs disproportionate to its benefits, primarily by exposing issuers and others to coercion to settle unmeritorious litigation (often referred to as "strike suits");
- the 1998 Draft Legislation gives plaintiffs an incentive to unfairly target large issuers because the damage cap is tied to market capitalization;

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8 Final Report, page vii. The recommendations in the Final Report reflected the unanimous views of 11 of the 12 members of the Allen Committee. The dissenting member of the Committee did not disagree with the primary recommendation that civil liability for continuous should be introduced. The dissenting member would, however, have struck a different balance than the majority in the design of the civil liability regime; a balance generally more favourable to investor compensation.

9 Staff members of the Commission des valeurs mobilières du Québec are also taking steps to ensure that the resulting legislation will satisfy Québec civil law requirements.

10 Compensation of a prospectus investor would generally involve the culpable issuer returning subscription money that it received from the aggrieved investors, restoring both the issuer and the investor to their respective original positions. By contrast, compensation of aggrieved secondary market investors (who trade with other investors, not the issuer) would generally involve payment by a culpable issuer that did not in fact receive money from the secondary market investors; by diminishing the issuer's assets, the compensation payment would in effect come at the expense of other innocent investors, in particular the issuer's continuing shareholders.

11 In this context, the CSA Civil Remedies Committee has been reviewing and comparing existing Canadian provincial class action regimes and has met with outside counsel to discuss various aspects of civil procedure particularly in the context of class action litigation in Canada and the U.S. The CSA Civil Remedies Committee has also reviewed recent legislative changes in the United States which were intended to address perceived abuses in securities class action litigation against publicly held companies as well as the development of the case law under Rule 10b-5 of the *Securities Exchange Act of 1934*.

12 For a detailed summary of the contents of the 1998 Draft Legislation, reference should be made to the Notice which was published in 1998. In Ontario, at (1998) 21 O.S.C.B. 3367.

> the application of the damage caps will be problematic where parallel actions are launched in more than one Canadian province or territory;

> the 1998 Draft Legislation goes beyond the U.S. implied right of action under Rule 10b-5.

1. IS THERE A PROBLEM?

The comment letters illustrate that the issuer community, in particular, remains unconvinced as to the need for the Proposal. In particular, the commenters question the basis upon which the Allen Committee concluded that there was a sufficient degree of non-compliance with continuous disclosure obligations to justify concern.

(i) Deficient Disclosure

The Allen Committee noted that institutional investors had characterized the quality of continuous disclosure in Canada as inadequate and inferior to that in the United States. Based on the CSA's collective experience, the CSA remain persuaded by the Final Report that the quality of continuous disclosure in Canada can and should be improved. Increased focus on continuous disclosure review will be helpful in improving the quality of this type of information provided it is accompanied by effective enforcement effort where disclosure violations are identified. In addition, improving standards of continuous disclosure will be an important component of an integrated disclosure regime.[13] However, the CSA remain committed to seeking implementation of the Proposal so that investors are empowered with the tools to seek redress when they suffer damages as a result of misrepresentative disclosure, resulting in improved continuous disclosure in Canada.

(ii) Asymmetry of Regulatory Scheme

The CSA also consider the Proposal to be justified, in principle, from a broader policy perspective. Primary market investors benefit from both:

> *public regulation* - regulatory review of the prospectus offering document, with discretion to withhold the necessary receipt, and potential enforcement action; and

> *private rights of action* - a statutory right to seek compensation from issuers and others, who bear direct personal liability for losses attributable to a misrepresentation in a prospectus without having to prove reliance which is required under existing common law rights of action.

In the view of the CSA, private rights of action and public regulation together provide important, effective and complementary incentives to issuers and others involved in the prospectus process to ensure sound disclosure (or disincentives to poor disclosure) and generally produce a high standard of prospectus disclosure.

Secondary market investors, by contrast, have:

> generally not benefited from regulatory review of continuous disclosure material and follow up enforcement action for breaches. This is because the limited regulatory resources have been focussed on prospectus disclosure and also because the volume and timeliness of continuous disclosure is incompatible with prior regulatory review; and

> no effective redress is available through private rights of action.

The CSA consider the disparity between the regulation of primary and secondary markets to be unjustifiable and continue to believe that a statutory right of action should be extended to secondary market investors.

The CSA are committed to recent steps to expand and intensify review of continuous disclosure (necessarily *ex post facto,* in most instances) and enforcement follow-up where appropriate. This move is being facilitated by the self-funding

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[13] For example, the Ontario Securities Commission (the "OSC") recently approved two rules and companion policies designed to improve disclosure of financial information by public companies. The rules will increase significantly the extent and quality of information provided in quarterly reports. OSC Rule 52-501, Financial Statements, introduces a new requirement for all public companies to include in interim financial statements an income statement and a cash flow statement for each three-month period of its financial year, other than the last three-month period of the year. Companies will also be required for the first time to provide an interim balance sheet and explanatory notes to the interim financial statements. Under the rule, a company's board of directors will be required to review the interim financial statements before they are filed with the OSC and distributed to shareholders. The rule permits the board to satisfy this review obligation through delegation of the review to the audit committee of the board. The companion policy to Rule 52-501 urges boards, in discharging their responsibilities for ensuring the reliability of interim financial statements, to consider retaining external auditors to review the statements. Rule 52-501 is expected to come into effect on December 27, 2000 (unless approved earlier by the Minister).

OSC Rule 51-501 reformulates existing OSC Policy 5.10 and introduces a new requirement for management to provide a narrative discussion and analysis (MD&A) of interim financial results with the interim financial statements. This will facilitate investors gaining an understanding of past corporate performance and future prospects on a more timely basis. The Rule will replace OSC Policy 5.10 and give the OSC greater ability to enforce compliance with annual and interim MD&A content requirements. Rule 51-501 is expected to come into effect on January 1, 2001.

In addition to the Rules, the OSC intends to continue to consider other steps that might be taken to enhance the quality and reliability of public company financial reporting. Matters under consideration include; the role and responsibilities of audit committees generally, the qualifications of audit committee members, to what extent the audit committee should be mandated and to what extent external auditors should be involved in interim reports.

status of several members of the CSA.[14] At the same time, the CSA continue to recommend that secondary market investors be given an effective mechanism involving private rights of action based on a "deterrent model", as recommended by the Allen Committee, which would serve as an incentive to issuers to follow good disclosure practices.

2. STRIKE SUIT EXPOSURE

The CSA have carefully considered concerns raised in comments on the 1998 Draft Legislation and, before that, in the course of the deliberations of the Allen Committee, about the potential under the Proposal of exposing issuers and their long term shareholders to frivolous, coercive and costly litigation ("strike suits").[15] The concern, simply put, is that cost rules and other procedural protections included in the 1998 Draft Legislation would not deter plaintiffs from commencing meritless actions with a view to extracting an early settlement. This is the most prevalent concern raised by those who oppose the Proposal.

The concern about strike suits must be addressed regardless of whether, and to what extent, one believes this will be the result if the legislation is adopted. Strike suits could expose corporate defendants to proceedings that cause real harm to long-term shareholders and resulting damage to our capital markets.

The Allen Committee concluded that statutory civil liability for misleading continuous disclosure would have little effect without the mechanism of the class action suit. Throughout its deliberations, the Allen Committee focussed on the "strike suit" phenomenon in the U.S. in the securities litigation context. The Allen Committee compared the litigation environment in the U.S. to that in Canada and concluded that they are sufficiently different to make it unlikely that meritless class actions will be brought in Canada.

In response to comments received on the Interim Report, the Allen Committee again reviewed its recommendations and concluded that there was little practical risk that they would, if implemented, open the door to strike suits. Indeed, the Allen Committee was concerned that there are too many disincentives built into the litigation system in Canada that tend to discourage even actions with merit. One example is the standard Canadian "loser pays" costs rules.[16]

The CSA Civil Remedies Committee in 1998 had been largely persuaded by the Allen Report's conclusion that the litigation environment in Canada differs sufficiently from that in the United States that strike suits are not likely to be a problem in Canada.[17] The depth of public concern on the part of the issuer community, however, coupled with some recent examples of entrepreneurial litigation in Canada, have led the CSA to recommend further measures to deter the potential for strike suits. These measures are discussed below.

(i) Court Approval of any Settlement

Much of the concern about strike suits stems from uncertainty about the likely response of Canadian courts to strike suit litigation and the coerced settlements that may be the real objective of strike suit litigation. The recent decision of the Ontario Superior Court of Justice in *Epstein* v. *First Marathon Inc.*[18] ("*Epstein*") provides a strong indication of judicial disapproval of any effort to import strike suit litigation on the American pattern. In *Epstein*, the Court had been asked to approve a settlement agreement between the parties pursuant to the *Class Proceedings Act, 1992* (Ontario) (the "CPAO"). The settlement agreement at issue involved the payment of fees and disbursements to plaintiff's counsel with no benefit conferred on any shareholders of the corporation. In declining

14 For example, a number of commissions have created continuous disclosure teams which are responsible for monitoring and assessing the continuous disclosure record of reporting issuers. These teams will be reviewing the continuous disclosure record of all reporting issuers in their jurisdictions on a periodic basis through a combination of targeted and random reviews.

15 "The term "strike action" or "strike suit" has emerged in the context of certain class proceedings litigation in the United States. The term connotes the commencement and pursuit of a class proceeding where the merits of the claim are not apparent but the nature of the claim and targeted transaction is such that a sizeable settlement can be achieved with some degree of probability. The term suggests a class proceedings that is properly regarded as an abuse of process. ... As the American experience suggests, "strike suits", which are lawyer rather than client driven, are disconcerting for two reasons. First, they often severely and unacceptably interfere with standard corporate governance practices, creating unnecessary inefficiencies and bypassing existing regulatory devices. Second, "strike suits" may effectively transform the class-action mechanism from a shield into a sword. When fashioned into a sword by profit-motivated lawyers and shareholder-plaintiffs posing as class representatives, the class proceedings becomes a means of harassing corporate defendants". (Justice Cumming in *Epstein v. First Marathon Inc.* 2000 CarswellOnt 346).

16 Whereas in the U.S., each party to a lawsuit is responsible for its own costs, the Canadian "loser pays" costs rules act as a discipline on frivolous actions. Under Ontario's and Quebec's class proceeding legislation "loser pays" is the normal rule (subject to discretion in the trial judge to depart from the rule in specified circumstances). By contrast, the B.C. *Class Proceedings Act*, adopts the U.S. costs rule. In light of this discrepancy in costs rules under applicable class action legislation, the Allen Committee recommended that the "loser pays" costs rules be mandated for purposes of class actions predicated on statutory civil liability for a misrepresentation in continuous disclosure (Final Report, page 27). The 1998 Draft Legislation largely followed this recommendation.

17 The Allen Committee reviewed the procedural provisions and other elements of the litigation environment that facilitate meritless class actions in the U.S. and concluded that many of these elements are not present in Canada. For example, the Allen Committee noted that pre-trial discovery rules have traditionally been more liberal in the U.S. than in Canada which in turn have allowed U.S. plaintiffs to engage in fishing expeditions. The Allen Committee also noted that jury trials for securities actions, while prevalent in the U.S., are rare in Canada. In this context, the Allen Committee concluded that defendants should be better able to assess their likelihood of success and should be less inclined to settle actions lacking merit and plaintiffs should be less inclined to commence lawsuits in the search for a "shakedown" settlement (see the Final Report pps. 30-33 for further examples).

18 February 16, 2000 (2000 CarswellOnt 346).

to grant approval, the Court held that the plaintiff's class proceeding was in the nature of a "strike suit" in that it was brought to benefit "entrepreneurial lawyers" and nominal plaintiffs not shareholders in the class and thus constituted an abuse of process. The Court not only declined to approve the proposed settlement but went on to exercise its discretion under the CPAO to dismiss the action without costs and specifically prohibited any payment to the plaintiff's counsel under the settlement agreement or otherwise.

The *Epstein* decision represents a strong denunciation of strike suits and a clear indication that Canadian courts, if given statutory authority, will exercise that authority to discourage strike suits.

To ensure that courts have the opportunity, as did the Court in *Epstein*, to consider a proposed settlement of an action launched under the proposed civil right of action, the CSA have introduced in the 2000 Draft Legislation a provision requiring court approval before any action can be stayed, discontinued, settled or dismissed (section 9 of the 2000 Draft Legislation).[19]

(ii) Screening Mechanism

The CSA have also introduced in the 2000 Draft Legislation a new provision designed to screen out, as early as possible in the litigation process, unmeritorious actions (section 7 of the 2000 Draft Legislation). This screening mechanism is designed not only to minimize the prospects of an adverse court award in the absence of a meritorious claim but, more importantly, to try to ensure that unmeritorious litigation, and the time and expense it imposes on defendants, is avoided or brought to an end early in the litigation process. By offering defendants the reasonable expectation that an unmeritorious action will be denied the requisite leave to be commenced, the 2000 Draft Legislation should better enable defendants to fend off coercive efforts by plaintiffs to negotiate the cash settlement that is often the real objective behind a strike suit.

The new screening provision would require a plaintiff to obtain leave of the court in order to bring an action. Before granting leave, the court must be satisfied that the action (i) is being brought in good faith and (ii) has a reasonable prospect of success at trial.[20]

This screening mechanism, coupled with the new provision described earlier that would require court approval of a settlement agreement are procedural protections that supplement the "loser pays" cost and proportionate liability provisions retained from the 1998 Draft Legislation.[21] Taken together, these elements of the 2000 Draft Legislation should ensure that any exercise of the statutory right of action occurs in a litigation environment different from that in the United States and less conducive to coercive strike suits.

3. EFFECT ON LARGER ISSUERS

Some commenters suggested that the 1998 Draft Legislation went beyond "deterrence" in terms of the impact it will have on larger issuers because the damages cap is tied to market capitalization and thereby gives plaintiffs an incentive to unfairly target larger issuers.[22]

The CSA considered several alternative approaches to the damage caps proposed under the 1998 Draft Legislation but

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19 This provision mirrors the provision in the Ontario *Class Proceedings Act* but is somewhat different from the provision in the B.C. class proceeding statute and the Québec *Code of Civil Procedure*.

20 The screening provision is based on a test that was recommended by the Ontario Law Reform Commission (the "OLRC") in its 1982 *Report on Class Actions*. In its report, the OLRC paid particular attention to the certification of a class action. The OLRC identified the motion for certification as one of the most important parts of the proposed procedure. The OLRC recommended that a court should be able to certify an action as a class action only if it finds that five conditions are satisfied by the representative plaintiff including proof of the substantive adequacy of the action.

21 The 2000 Draft Legislation retains from the 1998 Draft Legislation the provision for the payment of costs by the unsuccessful party, further diminishing the burden on a successful defendant.

The CSA is recommending that the limited statutory civil remedy regime include a "loser-pays" cost provision in any jurisdiction where class proceedings legislation does not already include a "loser-pays " cost rule. The inclusion of a "loser-pays" cost provision in the proposed legislation would serve as a deterrent to unmeritorious litigation, thereby reducing the risk of U.S. style strike suits against public issuers.

The *Class Proceedings Act* in British Columbia provides for a "no costs" rule. This provision generally prohibits the court from awarding costs to any party in a class proceeding except in special circumstances. Specifically, the *Class Proceedings Act* (British Columbia) permits a court to award costs only where the court considers that:

- there has been vexatious, frivolous or abusive conduct on the part of any party to the action;
- an improper or unnecessary application or other step has been made or taken for the purpose of delay or increasing costs or for any other improper purpose; or
- there are exceptional circumstances that make it unjust to deprive the successful party of costs.

Excluding the application of the "no costs" rule in the British Columbia *Class Proceedings Act* and including a "loser-pays" cost rule similar to that contained in the Ontario *Class Proceedings Act* in the proposed amendments would avoid a significant discrepancy between the proposed civil liability regime in British Columbia and that proposed in other provinces that provide for class actions. As with other aspects of the draft legislation, the government has not made any decision on the implementation of a "loser-pays" costs provision for securities class action lawsuits.

22 The liability caps proposed in the 1998 Draft Legislation tied maximum liability to an issuer's market capitalization, at the rate of 5% of market capitalization (or $1 million, whichever is greater). In this context, the 1998 Draft Legislation followed closely the recommendations of the Allen Committee.

has ultimately decided to retain the original approach.[23] The CSA remain of the view that damage exposure must, if the system is to have deterrent value, be sufficient to make it worthwhile for a plaintiff to undertake an action but, on the other hand, reflect an issuer's ability to pay and recognize that it is the non-plaintiff shareholders who ultimately bear the economic burden of providing compensation. The CSA believe that the procedural safeguards described previously will reduce the risk of coercive application of the statutory right of action and render it unnecessary to alter the damage caps as originally proposed.

4. APPLICATION OF THE LIABILITY CAPS

It has been suggested that the application of the liability caps will be problematic where multiple actions are launched in respect of a single misrepresentation.[24] The CSA remain of the view that the dollar caps on liability are an essential factor in achieving the desired focus on deterring poor disclosure, rather than providing full compensation. The CSA believe that this practical difficulty can be addressed by courts and litigants who understand the legislative intent underlying the liability caps. In this context, the CSA have also revised the draft legislation to incorporate an express statement that the amount of damages that a defendant must pay is to be reduced by the amount of any prior award made against, or settlement paid by, the defendant relating to the same misrepresentation under an action under similar legislation in any Canadian jurisdiction (section 6).

5. THE PROPOSAL CONTRASTED WITH RULE 10B-5

Some of the commenters submitted that the 1998 Draft Legislation went beyond Rule 10b-5 in the U.S. while others submitted that the CSA should simply adopt a Rule 10b-5 approach.

As a starting point, it is important to recognize that the 2000 Draft Legislation (and previously the 1998 Draft Legislation) is fundamentally different from Rule 10b-5. The 2000 Draft Legislation is a specific and comprehensive code whereas Rule 10b-5 is a general anti-fraud rule from which U.S. courts have implied a right of action and which has evolved and been variously interpreted by U.S. courts over the past several decades.[25] In fact, there has been considerable litigation in the U.S. over what could be considered strictly threshold issues such as who bears liability and what is the nature of such liability.

In a Rule 10b-5 action, a plaintiff must prove that the defendant acted with "*scienter*", defined by the U.S. Supreme Court as a "mental state embracing intent to deceive, manipulate or defraud", with most courts agreeing that recklessness constitutes *scienter* as well. Reliance, and to some extent causation, have been made easier to prove in the U.S. as a result of U.S. courts' decision to adopt a "fraud-on-the-market" theory. Essentially, this theory creates the presumption that because most publicly available information is reflected in the market price of an issuer's securities, an investor's reliance on any public material misrepresentations

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23 One alternative approach fixed a single universal liability cap that would not vary with an issuer's market capitalization. The CSA were concerned, however, that any universal liability cap would either be so high as to shift the balance too far in favour of compensation or so low as to undermine the compensatory and deterrence objectives of the Proposal. Such an approach would also inevitably be perceived as inequitable by smaller issuers. The second approach applied a mathematical formula that smoothed out the differences in aggregate liability between issuers with different market caps (i.e., the damage caps increase but, at a decreasing rate). The CSA were concerned, however, that this approach would shift the balance so far away from compensation that it would undermine the deterrent impact of the Proposal. To the extent that liability caps increase less quickly than market capitalization, the amount recoverable by any single investor would diminish the larger the issuer (on the reasonable assumption that issuers with large market capitalization also have large numbers of shareholders), eventually reaching the point at which an individual investor would have no motivation to commence an action, however meritorious, simply because the amount recoverable by the investor would be too small to justify the effort. The CSA accept that deterrence should outweigh compensation but, at the same time, any deterrent effect requires a plausible element of compensation.

24 In our federal system, in which 13 jurisdictions might have parallel legislation specifying identical liability caps, it is possible that at least that number of lawsuits may follow from a single misrepresentation, with unintended multiplication of possible damage awards and serious erosion of the intended caps on liability.

25 Rule 10b-5 provides that "It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange:

a. To employ any device, scheme or artifice to defraud,

b. To make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, or

c. To engage in any act, practice or cause of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

may be presumed.[26] In this context, Rule 10b-5 has developed into a fully compensatory model.[27]

In a recent Ontario court decision the U.S. "fraud-on-the-market" theory was rejected.[28] The plaintiffs' claim for "deemed reliance" based on the "fraud on the market" theory was an attempt to establish a common issue in order to gain certification as a class proceeding in Ontario. In general, claims which require proof of individual reliance are unlikely to be certified as class actions under Ontario class proceedings legislation.[29] The Court rejected the notion of deemed reliance, and rejected the "fraud-on-the-market" theory in Canada. The Court held that in the U.S., deemed reliance is inextricably bound up with the statutory action under U.S. securities law. The Court confirmed that in Canada, where an investor is claiming loss based on negligent or fraudulent misrepresentation, proof of actual reliance by the individual investor is a key element. In the Court's view, "to import such a presumption would amount to a redefinition of the torts themselves". The CSA view the decision as being significant because it illustrates the limitations inherent in class actions in the context of securities litigation based on the common law.

Unlike Rule 10b-5, the 2000 Draft Legislation includes two liability standards, absence of due diligence and gross misconduct, based on a matrix of factors, including the importance and nature of the document (i.e., purpose and the time constraints applicable to the preparation of the document) and the person responsible for it. The legislation puts the onus on the defendant to establish due diligence unless knowledge or gross misconduct is required to establish liability. In those cases, the plaintiff will have to prove that the defendant was aware of the misrepresentation or the failure to make timely disclosure (or deliberately avoided acquiring knowledge) or was otherwise guilty of gross misconduct. Moreover under the 2000 Draft Legislation a plaintiff has a right of action without regard to whether the plaintiff relied on the misrepresentation or on the responsible issuer having complied with its disclosure requirements.[30]

The CSA recognize that a due diligence standard is a more rigorous liability standard than the fraud based standard under Rule 10b-5. The key element of intent or recklessness which a plaintiff must establish to succeed in a Rule 10b-5 action need not be proved to establish liability on the basis of an absence of due diligence. The rationale for the allocation of the burden is twofold. The first reason is to provide a deterrent to poor continuous disclosure. By requiring the defendant to

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[26] The seminal U.S. authority on the "fraud on the market" theory is the U.S. Supreme Court decision in *Basic Inc. v. Levinson* (485 U.S. 224 (U.S. Ohio 1988)). Mr. Justice Blackmun, writing for the majority, adopted the following description of the theory at 241-242:

> The "fraud-on-the-market" theory is based on the hypothesis that, in an open and liquid market, the price of a company's stock is determined by the company and its business...Misleading statements will therefore defraud purchasers of stock even if the purchaser does not directly rely on the misstatements...The causal connection between the plaintiffs' purchase of stock in such a case is no less significant than in the case of direct reliance on misrepresentations.

A defendant can rebut the presumption by proving that there was no causation in fact, that is: (i) that the statements in question did not affect the market price; (ii) other information was available that negated the statements such that the market price appropriately discounted the statements (the "truth in the market" defence); or (iii) the plaintiff did not rely on the market price (e.g. the plaintiff was aware of the misrepresentation but bought or sold the shares for other reasons). Prior to the availability of the (rebuttable) presumption, it was extremely difficult in the U.S. to prove that a plaintiff relied on given misrepresentations. This problem was particularly significant where multiple plaintiffs attempted to have a class certified for the purpose of a class action, because questions of reliance, damages, and causation were clearly not common question of fact or law as amongst the class members.

[27] In December 1995, U.S. Congress passed the *Private Securities Litigation Reform Act of 1995* (the "Reform Act") which amended both the *Securities Act of 1933* (the "Securities Act") and the *Securities Exchange Act of 1934* (the "Securities Exchange Act"). The Reform Act was intended to curb what Congress perceived as burgeoning abuse of the litigation process by securities plaintiff's lawyers by adopting procedural and substantive provisions that were intended to make it more difficult to bring claims under the Securities Act or the Securities Exchange Act. One such protection was the Reform Act's heightened pleading standard. The Reform Act provides that in any private action under the Securities Exchange Act for misrepresentations or omissions, the complaint must specify the allegedly false statements and explain why they are false. The complaint must also allege with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind. Complaints that fail to meet these requirements are required to be dismissed.

Since the passage of the Reform Act there has been considerable debate as to whether the Reform Act's pleading provision changed the standard of liability under Rule 10b-5 and whether the Reform Act adopted the most stringent existing pleading standard, the Second Circuit's, or a higher standard. The Second Circuit standard requires a plaintiff to plead a "strong inference" of *scienter* either by alleging (i) facts showing that the defendant had both a motive and an opportunity to commit fraud; or (ii) strong circumstantial evidence of conscious misbehaviour or recklessness. U.S. courts still seem to be divided on this issue, with some courts holding that a plaintiff must plead, at a minimum, particular facts demonstrating deliberate or conscious recklessness.

[28] See *Carom v. Bre-X Minerals Ltd.*, (1998) 41 O.R. (3d) 780 (Ontario Court of Justice).

[29] See for example, *Carom v. Bre-X Minerals Ltd.*, (1999) 46 B.L.R. (2d) 247 (Ontario Superior Court of Justice), where the Court refused to let a class action proceed against certain brokerage firms and analysts who had prepared research reports and provided recommendations. The Court held that class actions were not the preferable mode of litigating these issues, because of the significant individual issues of proof relating to, among other things, the reliance placed by an individual on the research and recommendations of a broker or analyst.

[30] It should be noted that the CSA will also consider recommending changes to the existing statutory rights of action for primary market investors to deal with the issue of reliance in a manner comparable to that set out in the 2000 Draft Legislation.

prove due diligence, there is a much greater incentive to exercise due diligence. The second reason is access to evidence. The necessary information to establish that an officer or director, for example, was or was not duly diligent would be under the control of that officer or director. In this context, the 2000 Draft Legislation, unlike Rule 10b-5, is essentially a deterrent model.

The 2000 Draft Legislation attempts to strike a fair balance between the interests of responsible issuers and plaintiffs (for example, through the imposition of liability caps). The 2000 Draft Legislation effectively creates a presumption of causation if the market price following the correction of the misrepresentation is different from the market price at the time the misrepresentation was made (or the time at which the disclosure should have been made, in the case of an omission). The 2000 Draft Legislation does, however, exclude liability for any portion of the plaintiff's damages which does not represent a change in value of the security resulting from the misrepresentation or failure to make timely disclosure. The 2000 Draft Legislation also provides that no person or company is liable if that person or company proves that the plaintiff acquired or disposed of the security with knowledge of the misrepresentation or material change.

IV. DEFINITIONS OF "MATERIAL FACT" AND "MATERIAL CHANGE"

(i) Background

The 1998 Draft Legislation included proposed amended definitions of "material fact" and "material change" to be used for all purposes under securities legislation.[31] The Allen Committee's Final Report had recommended that the definition of "material fact" exclude the current *ex post facto* examination of the effects of the disclosure on the market price or the value of the security. In the course of considering the Allen Committee's recommendations, the CSA identified further concerns regarding the definition of "material fact" and "material change" in securities legislation:

- The terms do not have the same meaning throughout Canada. In this context, the *Securities Act* (Québec) does not define "material fact" and Québec courts have looked to United States jurisprudence to develop a different formulation of the materiality standard from that found in the legislation in other provinces of Canada. The standard articulated in the seminal U.S. case of *TSC Industries Inc., et al. V. Northway, Inc.*, 426 U.S. 438 (1976) has been used in Québec with approval. According to that standard, facts are material when they would be substantially likely to be considered important to a reasonable investor in making an investment decision.

- The current definitions are not easily applied in the context of mutual funds. National Instrument 81-102 concerning mutual funds[32] addressed this concern by incorporating a new defined term, "significant change", similar conceptually to the Québec interpretation of "material fact".

The CSA accordingly considered amending the definitions of "material fact" and "material change" to reflect the approach taken in Québec and the U.S. This would not only have removed the currently required ex post facto examination of market price or value of securities, as recommended in the Final Report, but also have produced a legal standard for disclosure that is uniform throughout Canada and consistent with that in the U.S.

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[31] In the 1998 Draft Legislation, "material change" was defined to mean

(a) if used in relation to an issuer other than an investment fund,

(i) a change in the business, operations, capital, assets or affairs of the issuer which would be substantially likely to be considered important to a reasonable investor in making an investment decision, or

(ii) a decision to implement a change referred to in subparagraph (a)(i) made by

A. senior management of the issuer who believe that confirmation of the decision by the directors is probable, or

B. the directors of the issuer, and

(b) if used in relation to an issuer that is an investment fund,

(i) a change in the business, operations or affairs of the issuer which would be substantially likely to be considered important to a reasonable investor in making an investment decision, or

(ii) a decision to implement a change referred to in subparagraph (b)(i) made by

A. senior management of the issuer or by senior management of the investment fund manager who believe that confirmation of the decision by the directors or trustees of the issuer or the directors of the investment fund manager is probable, or

B. the directors or trustees of the issuer or the directors of the investment fund manager;

Similarly, "material fact" was defined to mean, "if used in relation to the affairs of an issuer or its securities, a fact or group of related facts which would be substantially likely be considered important to a reasonable investor in making an investment decision".

[32] National Instrument 81-102 Mutual Funds has been adopted as a rule in each of British Columbia, Alberta, Manitoba, Ontario and Nova Scotia, a Commission regulation in Saskatchewan, and a policy in all other jurisdictions represented by the CSA and came into force on February 1, 2000.

(ii) Public Comment and CSA Responses

The CSA received 7 submissions in response to the original Request for Comment. A summary of all the comment letters that the CSA received is contained in Appendix B to this CSA Report.

In general, the majority of commenters expressed support for a consistent definition of materiality against which disclosure and other securities law obligations may be assessed. These commenters cautioned, however, that this cannot be accomplished merely by changing the definitions addressed in the Request for Comments, as securities laws contain requirements reflecting standards of materiality not based on the definitions of "material fact" and "material change". A change in the standard of materiality would need to address all of the materiality standards in securities laws to avoid creating unintended ambiguities. Conversely, some commenters expressed concern that the materiality standard in the 1998 Draft Legislation raised too many issues of interpretation and would introduce an unacceptable level of subjectivity and uncertainty into the determination. The commenters believed that this would be particularly troubling in a new statutory civil liability regime.[33]

In light of these comments, the CSA do not propose at this time to proceed with the amendments to the definitions of "material change" and "material fact" other than to:

a) tailor the definitions for application to mutual funds and non-redeemable investment funds by largely parallelling the terminology of the definition of "significant change" in National Instrument 81-102;[34] and

b) follow the recommendation of the Allen Committee to remove the retroactive element from the definition of "material fact" as it applies outside Québec.[35]

V. CONFIDENTIAL DISCLOSURE FILINGS

The CSA have also introduced in the 2000 Draft Legislation changes to the provisions of securities legislation which permit an issuer to make disclosure of material changes to securities regulators on a confidential basis. Currently, the securities legislation of most jurisdictions permits reporting issuers to file a "confidential" material change report with the applicable securities regulatory authority in lieu of making public disclosure where an issuer believes that disclosure of a "material change" would be unduly detrimental to its interests. Confidentiality can be maintained so long as an issuer reaffirms the need for confidentiality every ten days. The 2000 Draft Legislation would amend this confidential filing mechanism to:

- require that the issuer's decision that it would be unduly detrimental to its interests to make public disclosure must be arrived at a reasonable manner; and
- make clear that the issuer may not maintain disclosure in confidence if there are reasonable grounds to believe that the market is trading on leaked information.

These changes were recommended by the Allen Committee in both its Interim and Final Reports [36] and largely mirrors the safe harbour provision for confidential disclosure contained in subsection 3(8) of the 2000 Draft Legislation.[37]

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33 Interestingly, one commenter noted that in the context of timely disclosure obligations U.S. courts have adopted a "market impact" test in applying the *TSC Industries* standard (i.e., whether or not the information in question would likely be price sensitive). The commenter cautioned against a change in Canada which would simply obfuscate the likely meaning to be given to such language in the courts. In this context, the commenter also questioned why Canadian regulators would move away from the "market impact" test (which is the current test in Canada, other than Québec under the current definitions) when U.S. courts appear to be moving towards it.

34 Under the 2000 Draft Legislation "material change" when used in relation to an issuer that is an investment fund, means,

(i) a change in the business, operations or affairs of the issuer that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the issuer, or

(ii) a decision to implement a change referred to in subparagraph (i) made,

(A) by the board of directors of the issuer or the board of directors of the investment fund manager of the issuer or other persons acting in a similar capacity,

(B) by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, or

(C) by senior management of the investment fund manager of the issuer who believe that confirmation of the decision by the board of directors of the investment fund manager of the issuer or such other persons acting in a similar capacity is probable;

35 Under the 2000 Draft Legislation "material fact", when used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities;

36 See Interim Report at page 93 and Final Report at page 80.

37 It should be noted that in order for a responsible issuer to avail itself of the safe harbour provision contained in subsection 3(8) of the 2000 Draft Legislation, the responsible issuer must have a reasonable basis for making the disclosure on a confidential basis.

Appendix A

Proposal for a Statutory Civil Remedy for Investors in the Secondary Market (the "Proposal")

Published in May 1998

Summary of Written Comments Received on the Proposal and the Responses of the CSA

The following table provides a summary of the written comments received on the draft legislation published in May 1998 (the "1998 Draft Legislation") and the responses of the CSA. Defined terms are given alphabetically. Unless otherwise indicated, section references in this Appendix are references to the 1998 Draft Legislation. The CSA have included the names of the commenters for ease of reference. It should be noted, however, that the following information is a summary only. The CSA encourage readers to consult the comment letters, copies of which are maintained on the public file of the various Commissions.

1998 Draft Legislation	Public Comments	CSA Response
"control person" means, (a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer, or (b) each person or company in a combination of persons or companies, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer, to affect materially the control of the issuer, and, where a person or company, or combination of persons or companies, holds more than twenty per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company, or combination of persons or companies, shall, in the absence of evidence to the contrary, be deemed to hold a sufficient number of the voting rights to affect materially the control of the issuer; **[included in Ontario version of the Proposal]**	**The Toronto Stock Exchange** (28/08/98): Definition of "control person" unnecessary, can be folded into definition of "influential person".	The OSC incorporated the definition for the purpose of consistency, because "control person" is defined in Alberta and British Columbia. The OSC does not propose to revise this definition.
"correction of the failure to make timely disclosure" means, where there has been a failure to make timely disclosure, the disclosure of the material change in the manner required under the Act;	**The Toronto Stock Exchange** (28/08/98): The definitions of "correction of the failure to make timely disclosure" and "failure to make timely disclosure" unnecessarily confuse "timely disclosure" and failure to disclose a "material change". Eliminate the reference to "timeliness" (page 1).	The CSA consider "timeliness" an important element of the Proposal -- both in determining whether liability exists and, if so, in limiting liability through correction. Elimination of the concept could have two undesirable consequences. First, given that securities legislation requires prompt but not necessarily instantaneous

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		disclosure of a material change, a failure to refer to the "timeliness" requirements of securities legislation could expose an issuer to liability, even if it made disclosure as and when required by securities legislation, for the period between the occurrence of the material change and the disclosure. This would be contrary to the objectives of the CSA. The CSA do not intend to impose civil liability unless there has been non-compliance with securities legislation. Second, without reference to "timeliness of disclosure", it might be argued that eventual late disclosure of a material change, however long after the disclosure was required to have been made under securities legislation, would cure the issuer's default. This would deprive investors of a remedy and eliminate a deterrent to non-compliance with timely disclosure obligations. The CSA believe, however, that the defined phrase ("correction of the failure to make timely disclosure") is unnecessary and propose to move the "timeliness" concept to the operative provisions of the legislation as set out in section 2(4) as follows: "2(4) Where there is a failure to make timely disclosure by a responsible issuer, a person or company who acquires or disposes of an issuer's security between the time when the material change was required to be disclosed and the ***subsequent disclosure of the material change in the manner required under this Act*** has, without regard to whether the person or company relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against..." (emphasis added).
"derivative security of a responsible issuer" means a derivative security, the value of which is derived primarily from or by reference to securities of the responsible issuer, and which is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer;	**The Toronto Stock Exchange** (28/08/98): The definition is redundant -- see Ontario Securities Commission Rule 14-501. It is also confusing in that it incorporates guaranteed securities (page 2).	The CSA propose to modify the definition to incorporate concepts from an existing definition used in Ontario, and remove a redundancy by deleting the word "derivative" from the text, as follows: **"derivative security"** means, in respect of a responsible issuer, a security, (a) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer; and (b) which is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer; The CSA do not consider the definition to be otherwise redundant, and consider the

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		reference to guaranteed securities to be appropriate. The definition must be read in context: its purpose is not merely to describe what is meant by "derivative security", but more importantly to provide that the issuer of a security underlying a derivative security would not have liability under the Proposal except to the extent that the issuer itself participated in the creation of, or guaranteed, the derivative security.
"designated securities" means, for the purpose of the definition of "private issuer" (a) voting securities, or (b) securities other than debt securities carrying a residual right to participate in the earnings of the issuer or, upon the liquidation or winding-up of the issuer, in its assets;	**The Toronto Stock Exchange** (28/08/98): Replace the definitions of "private issuer", "responsible issuer" and "designated securities" with a simpler definition of responsible issuer. (page 2)	The CSA agree with the comment and propose to simplify the Proposal by eliminating the defined terms "private issuer" and "designated securities" and amending the definition of "responsible issuer" (see the discussion of that term).
"document" means any document, including a document that is transmitted in electronic form only, (a) that is filed or required to be filed with the Commission, or (b) that is, (i) filed or required to be filed with a government or an agency thereof under applicable securities or corporate law or any stock exchange under its by-laws, rules, or regulations, or (ii) a document the purpose of which makes it likely that it would contain information substantially likely to be considered important to a reasonable investor in making an investment decision in relation to a specified security, but does not include a document not reasonably likely to be released;	**The Toronto Stock Exchange** (28/08/98 (page 3): The commenter suggests a simpler definition. Subparagraphs (a) and (b)(i) overlap and can be combined. Subparagraph (b)(ii) loses track of the focus by looking to the purposes of the document, not its content.	The CSA propose to amend this definition: 1. to make clear the distinction between: (a) a document required to be filed with the Commission (for which, generally, public release can be presumed and civil liability under the Proposal is appropriate); and (b) a document filed with the Commission voluntarily, or filed or required to be filed with another agency under securities or corporate law, or any other communication the contents of which would be likely to affect the value of a security. In the case of documents described in (b), the CSA consider that civil liability under the Proposal would be inappropriate unless public release was or should reasonably have been expected. 2. to clarify the definition as it relates to documents neither filed nor required to be filed, for which the focus should be their likely effect on market price or value rather than the purpose of the document; and 3. to simplify the definition by removing the concluding phrase, the substance of which is reflected in a specific defence to civil liability as set out in subsection 3(13) of the Proposal.
"document" (continued)	**The Toronto Stock Exchange** (28/08/98): (continued) The commenter also suggests that a defence	The CSA agree with this comment and have

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	be available for leaked confidential documents.	provided for a specific defence in subsection 3(13) in respect of an unexpected public release or "leak" of a document: "**3(13)** No person or company is liable in an action under section 2 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document, the person or company did not know and had no reasonable grounds to believe that the document would be released."
"expert" means a person or company whose profession or practice gives authority to a statement made by the person in the person's professional capacity and includes an accountant, an actuary, an appraiser, an auditor, an engineer, a geologist and a solicitor;	**The Toronto Stock Exchange** (28/08/98): Do not define -- rely on Courts. If the qualification of acting in a "professional capacity" is meant to distinguish persons acting in multiple capacities, do so not in this definition but in the liability provisions (page 3).	The CSA believe that a definition is useful given the specific liability and defence provisions applicable to experts. The CSA propose to amend this definition to substitute the common term "lawyer" for "barrister and solicitor", a more formal term not used in all Canadian jurisdictions, and also to refer specifically to a "financial analyst". The definition has been amended as follows: **"expert"** means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist and lawyer; The CSA also propose clarifications in the operative provisions of the Proposal (section 2(1)(e)(iii) and in the defences (section 3(12)) to ensure that an expert's liability is predicated on unrevoked consent: "**3(12)** No expert is liable in an action under section 2 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves that, the written consent previously provided was withdrawn in writing before the release of the document or making of the public oral statement."
"failure to make timely disclosure" means a failure to disclose a material change as and when required to do so by the Act;	**The Toronto Stock Exchange** (28/08/98): The definitions of "correction of the failure to make timely disclosure" and "failure to make timely disclosure" unnecessarily confuse "timely disclosure" and failure to disclose a material change. Eliminate the reference to "timeliness" (page 1).	The CSA consider "timeliness" an important element of the Proposal and propose to retain the concept. See the discussion above concerning the defined term "correction of the failure to make timely disclosure". The CSA have made, however, minor drafting changes to the definition, as follows: **"failure to make timely disclosure"** means a failure to disclose a material change in the manner and when required under this Act;"

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"Influential person" means, in respect of a responsible issuer, (a) a control person of the responsible issuer, (b) a promoter of the responsible issuer, (c) an insider of the responsible issuer, or (d) an investment fund manager where the responsible issuer is an investment fund;	**Canadian Bankers Association** (21/09/98): A lender may become an "influential person" under this definition upon realizing on security for a loan; lender "will need to protect itself from potential liability...and ensure it does not 'knowingly influence' a violation...under the Proposal" (page 5).	While the circumstance described in the comment could indeed render a person an "influential person", liability would attach only to an influential person who actually made the misrepresentation or who "knowingly influenced" the making of a misrepresentation or failure to make timely disclosure. The concept of "knowingly influence" was chosen to ensure that the liability of influential persons is conditional on their deliberate involvement in the making of the misrepresentation. The CSA remain of the view that this is the correct standard.
"Influential person" (continued)	**Osler Hoskin & Harcourt** (27/08/98): (page 1). Inclusion of "promoter", although not inappropriate, would pick up anyone who ever acted as a promoter. Limit this to those who acted as promoters within the preceding two years. Inclusion of insiders would pick up 10% voting securityholders whether or not in a control position -- too remote.	While the commenter is correct in noting that there is no time period to limit the inclusion of persons under the statutory definition of "promoter", this will not cause a problem under the Proposal as liability will attach to "promoters" only to the extent that they knowingly influenced the misleading disclosure. The extension to insiders was deliberate, and tempered (as the commenter notes) by the requirement to have "knowingly influenced".
"MD&A" means the section of an annual information form, financial statement, annual report or other document that contains management's discussion and analysis of financial condition and results of operations of a responsible issuer as required under Ontario securities law;	**The Toronto Stock Exchange** (28/08/98): The term is better defined in Rule 14-501 (page 4).	The commenter refers to a definition in Ontario Securities Commission Rule 14-501 *Definitions*. The CSA prefer, for the purpose of the Proposal, the published definition, which limits the scope of the term to identifiable documents.
"market capitalization" in respect of an issuer means the aggregate of (i) in relation to its securities traded on a published market, an amount that is the sum of the products of multiplying the total number of outstanding securities of each such class by the market price at which a security of the class traded, on the principal market on which the securities trade, during the ten trading days before the day on which the misrepresentation was made or there was a failure to make timely disclosure, and (ii) in relation to its securities not traded on a published market, an amount equal to the fair market value thereof, as determined by a court, as at the time of the making of the misrepresentation or the failure to make timely disclosure.	**Canadian Bar Association (Ontario) Securities Subcommittee** (03/11/98): Change the 10 trading day test to 30 days, to conform with the reformulation of the short form prospectus distribution system.	The commenter notes that NI 44-101 *Short Form Prospectus Distributions* applies a market value test at any time during a 60 day period prior to the filing of a preliminary prospectus. That test, however, is used for a very different purpose than under the Proposal, namely as the basis for determining eligibility to file a short form prospectus. Under the Proposal, market capitalization must be a more precise figure determined much closer to the relevant time, because it forms the basis of quantifying potential liability of the measured entity. The CSA propose to retain the substance of the published definition but have made some drafting changes to clarify the mechanics of the calculation and to specify that market capitalization is calculated on the basis of an issuer's equity securities. In this context,

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		a definition of "equity securities" has been added to the Proposal.
"market price" means for the securities of a class for which there is a published market (a) except as provided in paragraphs (b) or (c), (i) if the published market provides a closing price, an amount equal to the weighted average of the closing price of securities of that class on the published market for each trading day on which there was a closing price for the period during which the market price is being determined, and (ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities traded, an amount equal to the average of the weighted averages of the highest and lowest prices of the securities of that class for each of the trading days on which there were highest and lowest prices for the period during which the market price is being determined, (b) if there has been trading of the securities of the class in the published market on fewer than half of the trading days for the period during which the market price is being determined, the average, weighted by number of trading days, of the following amounts established for each trading day of the period during which the market price is being determined (i) the simple average of the bid and ask price for each trading day on which there was no trading, and (ii) either (A) the weighted average of the closing price of the securities of that class for each trading day on which there has been trading, if the published market provides a closing price, or (B) the weighted average of the highest and lowest prices of the securities of that class for each trading day on which there has been trading, if the published market provides only the highest and lowest prices of securities traded on a trading day, or (c) if there has been no trading of the securities of the class in the published market	**Osler Hoskin & Harcourt** (27/08/98): (page 2). The weighting of closing prices to determine "market price" is inappropriate. Suggested alternatives: follow Allen Committee approach or section 183 of the Regulations to the *Securities Act* (Ontario).	The CSA's approach was chosen deliberately, in recognition of the relevance of trading volume in assessing the importance of a particular price. Use of a weighted average is compatible with the approach suggested by the Allen Committee for determining market capitalization.

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on any of the trading days during which the market price is being determined, the fair market value thereof as determined by a court;		
"market price" (continued)	**The Toronto Stock Exchange** (28/08/98): A weighted average of all trading prices rather than of closing prices is superior (page 4).	While the CSA agree with this comment in principle, they are concerned that it would be difficult to apply in practice. The CSA propose no change to the definition other than minor drafting changes.
"material change" means, (a) if used in relation to an issuer other than an investment fund, (i) a change in the business, operations, capital, assets or affairs of the issuer which would be substantially likely to be considered important to a reasonable investor in making an investment decision, or (ii) a decision to implement a change referred to in subparagraph (a)(i) made by A. senior management of the issuer who believe that confirmation of the decision by the directors is probable, or B. the directors of the issuer, and (b) if used in relation to an issuer that is an investment fund, (i) a change in the business, operations or affairs of the issuer which would be substantially likely to be considered important to a reasonable investor in making an investment decision, or (ii) a decision to implement a change referred to in subparagraph (b)(i) made by A. senior management of the issuer or by senior management of the investment fund manager who believe that confirmation of the decision by the directors or trustees of the issuer or the directors of the investment fund manager is probable, or B. the directors or trustees of the issuer or the directors of the investment fund manager;	**Canadian Investor Relations Institute** (28/09/98): Recommends that the definitions "capture more fully the standard proposed in *TSC Industries Inc.*". Displeased with incomplete move toward Québec/US standard.	The CSA do not propose at this time to proceed with the amendment to this definition as published in November 1997 and in the Proposal in May 1998. The CSA at that time were proposing to amend the definition to move from the current "market impact" standard of materiality (outside of Québec) to an investment decision approach (i.e., a change would be a "material change" only if the disclosure would be substantially likely to be considered important to a reasonable investor in making an investment decision). Please see the Notice for a more complete discussion of this issue.
"material fact" means, if used in relation to the affairs of an issuer or its securities, a fact or a group of related facts which would be substantially likely to be considered important		The CSA do not propose at this time to proceed with the amendment to this definition as published in November 1997 and in the Proposal in May 1998. Please see the

1998 Draft Legislation	Public Comments	CSA Response
to be reasonable investor in making an investment decision.		discussion noted immediately above as well as the Notice for a more complete discussion of this issue.
"material change" & "material fact" (continued)	**Canadian Bankers Association** (21/09/98) (page 4): Use the concept of "significant change" for mutual funds, using the definition under proposed NI 81-102.	In response to this comment, the CSA propose, as in the proposed amendments published in November 1997, to tailor the definition for application to investment funds by parallelling the terminology of the definition of "significant change" in National Instrument 81-102 *Mutual Funds*. The CSA also propose to follow the recommendation of the Allen Committee to remove the retroactive element from the definition of "material fact" as it applies outside Québec. The proposed definitions, which would apply for all purposes of securities legislation, follow: **"material change"** , (a) when used in relation to an issuer other than an investment fund, means, (i) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, or (ii) a decision to implement a change referred to in subparagraph (i) made by the board of directors or other persons acting in a similar capacity or by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, and (b) when used in relation to an issuer that is an investment fund, means, (i) a change in the business, operations or affairs of the issuer that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the issuer, or (ii) a decision to implement a change referred to in subparagraph (i) made, (A) by the board of directors of the issuer or the board of directors of the investment fund manager of the issuer or other

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		persons acting in a similar capacity, (B) by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, or (C) by senior management of the investment fund manager of the issuer who believe that confirmation of the decision by the board of directors of the investment fund manager of the issuer or such other persons acting in a similar capacity is probable; **"material fact"**, when used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities;
"material change" & "material fact" (continued)	**Canadian Investor Relations Institute** (28/09/98): Pleased with removal of retroactive aspect of the current definitions.	See the discussion immediately above.
"material change" & "material fact" (continued)	**KPMG** (28/08/98): The commenter expressed concern about the application of these terms to misstatements in audited financial statements. The commenter recommends that, in that context, the terms refer specifically to a "material departure from GAAP" or, in the alternative, that they move toward the definition of "material misstatement" in the CICA Handbook section 5130.05. (page 5) The commenter believes that the proposed definition of material fact would shift the burden of proof in respect of an alleged misrepresentation away from the plaintiff onto the defendant. (page 6)	See the discussion above. The CSA do not propose to adopt different definitions applicable specifically to the accounting presentation. As previously noted, the CSA do not propose to amend the defined terms in question and, in any event, do not agree with the comment. The defined terms describe concepts; burdens of proof are contained in operative provisions of securities legislation and this Proposal.
"person or company who acquires or disposes of a specified security" means a person or company who acquires or disposes of a specified security, other than (a) a person or company who acquires a specified security under a prospectus,	**The Toronto Stock Exchange** (28/08/98): The definition is cumbersome. All that is needed are definitions of "acquires" and "disposes". The Proposal's list of exclusions is more limited than the Allen Committee's. (pages 4-	The CSA remain of the view that the concepts embodied in the definition are necessary. The CSA have moved the concepts, however, to section 1(2) of the legislation which section specifies the transactions that are not subject

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(b) a person or company who acquires a specified security in a distribution pursuant to an exemption from the prospectus requirement under the Act except as may be prescribed by regulation for the purposes of this definition, (c) a person or company who acquires or disposes of a specified security in connection with or pursuant to a take-over bid or issuer bid except as may be prescribed by regulation for purposes of this definition, or (d) such other person or company or class of persons or companies as may be prescribed by regulation for the purposes of this definition;	5).	to the Proposal. Acquisitions and dispositions of securities under a prospectus, pursuant to exemptions from the prospectus requirements or pursuant to a take-over bid or issuer bid are generally excluded from the operation of the civil remedy on the basis that investors in such transactions are not viewed as secondary market investors and already afforded a comparable remedy under securities legislation. Section 1(2) (formerly in the definition section) contemplates in paragraphs (b) and (c) the authority to include by Rule investors who acquire or dispose of securities in transactions which are otherwise excluded from the operation of the civil liability regime. The accompanying proposed Rules currently identify investors purchasing from a control person or from a creditor selling securities held as collateral for a debt, and those acquiring or disposing of securities under take-over bids and issuer bids that are made (i) through the facilities of a recognized exchange, (ii) for not more than 5% of a class of securities or, (iii) in reliance on a de minimus exemption. In these cases, the transactions are in substance more analogous to a secondary market transaction rather than a private transaction.
"principal market" means, for a class of securities of an issuer in respect of which there has been a misrepresentation or a failure to make timely disclosure, (a) if there is only one published market in Canada, that market, (b) if there is more than one published market in Canada, the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the ten trading days immediately before the day on which the misrepresentation was made or there was a failure to make timely disclosure, or (c) if there is no published market in Canada, the market on which the greatest volume of trading in the particular class of securities occurred during the ten trading days immediately before the day on which the misrepresentation was made or there was a failure to make timely disclosure;	**The Toronto Stock Exchange** (28/08/98): The definition is redundant and unnecessary; item (a) is completely redundant (page 5).	The CSA consider the defined term useful but have moved the definition to the regulations and amended the proposed definition to read: "'**principal market'** means, for a class of securities of a responsible issuer (i) the published market in Canada on which the greatest volume of trading in securities of that class occurred during the 10 trading days immediately before the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, or (ii) if there is no published market in Canada, the market on which the greatest volume of trading in securities of that class occurred during the 10 trading days immediately before the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred;
"private issuer" means a person or company, other than a reporting issuer, that is (a) an issuer in whose constating documents, or in one or more agreements between the issuer and the holders of its designated securities (i) the right to transfer the	**Osler Hoskin & Harcourt** (27/08/98): (page 2). The Proposal extends liability to issuers whether or not they are reporting issuers and whether or not their securities are publicly traded, as soon as they cease to be a "private issuer", seriously affecting the ability of issuers in the pre-IPO transitional stage to	The CSA agree with the comment. In light of proposed change to the definition of "responsible issuer" this definition is unnecessary. See the discussion of comments on the defined term "responsible issuer".

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designated securities of the issuer is restricted, (ii) the number of beneficial holders of the designated securities of the issuer, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the issuer, were, while in that employment, and have continued after termination of that employment to be, holders of designated securities of the issuer, is limited to not more than fifty, two or more persons who are the joint registered owners of one or more designated securities being counted as one beneficial security holder, and (iii) any invitation to the public to subscribe for securities of the issuer or any securities convertible into or exchangeable for securities of the issuer is prohibited, or (b) a private mutual fund.	raise capital.	
"private issuer" (continued)	**The Toronto Stock Exchange** (28/08/98): Replace the definitions of "private issuer", "responsible issuer" and "designated securities" with a simpler definition of responsible issuer. (page 2)	See the comment immediately above.
"public oral statement" [new - No definition in the 1998 Draft Legislation]	**Canadian Investor Relations Institute** (28/09/98): Oral misrepresentations: "Oral communications are more easily capable of misinterpretation and, without recording each encounter..., defending...will be difficult at best". Scope of oral disclosure [should] be clearly defined, limited to "conference calls with financial analysts and/or the media" (page 5).	The CSA propose to introduce a definition of "public oral statement" to clarify that liability will only arise where a reasonable person would expect that the statement will become generally disclosed. The proposed definition will read as follows: **"public oral statement"** means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed.
	Canadian Bar Association (Ontario) Securities Subcommittee (03/11/98): Amend the definitions to ensure that only public oral statements containing information substantially likely to be important should attract potential liability.	Under the Proposal, liability only arises for a misrepresentation in any statement, including an oral statement, if it was reasonable to expect that the misrepresentation would have an impact on the market price or value of a security of the responsible issuer.

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"published market" means, for a class of securities, a market on which the securities of the class are traded that is (a) a stock exchange, or (b) an over-the-counter market if the prices at which securities of the class have been traded on that market are regularly published in a publication of general and regular paid circulation;	**The Toronto Stock Exchange** (28/08/98): The definition is unnecessary (page 4).	The CSA propose to eliminate the definition because the term as used in the Proposal is not meant to connote an exhaustive list of published markets but only to make clear that market capitalization, for example, should be determined where possible by reference to published trading prices.
"release", if used in relation to a document, means to publish, make available or disseminate to the public;	[No public comment]	The term "release" is used to clarify that liability will only arise where it is reasonable to expect that a document will be made available to the public. See also the new related defence in subsection 3(13). However, the CSA consider the term "publish" to be unnecessary in this definition and have amended it accordingly.
"responsible issuer" means an issuer that is not a private issuer;	**Canadian Bankers Association** (21/09/98): Include a specific exemption for NP 39 mutual funds, for which there is no secondary market and which are typically issued under a prospectus, "to ensure there is no confusion" (page 4)	The CSA intended no automatic exemption for mutual funds or any other type of issuer. The CSA recognize that few circumstances would likely arise in which a mutual fund could have liability under the Proposal, but if such circumstances do arise the CSA perceive no justification for special treatment for investment fund issuers.
"responsible issuer" (continued)	**Canadian Bar Association (Ontario) Securities Subcommittee** (03/11/98): The Proposal should apply only to issuers with shares that are actually publicly traded, rather than focussing on whether the private company restrictions are in their articles.	The CSA agree with this comment and have amended the definition as noted below.
"responsible issuer" (continued)	**Osler Hoskin & Harcourt** (27/08/98): (page 2). The Proposal extends liability to issuers whether or not they are reporting issuers and whether or not their securities are publicly traded, as soon as they cease to be a "private issuer", seriously affecting the ability of issuers in the pre-IPO transitional stage.	The CSA agree with this comment.
"responsible issuer" (continued)	**The Toronto Stock Exchange** (28/08/98): Replace the definitions of "private issuer", "responsible issuer" and "designated securities" with a simpler definition of responsible issuer. (page 2)	The CSA propose to simplify the Proposal by eliminating the defined terms "private issuer" and "designated securities" and amending the definition of "responsible issuer" to reflect the general approach in the original Allen Committee recommendation. The revised

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		definition of "responsible issuer" will state: **"responsible issuer"** means, (i) a reporting issuer, or (ii) any other issuer with a substantial connection to Ontario any securities of which are publicly traded;
1(2) For the purposes of this Part, (a) multiple misrepresentations that have sufficient common features, including the persons or companies responsible for releasing the documents or making the public oral statements in which misrepresentations are contained and the content of the misrepresentations may in the discretion of the court be treated as a single misrepresentation, and (b) multiple instances of a failure to make timely disclosure that have sufficient common features, including the persons or companies responsible for failures to make timely disclosure and the subject matter of the information that was required to be disclosed, may in the discretion of the court be treated as a single failure to make timely disclosure.	**Canadian Bankers Association** (21/09/98): (page 6): "Further refinement of these provisions is necessary."	The CSA have revised and moved the proposed provision to read: **"2(6)** In an action under this section, (a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation; and (b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make timely disclosure."
Operative provisions creating "right of action": **2(1)** Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of a specified security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected, is deemed to have relied on the misrepresentation and has a right of action for damages against (a) the responsible issuer, (b) each director of the responsible issuer, (c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document, (d) each influential person or director or officer of an influential person, who is not also an officer or director of the responsible issuer, and who knowingly influenced (i) the responsible issuer or any		

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person or company on behalf of the responsible issuer to release the document, or (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document, and (e) each expert where (i) the misrepresentation is also contained in a report, statement or opinion made by the expert, (ii) the document includes, refers to or quotes from the report, statement or opinion of the expert, and (iii) the written consent of the expert to the use of the expert's report, statement or opinion in the document has been obtained.		
2(2) Where a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates directly or indirectly to the business or affairs of the responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of a specified security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected is deemed to have relied on the misrepresentation and has a right of action for damages against (a) the responsible issuer, (b) the person who made the public oral statement, (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement, (d) each influential person, or director or officer of the influential person who is not also an officer or director of the responsible issuer, and who knowingly influenced (i) the person who made the public oral statement to make the public oral statement, or (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement; and		

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(e) each expert where (i) the misrepresentation is also contained in a report, statement or opinion made by the expert, (ii) the person making the public oral statement includes, refers to or quotes from the report, statement or opinion of the expert, and (iii) the written consent of the expert to the use of the expert's report, statement or opinion in the public oral statement has been obtained. **(3),(4)** [Similar liability for other misrepresentations.]		
2 (Operative "right of action" section, generally; see text above)	**Canadian Bankers Association** (21/09/98): "...we are concerned [that] the vagueness of the term 'knowingly influence' will make it difficult for financial institutions to manage potential risk under the Proposal." "...consider excluding financial institutions that acquire a position in a corporate borrower's holdings in connection with a financing from the definition of 'influential person'." "...the term 'knowingly influence' should be re-examined."	The CSA do not agree that the term "knowingly influence" presents unmanageable uncertainty, nor that any "influential person" who does "knowingly influence" another person or company to make a misrepresentation or a failure to make timely disclosure should be automatically exempt from liability. The concept of "knowingly influence" was deliberately chosen by the CSA to denote a high degree of awareness. The CSA remain of the view that it is the correct standard and do not consider that exemption would be necessary or appropriate for particular categories of issuers or institutions.
2 (Operative "right of action" section, generally; see text above)	**Canadian Investor Relations Institute** (28/09/98): Excessively broad net of liability, far exceeding that applicable to prospectus liability. "Officer" is an expansive term. "Permitting" and "acquiescing in" are broad and uncertain terms. "Little attention...paid to ...legitimate concerns of corporate officers of all levels of management". (page 4) Oral misrepresentations: "Oral communications are more easily capable of misinterpretation and, without recording each encounter..., defending...will be difficult at best". Scope of oral disclosure [should] be clearly defined, limited to "conference calls with financial analysts and/or the media" (page 5).	The issues raised in this comment were considered in detail both by the Allen Committee and by the CSA. The CSA are of the view that the proposed right of action must be comprehensive in scope, but should balance legitimate needs and expectations of investors, issuers and issuers' management. The CSA remain of the view that the Proposal does properly address legitimate concerns of diligent management. Section 2 must be read (i) together with definitions that incorporate elements of reasonable expectation ("document", "public oral statement"), (ii) in light of the element of awareness inherent in each of the words "authorized, permitted or acquiesced", (iii) in light of the positive action implied by the words "authorized" and "permitted", (iv) recognizing that a plaintiff would bear the burden of demonstrating, to the satisfaction of a court, all the elements of the right of action under section 2, and (v) having regard to the available defences, which include "due diligence" that, under section 3(7), would take

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		into account the circumstances surrounding the impugned disclosure, the existence, if any, and the nature of any system to ensure that the responsible issuer meets its continuous disclosure obligations and; the reasonableness of reliance by the person or company on the disclosure compliance systems in place at the time. The cumulative effect of these provisions should restrict liability to instances in which an individual has failed to act reasonably.
2 (Operative "right of action" section, generally; continued)	**Davies, Ward & Beck** (28/08/98): "...[I]ssuers will be exposed to liability... in a much wider range of circumstances than ...under US federal securities laws (page 8). [Under section 10(b)-5,] the plaintiff must prove... "scienter". The Proposal establishes much lower pleading thresholds...the plaintiff will not have to plead...the defendant's state of mind" (pages 8-9).	The CSA understand the commenter to refer to the difference between the long-standing requirement under Canadian securities legislation for timely disclosure of all material changes and the more limited requirements under US federal securities laws. The Proposal should, in the view of the CSA, apply in respect of all disclosure of material changes required under Canadian securities legislation. The US provision is an anti-fraud measure that has been developed through jurisprudence into a compensatory scheme. The Proposal, by contrast, is designed as an incentive to good corporate disclosure practices, rather than a fully compensatory scheme. As such, the CSA believe the standards encouraged by the Proposal -- "due diligence" in respect of core documents on the part of those responsible for them, and absence of gross misconduct in other cases -- to be appropriate.
	Davies, Ward & Beck (28/08/98) (continued): "...[T]hese exceptionally low pleading thresholds will invite strike suits..." (pages 8-9). "..'[L]oser pays' cost rules...will not deter judgment-proof plaintiffs...nor...meritless claims commenced in the expectation that they will be settled..." (page 13). "[L]awyer-driven" class action litigation motivated by contingency fees (page 14).	Rules of civil procedure give courts an important role in screening out unmeritorious claims early in the litigation process in response to defence motions to strike out actions. The CSA have also made significant changes to the Proposal to (i) require that a plaintiff obtain leave of the court before commencing an action, which leave will only be granted if there is evidence of good faith and the plaintiff has a reasonable chance of success; and (ii) require court approval of any settlement agreement.
2 (Operative "right of action" section, generally; continued)	**Davies, Ward & Beck** (28/08/98) (continued): "Terms of uncertain meaning": • "public oral statement" by individuals "whose status as 'authorized' representatives ... may be questionable". • "...the Proposal fails to define the term 'knowledge'" (page 14).	The CSA have added a definition of "public oral statement" (discussed above). With that addition, the CSA consider these terms sufficiently clear to enable issuers, investors and others, as well as the courts, to understand the scope and purpose of the Proposal and apply it appropriately.

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2 (Operative "right of action" section, generally; continued)	**The Fraser Institute: Law and Markets Project** (28/08/98): "...Canadian standards for notice pleading have never been tested in securities class actions". Contingency fees: available in some jurisdictions, "providing another incentive for forum shopping". (page 35) "...underestimates the degree to which plaintiff attorneys [sic] could shop between provinces". The Proposal would "invite the Courts to take a greater role in securities rule-making... the unleashing of Courts into questions of disclosure". (page 37) Discovery: "ability to compel testimony from directors" is "troubling" (page 35).	In respect of the Proposal specifically, see the CSA's comment above on procedural measures and revisions to the Proposal. The CSA infer from these comments a general concern about the role of courts in monitoring the performance by issuers, their directors and others of their public responsibilities. Established rules of civil procedure are designed to prevent the use of the discovery process by plaintiffs to conduct "fishing expeditions", against directors or others, to establish whether they might have the basis of a claim.
2 (Operative "right of action" section, generally; continued)	**Goodman Phillips & Vineberg** (26/08/98): (page 7). ..."[P]roposal does not encompass some of the most active players in the secondary market, namely dealers and brokers, who ... have Rule 10(b-5) liability in the United States...".	Both the Allen Committee and the CSA specifically considered whether the Proposal, should apply to registrants. Both decided that the civil remedy would not appropriately extend to registrants acting only in that capacity. This is largely a reflection of the underlying purpose of the Proposal, the encouragement of high quality disclosure on the part of issuers, and a recognition that registrants do not generally have a significant role in preparing continuous disclosure. Note, however, that a registrant could fall within the definition of "influential person" in certain circumstances, in which case, if the person knowingly influenced a misrepresentation or a failure to make timely disclosure, liability would attach under the Proposal. Note also that the definition of "expert" has been expanded to refer specifically to financial analysts.
2 (Operative "right of action" section, generally; continued)	**Goodman Phillips & Vineberg** (26/08/98) (page 7) (continued): The Proposal is much stricter than US 10(b-5) liability which "requires evidence of 'scienter'". The Proposal is predicated on 'deemed reliance' whereas US jurisprudence only presumes reliance, the presumption being "rebuttable by, among others, a 'truth on the market' defence where sufficient current information is present in the marketplace" (citing Apple Computer).	See the CSA response to a similar comment by Davies, Ward & Beck, above. The CSA have amended the 1998 Draft Legislation to clarify that a person or company has a right of action for a misrepresentation without regard to whether the plaintiff relied on the misrepresentation. In this context, the revised legislation creates a purely statutory right of action. Section 4(3), however, allows the defendant to show that all or part of the loss to the plaintiff was caused by factors other than the misrepresentation or failure to

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		disclose. This provision could arguably allow a defendant to raise a "truth in the market" defence.
2 (Operative "right of action" section, generally; continued)	**Investment Dealers Association of Canada** 29/09/98 to 02/10/98: (page 2)	
	The Proposal "imposes strict liability" whereas US Rule 10b-5 requires "the plaintiff [to] prove intent on the part of the defendant".	See the CSA response to a similar comment by Davies, Ward & Beck, above.
	Rather than providing a remedy to investors, regulators should: • upgrade continuous disclosure rules to US standards; and	The CSA agree with the commenter that continuous disclosure requirements should be upgraded and note that enhancements to continuous disclosure requirements are under consideration as part of separate CSA initiatives. These initiatives include the proposed Integrated Disclosure System, which was the subject of a Concept Proposal published for comment on January 28, 2000. The Proposal is designed to encourage practices that ensure compliance with disclosure requirements. That purpose would, in the view of the CSA, remain valid irrespective of changes in particular disclosure requirements.
	• implement uniformly an equivalent to *Securities Act* (Ontario) section 128.	The commenter refers to a provision enabling the regulator to apply to a court for a remedial order. While some CSA members have such authority, the CSA do not consider that the availability or otherwise of such a provision would have a bearing on the appropriateness of a civil remedy available directly to investors.
2 (Operative "right of action" section, generally; continued)	**McCarthy Tétrault** (28/08/98):	
	"The Proposal [section 2] contemplates strict liability...significantly tougher ...than in the United States where a *scienter* standard applies" (page 13).	See the CSA response to a similar comment by Davies, Ward & Beck, above.
	The commenter points to contingency fees and the practice of plaintiff firms financing class action litigation.	See the CSA response to a similar comment by Davies, Ward & Beck, above.
2 (Operative "right of action" section, generally; continued)	**Ontario Municipal Employees Retirement Board** 30/09/98:	
	"Tighten and improve the text of the Proposed Legislation".	The CSA have taken this comment into account in revising the Proposal.
2 (Operative "right of action" section, generally; continued)	**Osler Hoskin & Harcourt** (2708/98): (page 4).	
	The Proposal fails to carry forward the Allen Committee recommendations to exclude professional advisers acting in that capacity, and to require actual awareness on the part of influential persons.	The change from the Allen Report recommendation was deliberate. In view of the CSA's objective of encouraging sound disclosure by issuers, and the almost universal involvement of external advisors in at least some aspects of issuer disclosure, the suggested exclusion is unjustifiable.

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		Note, however, that an external advisor who is an "influential person" would be liable only for a misrepresentation or failure to make timely disclosure that the adviser "knowingly influenced", or if the influential person actually released the document or made the public oral statement containing the misrepresentation. This, in the view of the CSA, is the correct result and not inconsistent with the commenter's objective.
2 (Operative "right of action" section, generally; continued)	**The Toronto Stock Exchange** (28/08/98): The Proposal fails to carry forward the Allen Committee's recommended distinct liability of a professional advisor acting in that capacity.	See the comments immediately above.
	The Toronto Stock Exchange (28/08/98) (continued): The Proposal does not achieve its objectives in that an investor who acquired securities after the correction would not have a cause of action (page 7).	The CSA are of the view that the Proposal is correct in not extending a cause of action to an investor who acquires securities after a misrepresentation has been corrected. The CSA generally agree with the conclusion of the Allen Committee as to who should have a cause of action.
Operative section 2 -- specific elements: **2 (2)** (See above.)	**Canadian Bar Association (Ontario) Securities Subcommittee** (03/11/98): There should be a defence for an issuer that publicly disavows a public statement by a person with apparent but not actual authority.	The CSA are sympathetic to the suggestion. In an effort to more clearly balance the legitimate interests of issuers and investors, and in view of the underlying purpose of the Proposal, namely the encouragement of good disclosure practices on the part of issuers, the CSA have modified the "correction" defence as follows: **"2(7)** In an action under subsection (2) or subsection (3), if the person or company that made the public oral statement had apparent, but not implied or actual, authority to speak on behalf of the issuer, no person is liable with respect to any of the responsible issuer's securities acquired or disposed of before that person became, or should reasonably have become, aware of the misrepresentation."
Operative section 2 -- specific elements: (continued) **2 (2)** (See above.)	**Global Strategy Investment Fund** (30/09/98): The term "public oral statement" could describe the commenter's periodic market overview and, if so, the commenter is uncertain whether a genuinely-held, but ultimately inaccurate, view would relate "directly or indirectly to the business or affairs of an Issuer" and constitute a "misrepresentation". If excluded, the	The CSA do not consider a specific exclusion of "market overviews" either practical or necessary. The CSA are of the view that the circumstances in which a publicly stated misrepresentation of facts could give rise to liability are appropriately limited under the Proposal.

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	definitions need to be clearer. If intended to create liability, the legislation must more clearly distinguish between types of disclosure. Concern was also expressed about potential liability for a misrepresentation through omission, for example in a focussed discussion that does not cover certain areas.	Liability under the Proposal would not attach merely by reason of an inaccuracy in a public oral statement. The statement, as noted, must amount to a "misrepresentation", which in turn under securities legislation constitutes either an untrue statement of a material fact or an omission to state a material fact that is either required to be stated or that must be stated to ensure that a statement is not misleading in the light of the circumstances in which it was made. A "material fact" refers, in most jurisdictions, to something that would reasonably be expected to have a significant effect on the market price or value of a security. In Québec, the term refers to something reasonably likely to have a significant effect on an investment decision. An "overview" of market conditions would not likely be considered a statement constituting a material fact. Moreover, a positive statement of an issuer's genuine and reasonable belief as to market conditions, characterized as such, would not likely be considered "untrue", if indeed it would constitute a material fact. Note also that the Proposal provides defences for all persons and companies that, after reasonable investigation ("due diligence"), reasonably believed that there had not been a misrepresentation, and for forward looking information that is accompanied by appropriate cautions and for which the person or company has a reasonable basis for making the forward-looking disclosure.
Operative section 2 -- specific elements: (continued) **2 (4)** Where there is a failure to make timely disclosure by a responsible issuer, a person or company who acquires or disposes of a specified security between the time when the material change was required to be disclosed and the correction of the failure to make timely disclosure is deemed to have relied on the responsible issuer having complied with its disclosure requirements under the Act and has a right if action for damages against (a) the responsible issuer, (b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure, and (c) each influential person or director or officer of an influential person, who is not also an officer or director of the responsible issuer,	**Canadian Investor Relations Institute** (28/09/98): Liability for failure to make "timely" disclosure is criticized as an extension beyond US standards. There is no de minimus delay allowed and no reflection of the difficult judgements required for determining when disclosure becomes necessary or material. The commenter calls for "...a very expansive safe harbour" (page 6).	The CSA propose no "safe harbour" for failures to make timely disclosure. The Proposal does not alter existing requirements for timely disclosure, which the CSA consider fundamental to the existing disclosure regime under Canadian securities law. The Proposal does, however, recognize the need on occasion to balance demands for reliability and timeliness of disclosure, primarily through the defence, available to all persons and companies, of reasonable investigation ("due diligence"). The legislation allows the court to consider a number of factors in assessing the reasonableness of investigation or whether the person or company is guilty of gross misconduct, including the time period within which the disclosure was required to be made.

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and who knowingly influenced (i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.		
3 (4) In determining whether an investigation was reasonable, or whether any person or company has been grossly negligent, regard shall be had to all of the circumstances, including (a) the nature of the responsible issuer, (b) the knowledge, experience and function of the person or company, (c) the office held if the person was an officer, (d) the presence or absence of another relationship with the responsible issuer if the person was a director, (e) the reasonableness of reliance on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties should have given them knowledge of the relevant facts, (f) the time period within which disclosure was required to be made, (g) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement, and (h) in the case of a failure to make timely disclosure, the role and responsibility of the person or company in a decision not to disclose the material change.	**KPMG** (28/08/98): The commenter expressed concern that the defence of "reasonable investigation" could be onerous for auditors, exposing them to judicial second-guessing as to the reasonableness of their audit investigation and the inevitable judgements that auditors must make about whether, and how far, to insist on changes to financial statements (page 7). The Proposal should specify what procedures constitute a "reasonable investigation" to support the auditor's belief that a released document fairly represents the auditor's report (page 8).	The CSA do not consider that any professional's participation in public disclosure should automatically be exempt from judicial review. Concerning the commenter's second point, the Proposal reflects the CSA view that guidance ought not to take the form of a procedural handbook. However, reference to relevant professional standards would give an appropriate degree of guidance to courts and certainty to experts. To clarify the role of the court, the CSA have changed the preamble to read: "**3(7)** In determining whether an investigation was reasonable under subsection (6), or whether any person or company is guilty of gross misconduct under subsection (1) or (3), the court shall consider all relevant circumstances, including..." To address the specific issue raised by the commenter, the CSA have also revised the provision by adding the following after paragraph: "(h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert; " The requirement for the expert's written consent to the particular use to which the expert's work is put should go some way to address the commenter's concerns. In a similar vein, the CSA propose to add to the Proposal the following (not limited to expert statements): "(i) the extent to which the person or company knew or should reasonably have known the content and medium of dissemination of the document or public oral statement,"
3 (5) No person or company is liable under section 2 where there has been a failure to make timely disclosure if the material change was disclosed by the responsible issuer on a confidential basis to the Commission and, (a) the responsible issuer had a reasonable basis for making the	**Canadian Bankers Association** (21/09/98): (page 5): Clarify which party has the burden of proof.	The CSA propose to revise the provision to make clear that the burden of demonstrating the grounds of this defence to liability rests with the defendant:

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disclosure on a confidential basis, (b) if the information contained in the confidential filing remains material, disclosure of the material change was made public promptly upon the end of the basis for confidentiality, and (c) the person or company or responsible issuer does not release a document or make a public oral statement that, due to the undisclosed material change, constitutes a misrepresentation, provided that, upon the material change becoming public, the responsible issuer promptly discloses the material change in the manner required under the Act.		"**3(8)** No person or company is liable in an action under section 2 in respect of a failure to make timely disclosure if, (a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under subsection 75(3) of this Act;..." The CSA consider this defence and the related burden of proof to be appropriate: knowledge concerning the existence or nonexistence of a confidential filing will rest with the issuer and other responsible persons acting on its behalf, and not with a plaintiff.
3 (5) (continued)	**The Toronto Stock Exchange** (28/08/98): The concluding words are circular because it is the issuer that will make the information public (page 6).	The comment assumes that confidential information can become public only by the issuer's action. This may not always be the case. The provision was meant to ensure that, if information is leaked, however justified confidentiality might have been, the information should be formally made public to ensure broad dissemination. The CSA propose to make several minor drafting changes to the section to clarify its operation. The CSA have revised the section to read as follows: "**3(8)** No person or company is liable in an action under section 2 in respect of a failure to make timely disclosure if, (a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under subsection 75(3) of this Act; (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis; (c) if the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist; (d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and

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		(e) if the material change became publicly known in a manner other than as required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.
3 (6) No person or company is liable under section 2 for a misrepresentation in forward-looking information if, (a) the person or company proves that (i) the forward-looking information contained reasonable cautionary language proximate to the forward-looking information and, where reasonably practicable, an analysis of the sensitivity of the information to variations in the material factors or assumptions that were applied in reaching a conclusion or forecast contained in the forward-looking information, and (ii) the person or company had a reasonable basis for the conclusion or forecast, (b) securities of the responsible issuer are traded on a published market, and (c) the forward-looking information is not contained in the prospectus or securities exchange take-over bid circular of the responsible issuer filed in connection with the initial public distribution of securities of the responsible issuer.	**Canadian Bankers Association** (21/09/98): Remove the requirement for a sensitivity analysis owing to the uncertainty of the "where reasonably practicable" language. Give more guidance on cautionary language. (page 5)	The CSA propose revisions that would clarify and broaden the defence to liability in respect of forward-looking information, by (i) making clear that the requisite cautionary language must be proximate to but need not be part of the forward-looking information; (ii) clarifying elements of the requisite cautionary language; (iii) eliminating the requirement for a sensitivity analysis; and (iv) eliminating the condition relating to trading of the responsible issuer's securities. In this context, the CSA also propose to make some drafting changes to the definition of "forward looking information" to clarify its scope. The proposed definition would read as follows: **"forward-looking information"** means all disclosure regarding possible events, conditions or results including future oriented financial information with respect to prospective results of operations, financial position or changes in financial position, based on assumptions about future economic conditions and courses of action, and presented as either a forecast or a projection;
3 (6) (continued)	**Canadian Investor Relations Institute** (28/09/98): "Safe harbour" for forward-looking information: Concerned about difficulty of establishing a "reasonable basis". "recommend instead...US standard" offering safe harbour with cautionary language and absence of "actual knowledge that the statements were false or misleading". Utility of sensitivity analysis doubted (page 7).	The CSA propose to remove the requirement for a sensitivity analysis and have proposed other modifications to the provision. See the response to the comment from the Canadian Bankers Association, immediately above. The CSA do not, however, consider that a defence conditional on a "reasonable basis" for a statement is unduly restrictive. The CSA do not agree with the proposition that forward-looking information should, in effect, be protected whether or not the maker has any basis for making the statement, unless the plaintiff can prove actual knowledge that the statement was false. To do so would be tantamount to sanctioning fraudulent misrepresentations.

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3 (6) (continued)	**Goodman Phillips & Vineberg** (26/08/98): "Safe harbour" under the Proposal for forward-looking information shifts onto defendants the burden of proving a reasonable basis for the forecast information while in the US the plaintiff must prove that the defendant actually knew that the information is misleading (page 8).	The CSA consider the proposed defence, with the modifications described above, to be appropriate.
3 (6) (continued)	**Osler Hoskin & Harcourt** (27/08/98): (page 5). The proposed "safe harbour" is not available to issuers whose securities are not traded on a public market, although they would be subject to general liability under the Proposal as soon as their "private company" restrictions are removed.	The CSA share the commenter's concern and have amended both the safe harbour and the definition of "responsible issuer" to address this concern. More broadly, however, the CSA do not consider the trading status of the responsible issuer's securities integral to this defence, and propose to remove that condition. See the response to comments of the Canadian Bankers Association, above.
3 (7) Where the report, statement or opinion of an expert is included, referred to or quoted from in a document or in a public oral statement, the written consent of the expert to such use being made of the report, statement, or opinion shall be obtained by the responsible issuer prior to, (a) the document being filed with the Commission, or with a government or an agency thereof under applicable securities or corporate law, or any stock exchange under its by-laws, rules or other regulatory instruments or policies, (b) the document being released if the document has not already been filed with the Commission, or with a government or an agency thereof under applicable securities or corporate law, or any stock exchange under its by-laws, rules or other regulatory instruments or policies, or (c) the person making the public oral statement.	**The Canadian Institute of Chartered Accountants** (03/09/98) (page 1): An expert should have a defence upon becoming "aware that the information on which they carried out services is altered".	Under the Proposal an expert would only be liable if the expert's report, statement or opinion contains a misrepresentation at the time the report, statement or opinion is made. If information changes after the report, statement or opinion is made, the expert would not be liable. Further, in order to attract liability, the expert must have given his consent to use the report, statement or opinion and not subsequently withdrawn his consent. For post-publication corrections, see the discussion below concerning subsection 4(1) of the 1998 Draft Legislation (now section 3(15) in the revised legislation).
3 (7) (continued)	**The Toronto Stock Exchange** (28/08/98): The requirement for written consent of the expert is criticized as superfluous and unnecessary, in that issuers and experts will obtain and give consents anyway (page 6).	The CSA agree with the comments and have removed the requirement from the Proposal. It should be noted, however, that any existing requirements under securities legislation for written consents in respect of specific disclosure documents are unaffected by the Proposal.
Derivative Information		The use by an issuer in its disclosure documents of information, containing a

1998 Draft Legislation	Public Comments	CSA Response
[new - No counterpart in the 1998 Draft Legislation]		misrepresentation, that was derived from public disclosure by another issuer could expose the first issuer to liability. To make clear that disclosure, by or for a responsible issuer, of information in respect of another issuer that is derived from public disclosure by that other issuer, where the use of that information by or on behalf of the first issuer is not unreasonable, will not render the responsible issuer liable for a misrepresentation in the disclosure of the other issuer, the CSA have revised the Proposal by adding the following provision: "**3(14)** No person or company is liable in an action under section 2 for a misrepresentation in a document or a public oral statement, if the person or company proves that: (a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or a stock exchange and not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada or stock exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer; (b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and (c) at the time of release of the document or the making of the public oral statement, the person or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation. "
4 (1) No person or company, other than the responsible issuer, is liable under section 2 in respect of a misrepresentation or a failure to make timely disclosure that was made without the knowledge or consent of the person or company, for any loss or damage incurred by a plaintiff after (a) the person or company became aware of a misrepresentation or a failure to make timely disclosure, (b) the person or company promptly notified the board of directors of the responsible issuer of the misrepresentation or the failure to make timely disclosure, and	**The Toronto Stock Exchange** (28/08/98): The commenter notes that the provision, which differs somewhat from the equivalent proposed by the Allen Committee, while perhaps intended to promote early third-party correction of a misrepresentation could actually discourage third-party correction (page 6).	The CSA are not convinced that the provision would, in fact, discourage third-party correction but do propose to revise the provision to make clear that, as under the Allen Committee' s proposal, qualifying defendants would have no liability: "**3 (15)** No person or company, other than the responsible issuer, is liable in an action under section 2 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and, if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely

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(c) if no correction of the misrepresentation or no correction of the failure to make timely disclosure was made by the responsible issuer within two days after the notification under paragraph (b), the person or company (unless prohibited by law or by professional confidentiality rules) promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure.		disclosure before it was disclosed in the manner required under this Act, (a) the person or company promptly notified the board of directors of the responsible issuer or such other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure, and (b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within two business days after the notification under paragraph (a), the person or company, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure.
4 (2) In an action under section 2 in respect of a misrepresentation or a failure to make timely disclosure, if the plaintiff acquired or disposed of specified securities on or before the tenth trading day after the public correction of the misrepresentation or the correction of the failure to make timely disclosure, the amount recoverable shall not exceed the amount of the plaintiff's actual loss, calculated taking into account the result of hedging or other risk limitation transactions undertaken by the plaintiff.	**The Toronto Stock Exchange** (28/08/98): The Proposal fails to distinguish between a plaintiff who sells before and one who sells after correction (page 7).	The comment is correct. The CSA do not consider it necessary to make such a distinction. These provisions do make a distinction in the computation of the loss recoverable depending on when, if ever, the loss is crystallized, in essence requiring that the loss be computed on the basis of a market price not more than 10 days after public correction, because it was considered that the variety of influences on market price during any longer period would tend to detract from the link between a later market price and the effect of the misrepresentation and its correction. The CSA do, however, propose revisions to make this distinction clearer: **"4(1)** Damages shall be assessed in favour of a person or company that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows: (a) in respect of any of the securities of the responsible issuer that the person or company subsequently disposed of on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of such disposition), calculated taking into account the result of hedging or other risk limitation transactions;

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		(b) in respect of any of the securities of the responsible issuer that the person or company subsequently disposed of after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of, (i) an amount equal to the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of such disposition), calculated taking into account the result of hedging or other risk limitation transactions, and (ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and, (A) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or (B) if there is no published market, then the amount the court considers just; and (c) in respect of any of the securities of the responsible issuer that the person or company has not disposed of, assessed damages shall equal the number of securities acquired, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and, (i) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 day trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

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		(ii) if there is no published market, then the amount that the court considers just.
4 (3) In an action under section 2 in respect of a misrepresentation or a failure to make timely disclosure, other than by a plaintiff described in subsection 4(2), the amount recoverable shall not exceed the aggregate of commissions paid in respect of the original acquisition or disposition and the lesser of, (a) where the plaintiff has subsequently acquired or disposed of the specified securities, the plaintiff's actual loss, calculated taking into account any hedging or other risk limitation transactions undertaken by the plaintiff, and (b) a loss amount calculated on the basis of the difference between the price paid or received by the plaintiff at the time of the initial transaction in which the plaintiff acquired or disposed of the specified securities in question and (i) where the specified securities trade on a published market, the market price of the specified securities on the principal market for the specified securities during the ten trading days following the public correction of the misrepresentation or the correction of the failure to make timely disclosure, or (ii) if there is no published market, then such amount as a court may deem just.	**The Toronto Stock Exchange** (28/08/98) (continued): Proposal fails to distinguish between a plaintiff who sells before and one who sells after correction (page 7).	See the comment immediately above concerning subsection 4(1).
4 (4) In an action under section 2 in respect of a misrepresentation or a failure to make timely disclosure, no amount shall be recoverable for any loss or damage that the defendant proves was not caused by the misrepresentation or the failure to make timely disclosure.	**Goodman Phillips & Vineberg** (26/08/98) (page 7): Proposal shifts burden of proving "causation" to the defendant; the burden rests on the plaintiff under 10b-5 (citing Huddleston).	The provision parallels, as intended, securities legislation governing liability for misrepresentations in a prospectus. The Proposal is fundamentally different than Rule 10b-5. The former is a specific and comprehensive code whereas the latter is a general anti-fraud rule which leaves to determination by the courts matters such as the elements of the cause of action and apportionment of damages. The Proposal attempts to strike a fair balance between the interests of responsible issuers and plaintiffs. The plaintiff is not required to prove that a misrepresentation or failure to file caused him damage. It is assumed from the element of materiality inherent in the definition of "misrepresentation" and in the requirement to file a material change report that the misrepresentation or failure to file would be

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		expected to affect the price at which the plaintiff purchases or sells the security. However subsection 4(3) excludes liability for any portion of the plaintiff's damages which do not represent a change in value of the security resulting from the misrepresentation or failure to file.
4 (4) (continued)	**Canadian Bankers Association** (21/09/98): (page 6): The Proposal "goes too far by relieving the Plaintiff of the burden of proving... any cause or factors" -- "low pleading threshold will encourage ...strike suits...".	See the CSA response to similar comments by Davies, Ward & Beck in connection with section 2, above. The CSA have amended the Proposal to require that a plaintiff obtain leave of the court before commencing an action, which leave will only be granted if there is evidence of good faith and the plaintiff has a reasonable chance of success.
4 (5) The total liability of a person or company in an action under section 2 in respect of a misrepresentation or a failure to make timely disclosure in respect of, (a) a responsible issuer, shall not exceed the greater of (i) 5% of its market capitalization, and (ii) $1 million, (b) each director or officer of a responsible issuer, shall not exceed the greater of (i) $25 000, and (ii) 50% of the aggregate of the director's or officer's total compensation from the responsible issuer and its affiliates, (c) an influential person, where the influential person is not an individual, shall not exceed the greater of (i) 5% of its market capitalization, and (ii) $1 million, (d) an influential person where the influential person is an individual, shall not exceed the greater of (i) $25 000, and (ii) 50% of the aggregate of the influential person's total compensation from the responsible issuer and its affiliates, (e) each director or officer of an influential person, shall not exceed the greater of	**The Fraser Institute: Law and Markets Project** (28/08/98): The proposed caps on damages will penalize "Canada's largest and arguably most successful companies" (page 39).	The CSA do not propose to modify the damage caps. The CSA remain of the view that damage exposure must, if the system is to have deterrent value be sufficient to make it worthwhile for a plaintiff to undertake an action but, on the other hand, reflect an issuer's ability to pay and recognize that it is the non-plaintiff shareholders who ultimately bear the economic burden of providing compensation. In this context, the CSA have amended the legislation to introduce a "gatekeeper" mechanism (section 7) and a requirement to seek court approval for settlements (section 9). The CSA believe that these procedural safeguards coupled with the "loser pay" cost provision (section 10) and the provision apportioning liability among defendants (section 5) included in the 1998 Draft Legislation will reduce the risk of strike suits.

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(i) $25 000, and (ii) 50% of the aggregate of the director's or officer's total compensation from the influential person and its affiliates, (f) an expert, shall not exceed the greater of (i) $1 million, and (ii) the revenue that the expert and its affiliates have earned from the responsible issuer and its affiliates during the twelve months preceding the misrepresentation, and (g) each person, other than a person or company under subsections 4(5)(a), (b), (c), (d), (e) or (f), who made a public oral statement where the person is an individual, shall not exceed the greater of (i) $25 000, and (ii) 50% of the aggregate of each person's total compensation from the responsible issuer and its affiliates; unless, in the case of a person or company other than the responsible issuer, the plaintiff proves that the person or company authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure.		
4 (5) (continued)	**Goodman Phillips & Vineberg** (26/08/98) (page 10): "By linking the limits on total liability of individual defendants to their compensation, the Proposal will lead to the anomalous result that an individual [with]... the greatest responsibility for the misleading disclosure could pay less in damages than a less 'culpable' individual who happens to be better compensated". Similar result for corporate defendants with differing capitalization. Multiple categories of defendants, defences and documents: "Proposal is unduly complex".	This result follows from the emphasis on deterrence rather than full compensation. No change is proposed. See the CSA response to a similar comment raised by The Fraser Institute above Difficult to further simplify categories of defendant.

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	The effectiveness of the Proposal hinges on class actions, not available across Canada.	Class actions are not a prerequisite of the Proposal. It should be noted, however, that B.C. class proceeding legislation permits the inclusion of plaintiffs that reside outside B.C. on an "opt-in" basis as a sub-class. Moreover, Ontario courts have recently decided that the absence of an explicit mention of foreign plaintiffs in the Ontario class proceeding legislation does not preclude their participation under that statute unless they specifically "opt out" (see, *Carom v. Bre-X Minerals Ltd.*, 43 O.R. (3d) 441).
4 (5) (continued)	**McCarthy Tétrault** (28/08/98): "The Proposal is unfair to large cap issuers with significant share equity" (page 2).	See the CSA response to a similar comment raised by The Fraser Institute above.
	"The gate keeping of provincial securities administrators should not be altered" by supplementing regulatory oversight with private enforcement (page 9). There is little reason to believe that Canadians are truly less litigious than their American brethren. It is more likely that our system of justice has simply not allowed... the ... approach taken in the United States. This may be changing..." (page 11).	The CSA view a so-called "gatekeeping role" as an important element of the role of a court in assessing any motion to dismiss an action before it, or in considering a motion to join plaintiffs or to certify a class action. The CSA do not consider that it would be appropriate for a securities regulatory authority to be obligated, in essence, to intervene in and possibly terminate an action before it reaches the courts. Securities regulatory authorities would, however, be notified of actions and entitled to intervene where such intervention would be in the public interest.
4(5)	[No public comment]	The CSA have clarified in the Proposal that the proposed caps on damages are aggregate amounts that apply to all actions commenced across Canada. Specifically, the amount of damages a defendant must pay are reduced by the amount of any prior award made against, or settlement paid by, the defendant relating to the same misrepresentation under a similar action in any Canadian jurisdiction (see section 6 of the revised legislation).
5 (1) In an action under section 2, where damages have been caused or contributed to by the fault or neglect of two or more defendant persons or companies, the court shall determine each defendant's responsibility for the damage or loss incurred by all plaintiffs in the action, expressed as a percentage of all defendants' responsibility, and each defendant shall be liable to the plaintiffs only for that percentage of the aggregate amount of damages awarded to the plaintiffs. **5 (2)** Despite subsection (1), if, in an action under section 2 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular	**KPMG** (28/08/98): Because audited financial statements are the joint responsibility of auditors, directors and management, • the liability of auditors should never exceed 50%; and • directors and officers should not be able to assert as a defence reliance on the auditor. (page 8)	The CSA do not agree with the comment and do not believe that an arbitrary apportionment of liability as between auditors and others is appropriate. The recommendations would remove from the courts the decision deliberately left to them under the Proposal, a decision to be made on the basis of all relevant circumstances of a particular case.

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defendant (other than the responsible issuer) authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, that defendant will be liable jointly and severally with each other defendant, other than the responsible issuer, in respect of whom the court has made a similar determination, for the aggregate amount of damages awarded in the action.		
6 Notwithstanding anything to the contrary in the *Courts of Justice Act* (Ontario) and the *Class Proceedings Act* (Ontario), the prevailing party in an action under section 2 shall be entitled to costs determined by a court in accordance with applicable rules of civil procedure.	**Canadian Bankers Association** (21/09/98): (page 6): The CBA supports the Proposal but calls for its extension to existing prospectus liability provisions.	The CSA may consider this comment separately from this Proposal.

Appendix B
Summary of Comments Received on the Request for Comments Proposed Changes to the Definitions of "Material Fact" and "Material Change"

Certain members of the Canadian Securities Administrators (the "CSA") published for comment proposed changes to the definitions of "material fact" and "material change". The amended definitions were first published for comment in November 1997[1] (the "Request for Comment") and did not form a part of the recommendations contained in the Allen Committee's Final Report.[2] The CSA received the following 7 submissions in response to this Request for Comment:

1. Securities Advisory Committee (Ontario) by letter dated December 4, 1997.
2. Canadian Bankers Association by letter dated December 17, 1997.
3. Osler, Hoskin & Harcourt (Corporate Department) by letter dated December 19, 1997.
4. Phillip Anisman on behalf of The Toronto Stock Exchange by letter dated December 22, 1997.
5. McCarthy Tétrault by letter dated December 29, 1997.
6. CBAO Securities Law Sub-Committee of the Business Law Section by letter dated January 23, 1998 (subsequent submission dated April 19, 1998).
7. Aur Resources Inc. by letter dated January 27, 1998.

At the time the 1998 Draft Legislation was being published the CSA were still considering the comments received on the proposed amended definitions and a final decision had not been made to recommend to our respective governments that the definitions be revised as proposed. In the meantime, a decision was made to reflect the proposed revised definitions in the 1998 Draft Legislation and publish the entire package for comment.

The CSA thank all the commenters for providing their comments. The comments provided in these submissions have been considered by the CSA. However, as the CSA do not propose at this time to proceed with the amendments to these two definitions as published in the 1998 Draft Legislation (other than the changes noted previously in the CSA Report), the CSA is only providing a summary of the comments received without a specific response to each of these comments. The summary has been organized by topic. In this context, it should be noted that the CSA received a number of drafting comments on the proposed definitions which have not been specifically included in this summary.

A. Single and Uniform Materiality Standard

Four commenters supported the proposed changes in principle and agreed that a single and uniform standard of materiality for all purposes under securities laws would be desirable. However, one commenter noted that this cannot be accomplished merely by changing the two definitions addressed in the Request for Comments, as Canadian securities laws contain requirements reflecting materiality standards not based on the definitions of "material fact" and "material change".[3] It was the commenter's view that a change in the standard of materiality must address all of the materiality standards in Canadian securities laws to avoid creating unintended ambiguities. The commenter's support of the proposed changes was premised on the assumption that the consequential amendments necessary to ensure a single standard of materiality for all purposes would be made to the securities acts, regulations, rules and policies of each province when the new definitions are enacted. If the review necessary to ensure a consistent standard of materiality throughout Canada could not be accomplished within the CSA's time frame for implementation of the Allen Report's civil liability regime, the commenter noted that it would be preferable to amend the definition of "material fact" only to remove its retroactive element when the civil liability regime is enacted and defer the remaining changes to a later date.

B. Effect of Proposed Reasonable Investor Standard

Commenters were divided as to the likely impact on disclosure obligations if the CSA moved from a market impact standard of materiality to a reasonable investor standard.

One commenter expressed concern that the proposed definitions will make determining whether a material change or material fact has occurred very difficult and will make the threshold more subjective. In this context, the commenter suggested that the implementation of the new materiality/disclosure standard be delayed until Canadian capital markets adjust to the implementation of the limited statutory civil liability regime for continuous disclosure.

One commenter was of the view that the disclosure obligations imposed by the current definitions and those proposed would not differ in practice in most cases. In this context, the commenter noted that a perceived impact of information on share prices invariably influences and is influenced by its importance to investors. Information that is significant to investors will almost always be likely to affect the market price of an issuer's securities (except with respect to mutual funds). In the commenter's view, it is difficult to envisage circumstances in which a fact that would not be likely to affect the market price would be material under the proposed standard. If the CSA intends the new standard to encompass facts that do not have financial consequences for issuers and their securities, the commenter suggested that the CSA define such circumstances and the intended purpose of including them, and in doing so, should proceed with caution. If the proposed changes are enacted, the commenter suggested

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[1] In Ontario, Request for Comments #51-901, (1997) 20 OSCB 5751.

[2] With the exception of one aspect of the proposed change to the definition of "material fact" to remove the retroactive aspect of the current definition which was recommended by the Allen Committee.

[3] For example, the commenter noted that in contrast to the proposed definitions, a takeover bid circular describes matters, in addition to material facts, which "would reasonably be expected to affect the decision" of the offeree security holders with respect to the bid. In addition, concepts of materiality are often used to require disclosure of events, transactions and contracts in a statutory context in which the current definition of "material facts" does not apply (common instances are in the forms specifying disclosure under securities legislation).

that an interpretive policy be published addressing the practical implications of the new standard for issuers.

Finally, one commenter expressed doubt about whether the adoption of an "investment decision" standard would advance things much. The commenter noted that while *Basic Inc. v. Levinson* extended the *TSC Industries* standard of materiality in the U.S. from voting decisions to timely disclosure obligations, ultimately, the essential test is whether the information in question would likely be price sensitive. The commenter argued that the price impact test is the true test in the United States, at least for disclosure purposes and insider trading purposes. Therefore, the commenter cautioned against a change in Canada that would obfuscate the likely meaning to be given to such language in the courts. The commenter noted that the preferred route would be to remove the *ex post facto* test and apply a test based on the current approach which focuses on expected price impact.

C. <u>Scope of proposed materiality standard</u>

Commenters were divided as to whether the proposed materiality standard should be applied to all disclosure obligations and to insider trading.

Offering Documents

One commenter expressed the view that the proposed definitions are appropriate for offering documents, such as prospectuses, offering memoranda, take-over bid circulars and directors circulars.

Conversely, another commenter expressed concern that amending the definition of "material fact" could result in extremely lengthy prospectus documents disclosing facts which would be material to a wide spectrum of reasonable investors in making an investment decision. To the extent that the CSA is concerned that the length of prospectuses is not conducive to allowing investors to make reasoned investment decisions, the proposed amendments could further serve to exacerbate the situation.

Proxy Circulars

Two commenters recommended that the materiality standard not apply to information in a management information circular ("proxy circular"). In this context, one of the commenters expressed concern that applying the proposed standard misconstrues the purpose of the proxy circular, which is to provide all relevant information to investors in order for them to be able to make a reasoned decision about the matters to be submitted to the meeting. The commenter was concerned that the proposed materiality standard will cause the information to extend beyond information about a proposal to information as to the likelihood of success of the proposal (which would be of primary concern to some market participants).

One commenter believed that the proposed standard must be applied to proxy circulars, as documents used by a corporation for one purpose may be used by investors for another. For example, a proxy circular issued in connection with an amalgamation may influence investment decisions and the information in the circular will likely affect the price of the issuer's securities. A misrepresentation in the circular would affect the validity of the shareholders' meeting and could give rise to civil liability. The materiality standard should be the same for both purposes. However, in other contexts, a misrepresentation that affects the validity of a meeting or specific resolution may not be likely to influence an investment decision but rather may affect a voting decision (for example, information with respect to a nominee to the board of directors). The proposed standard of materiality must be applied in the context of the decision to which it relates. To make it clear that this is the intended approach, the definition of "material fact" should provide that the standard inherent in the definition is to be applied in the relevant circumstances.

Insider Information

One commenter believes that the proposed standard is appropriate for the purpose of preventing insiders from buying or selling securities if they have knowledge of a material fact or material change that has not been generally disclosed. The commenter believes that the proposed standard should simplify the decision about whether disclosure is required because there is no longer a requirement to focus on market reactions. Further, if the proposed definitions lower the threshold and more information is disclosed, the possibility of inadvertent trading on non-disclosed information should be reduced.

Conversely one commenter was of the view that the move from a market standard to a reasonable investor standard, as proposed, could potentially be problematic when applied to insider trading provisions. For example, it was in the commenter's view, a questionable proposition as to whether someone should be prohibited from trading with knowledge of undisclosed information which would not affect the market price of the securities.

Continuous Disclosure

One commenter expressed the view that the current "move the market" test is inappropriate for continuous disclosure obligations. The commenter believes that it forces a consideration of the operations of the market and for some issuers, a difficult admission of the potentially negative effect of adverse developments, both of which may result in decisions about disclosure that are inconsistent with an investor's interest in the information. The commenter believes that some issuers are reluctant to make the decision to disclose potentially adverse information as this is tantamount to a determination by the issuer that the information negatively affects shareholder value. The proposed new definition of "material change" will result in less stigma associated with determining that a material change has occurred in the business of a reporting issuer.

D. <u>"Total mix" concept</u>

One commenter questioned whether the new materiality standard incorporated the "total mix concept.[4] Under that

[4] The U.S. court in *TSC Industries, Inc v. Northway Inc.* ("*TSC Industries*") stated that the issue of materiality turned on whether there is "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of

concept, there is no liability under U.S. securities laws because of an alleged failure to disclose information that is already available to the public and therefore is part of the "total mix" of available information. The commenter felt that the standard would have to presume that a reasonable investor would not consider an omitted fact or change important if the information was already in the market from other sources. However, this presumption requires the recognition of the efficient market theory by our courts which has not been done yet. The commenter suggested that the "total mix" concept be expressly included in the civil liability section as a defence.

E. Timely Disclosure Obligations

One commenter provided comments directed at extending the timely disclosure obligations to both "material facts" and "material changes" (i.e. to "material information" generally).[5] The commenter did not object to expanding the reporting obligations to "material facts", but noted that there would also have to be an expansion of the confidential material change report filing procedure because, in the commenter's view, the provision is too narrow.

F. Loser-Pay Costs Rules

One commenter recommended that in order to protect issuers from meritless claims, a "loser-pays" cost rule should be adopted by British Columbia and uniform rules for securities class action litigation should be included in the legislation across the country. The commenter also expressed concern that the "loser-pays" rules would not deter all meritless claims and that additional protection is required to ensure that issuers are not subject to "strike suits".

information available.

[5] Although the interim report of the Allen Committee included this recommendation, the final report of the Allen Committee is silent on this issue.

Appendix C
CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

INTERPRETATION

Delete and substitute the following definitions in s.1(1) of the Act

"material change"

(a) when used in relation to an issuer other than an investment fund, means,

(i) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, or

(ii) a decision to implement a change referred to in subparagraph (i) made by the board of directors or other persons acting in a similar capacity or by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, and

(b) when used in relation to an issuer that is an investment fund, means,

(i) a change in the business, operations or affairs of the issuer that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the issuer, or

(ii) a decision to implement a change referred to in subparagraph (i) made,

(A) by the board of directors of the issuer or the board of directors of the investment fund manager of the issuer or other persons acting in a similar capacity,

(B) by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, or

(C) by senior management of the investment fund manager of the issuer who believe that confirmation of the decision by the board of directors of the investment fund manager of the issuer or such other persons acting in a similar capacity is probable;

"material fact", when used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities;

"mutual fund" includes,

(a) an issuer,

(i) whose primary purpose is to invest money provided by its securityholders, and

(ii) whose securities entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets, including a separate fund or trust account, of the issuer, or

(b) an issuer or a class of issuers that is designated as a mutual fund by an order of the Commission in the case of a single issuer or otherwise in a regulation which is made for the purposes of this definition,

but does not include,

(c) an issuer or a class of issuers that is designated not to be a mutual fund by an order of the Commission in the case of a single issuer or otherwise in a regulation which is made for the purposes of this definition.

Add the following definitions to s. 1(1) of the Act

"investment fund" means,

(a) a mutual fund, or

(b) a non-redeemable investment fund;

"investment fund manager" means a person or company who has the power and exercises the responsibility to direct the affairs of an investment fund;

"non-redeemable investment fund" includes,

(a) an issuer,

(i) whose primary purpose is to invest money provided by its security holders,

(ii) that does not invest for the purpose of exercising or seeking to exercise control of an issuer or for the purpose of being actively involved in the management of the issuers in which it invests, other than other mutual funds or non-redeemable investment funds, and

(iii) that is not a mutual fund, or

(b) an issuer or a class of issuers that is designated as a non-redeemable investment fund by an order of the Commission, in the case of a single issuer, or otherwise in a regulation which is made for the purposes of this definition,

but does not include,

(c) an issuer or a class of issuers that is designated not to be a non-redeemable investment fund by an order of the Commission, in the case of a single issuer, or otherwise in a regulation which is made for the purposes of this definition.

Delete and substitute the following section 75 of the Act

75 (1) Subject to subsection (3), where a material change occurs in the affairs of a reporting issuer, it shall promptly issue and file a news release authorized by a senior officer disclosing the nature and substance of the change.

(2) Subject to subsection (3), the reporting issuer shall file a report of such material change in accordance with the regulations as soon as practicable and in any event within ten days of the date on which the change occurs.

(3) Where,

(a) in the opinion of the reporting issuer, provided that such opinion is arrived at in a reasonable manner, the disclosure required by subsection (2) would be unduly detrimental to the interests of the reporting issuer; or

(b) the material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable and senior management of the issuer has no reason to believe that person with knowledge of the material change have made use of such knowledge in purchasing or selling securities of the issuer, the reporting issuer may, in lieu of compliance with subsection (1), forthwith file with the Commission the report required under subsection (2) marked so as to indicate that it is confidential, together with written reasons for non-disclosure.

(4) Where a report has been filed with the Commission under subsection (3), the reporting issuer shall advise the Commissioner in writing where it believes the report should continue to remain confidential within ten days of the date of filing of the initial report and every ten days thereafter until the material change is generally disclosed in the manner referred to in subsection (1) or, if the material change consists of a decision of the type referred to in clause (3)(b), until that decision has been rejected by the board of directors of the issuer.

(5) Notwithstanding a report has been filed with the Commission under subsection (3), the reporting issuer shall promptly generally disclose the material change in the manner referred to in subsection (1) upon the reporting issuer becoming aware or having reasonable grounds to believe that

persons or companies are purchasing or selling securities of the reporting issuer with knowledge of the material change that has not been generally disclosed.

Add the following clauses to subsection 143(1) of Part XXIV of the Act

143.(1) Rules. - The Commission may make rules in respect of the following matters:

57. Prescribing exemptions from the prospectus requirement under this Act for the purposes of clause (b), take-over bids and issuer bids for the purposes of clause (c) and transactions or classes of transactions for the purposes of clause (d) of subsection 1(2) of PART I (Civil Liability for Secondary Market Disclosure) of this Act.

58. Prescribing documents for the purposes of the definition of "core document" in PART I (Civil Liability for Secondary Market Disclosure) of this Act.

59. Prescribing the meaning of "market capitalization", "trading price" and "principal market" and such other defined terms as are used in Part I (Civil Liability for Secondary Market Disclosure) and are not otherwise defined in this Act.

PART I

CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

1(1). Definitions. - In this Part,

"compensation" means compensation received during the 12 month period immediately preceding the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the fair market value of all deferred compensation including, without limitation, options, pension benefits and stock appreciation rights, granted during the same period, valued as of the date that such compensation is awarded;

"control person" means,

(a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer, or

(b) each person or company in a combination of persons or companies, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer,

to affect materially the control of the issuer, and, where a person or company, or combination of persons or companies, holds more than twenty per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company, or combination of persons or companies, shall, in the absence of evidence to the contrary, be deemed to hold a sufficient number of the voting rights to affect materially the control of the issuer;

"core document" means,

(a) where used in relation to,

(i) a director of a responsible issuer who is not also an officer of the responsible issuer,

(ii) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or

(iii) a director or officer of an influential person, other than an officer of an investment fund manager, who is not also an officer of the responsible issuer, a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, MD&A, an annual information form, an information circular, and annual financial statements of the responsible issuer, or

(b) where used in relation to,

(i) an officer of a responsible issuer,

(ii) an investment fund manager where the responsible issuer is an investment fund, or

(iii) an officer of an investment fund manager where the responsible issuer is an investment fund, a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, MD&A, an annual information form, an information circular, annual financial statements, interim financial statements, and a report required under subsection 75(2) of this Act, of the responsible issuer, and

(c) such other documents as may be prescribed by regulation for the purposes of this definition;

"derivative security" means, in respect of a responsible issuer, a security,

(a) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer, and

(b) which is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer;

"document" means any written communication, including a communication prepared and transmitted only in electronic form, that is,

(a) required to be filed with the Commission,

(b) other than a communication referred to in clause (a),

(i) filed with the Commission,

(ii) filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with any stock exchange or quotation and trade reporting system under its by-laws, rules, or regulations, or

(iii) any other communication the content of which would reasonably be expected to affect the market price or value of a security of the responsible issuer;

"expert" means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist and lawyer;

"failure to make timely disclosure" means a failure to disclose a material change in the manner and when required under this Act;

"forward-looking information" means all disclosure regarding possible events, conditions or results including future oriented financial information with respect to prospective results of operations, financial position or changes in financial position, based on assumptions about future economic conditions and courses of action, and presented as either a forecast or a projection;

"influential person" means, in respect of a responsible issuer,

(a) a control person,

(b) a promoter,

(c) an insider, other than a director or senior officer of the responsible issuer, or

(d) an investment fund manager if the responsible issuer is an investment fund;

"issuer's security" means a security of the responsible issuer and includes, without limitation, a derivative security;

"liability limit" means, in the case of

(a) a responsible issuer, the greater of

(i) 5% of its market capitalization (as such term is defined in the regulations), and

(ii) $1 million,

(b) a director or officer of a responsible issuer, the greater of

(i) $25,000, and

(ii) 50% of the aggregate of the director's or officer's compensation from the responsible issuer and its affiliates,

(c) an influential person that is not an individual, the greater of

(i) 5% of its market capitalization (as such term is defined in the regulations), and

(ii) $1 million,

(d) an influential person who is an individual, the greater of

(i) $25,000, and

(ii) 50% of the aggregate of the influential person's compensation from the responsible issuer and its affiliates,

(e) a director or officer of an influential person, the greater of

(i) $25,000, and

(ii) 50% of the aggregate of the director's or officer's compensation from the influential person and its affiliates,

(f) an expert, the greater of

(i) $1 million, and

(ii) the revenue that the expert and its affiliates have earned from the responsible issuer and its affiliates during the twelve months preceding the misrepresentation,

(g) each person or company who made a public oral statement, other than an individual under clauses (a), (b), (c), (d), (e) or (f), the greater of

(i) $25,000, and

(ii) 50% of the aggregate of the person or company's compensation from the responsible issuer and its affiliates;

"MD&A" means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial condition and results of operations of a responsible issuer as required under Ontario securities law;

"public oral statement" means an oral statement made in circumstances in which a reasonable person would believe

that information contained in the statement will become generally disclosed;

"release" means,

(i) to file with the Commission or any other securities regulatory authority in Canada or a stock exchange, or

(ii) to otherwise make available to the public;

"responsible issuer" means,

(i) a reporting issuer, or

(ii) any other issuer with a substantial connection to Ontario any securities of which are publicly traded; and

"trading day" means a day during which the principal market (as such term is defined in the regulations) for the security is open for trading.

1(2). Application. - This Part does not apply to,

(a) the acquisition of an issuer's security under a prospectus;

(b) the acquisition of an issuer's security pursuant to an exemption from sections 53 or 62 of this Act, except as may be prescribed by regulation;

(c) the acquisition or disposition of an issuer's security in connection with or pursuant to a take-over bid or issuer bid, except as may be prescribed by regulation; or

(d) such other transactions or class of transactions as may be prescribed by regulation.

2. Liability for Secondary Market Disclosure

Documents Released by Responsible Issuer

(1) Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of an issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer;

(b) each director of the responsible issuer at the time the document was released;

(c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;

(d) each influential person, and each director and officer of an influential person, who knowingly influenced,

(i) the responsible issuer or any person or company on behalf of the responsible issuer to release the document, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and

(e) each expert where,

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

Public Oral Statements by Responsible Issuer

(2) Where a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of an issuer's security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer;

(b) the person who made the public oral statement;

(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement;

(d) each influential person, and each director and officer of the influential person, who knowingly influenced,

(i) the person who made the public oral statement to make the public oral statement, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement; and

(e) each expert where,

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

Documents or Public Oral Statements by Influential Persons

(3) Where an influential person or a person or company with actual, implied or apparent authority to act on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of an issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer, if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;

(b) the person who made the public oral statement;

(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;

(d) the influential person;

(e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and

(f) each expert where,

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

Failure to Make Timely Disclosure

(4) Where there is a failure to make timely disclosure by a responsible issuer, a person or company who acquires or disposes of an issuer's security between the time when the material change was required to be disclosed and the subsequent disclosure of the material change in the manner required under this Act has, without regard to whether the person or company relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against,

(a) the responsible issuer;

(b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and

(c) each influential person, and each director and officer of an influential person, who knowingly influenced,

(i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

Multiple Roles

(5) In an action under this section, a person that is a director or officer of an influential person is not liable in that capacity if the person is liable in their capacity as a director or officer of the responsible issuer.

Multiple Misrepresentations

(6) In an action under this section,

(a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation; and

(b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make timely disclosure.

No Implied or Actual Authority

(7) In an action under subsection (2) or subsection (3), if the person that made the public oral statement had apparent, but not implied or actual, authority to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities acquired or disposed of before that person became, or should reasonably have become, aware of the misrepresentation.

3. Burdens of Proof and Defences

Standard for Non-Core Documents and Public Oral Statements

(1) In an action under section 2 in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, no person or company is liable, subject to subsection (2), unless the plaintiff proves that the person or company,

(a) knew, at the time that the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation;

(b) at or before the time that the document was released or public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral

(c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

(2) A plaintiff is not required to prove any of the matters set out in subsection (1) in an action under section 2 in relation to an expert.

Standard for Failure to Make Timely Disclosure

(3) In an action under section 2 in relation to a failure to make timely disclosure, no person or company is liable, subject to subsection (4), unless the plaintiff proves that the person or company,

(a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change;

(b) at the time of or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change; or

(c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

(4) A plaintiff is not required to prove any of the matters set out in subsection (3) in an action under section 2 in relation to,

(a) a responsible issuer;

(b) an officer of a responsible issuer;

(c) an investment fund manager; or

(d) an officer of an investment fund manager.

Knowledge of the Misrepresentation or Material Change

(5) No person or company is liable in an action under section 2 in relation to misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security with knowledge,

(a) that the document or public oral statement contained a misrepresentation; or

(b) of the material change.

Reasonable Investigation

(6) No person or company is liable in an action under section 2 in relation to

(a) a misrepresentation if that person or company proves that,

(i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) at the time of the release of the document or the making of the public oral statement, the person or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation; or

(b) a failure to make timely disclosure if that person or company proves that,

(i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur.

Factors to be Considered

(7) In determining whether an investigation was reasonable under subsection (6), or whether any person or company is guilty of gross misconduct under subsection (1) or (3), the court shall consider all relevant circumstances, including,

(a) the nature of the responsible issuer;

(b) the knowledge, experience and function of the person or company;

(c) the office held if the person was an officer;

(d) the presence or absence of another relationship with the responsible issuer if the person was a director;

(e) the existence, if any, and the nature of any system to ensure that the responsible issuer meets its continuous disclosure obligations;

(f) the reasonableness of reliance by the person or company on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts;

(g) the time period within which disclosure was required to be made under applicable law;

(h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert;

(i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;

(j) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement; and

(k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change.

Confidential Disclosure

(8) No person or company is liable in an action under section 2 in respect of a failure to make timely disclosure if,

(a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under subsection 75(3) of this Act;

(b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis;

(c) if the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist;

(d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and

(e) if the material change became publicly known in a manner other than as required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.

Forward-Looking Information

(9) No person or company is liable in an action under section 2 for a misrepresentation in forward-looking information if the person or company proves that,

(a) the document or public oral statement containing the forward-looking information contained, proximate to the forward-looking information,

(i) reasonable cautionary language identifying the forward-looking information as such and identifying material factors that could cause actual results to differ materially from a forecast or projection in the forward-looking information, and

(ii) a statement of the material factors or assumptions that were applied in making a forecast or projection in the forward-looking information; and

(b) the person or company had a reasonable basis for making the forecasts or projections in the forward-looking information.

(10) Subsection 3(9) does not apply to a person or company in respect of forward-looking information contained in the prospectus of the responsible issuer filed in connection with the initial public distribution of securities of the responsible issuer or contained in financial statements prepared by the responsible issuer.

Expert Report, Statement or Opinion

(11) No person or company, other than an expert, is liable in an action under section 2 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the written consent of the expert to the use of the report, statement or opinion was obtained by the responsible issuer and that consent had not been withdrawn in writing prior to the release of the document, or the making of the public oral statement, if the person or company proves that,

(a) the person or company did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert; and

(b) the part of the document or public oral statement fairly represented the report, statement or opinion made by the expert.

(12) No expert is liable in an action under section 2 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves that, the written consent previously provided was withdrawn in writing before the release of the document or making of the public oral statement.

Release of Documents

(13) No person or company is liable in an action under section 2 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document, the person or company did not know and had no reasonable grounds to believe that the document would be released.

Derivative Information

(14) No person or company is liable in an action under section 2 for a misrepresentation in a document or a public oral statement, if the person or company proves that,

(a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or a stock exchange and not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada or stock exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer;

(b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and

(c) at the time of release of the document or the making of the public oral statement, the person or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

Where Corrective Action Taken

(15) No person or company, other than the responsible issuer, is liable in an action under section 2 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and, if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,

(a) the person or company promptly notified the board of directors of the responsible issuer or such other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and

(b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within two business days after the notification under paragraph (a), the person or company, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure.

4. Assessment of Damages

(1) Damages shall be assessed in favour of a person or company that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

(a) in respect of any of the securities of the responsible issuer that the person or company subsequently disposed of on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of such disposition), calculated taking into account the result of hedging or other risk limitation transactions;

(b) in respect of any of the securities of the responsible issuer that the person or company subsequently disposed of after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of,

(i) an amount equal to the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of such disposition), calculated taking into account the result of hedging or other risk limitation transactions, and

(ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those

securities (including any commissions paid in respect thereof determined on a per security basis) and,

(A) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

(B) if there is no published market, then the amount the court considers just; and

(c) in respect of any of the securities of the responsible issuer that the person or company has not disposed of, assessed damages shall equal the number of securities acquired, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,

(i) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

(ii) if there is no published market, then the amount that the court considers just.

(2) Damages shall be assessed in favour of a person or company that disposed of securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

(a) in respect of any of the securities of the responsible issuer that the person or company subsequently acquired on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of such disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions;

(b) in respect of any of the securities of the responsible issuer that the person or company subsequently acquired after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of,

(i) an amount equal to the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of such disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions, and

(ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of such disposition determined on a per security basis) and,

(A) the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

(B) if there is no published market, then the amount the court considers just,

(c) in respect of any of the securities of the responsible issuer that the person or company has not acquired, assessed damages shall equal the number of securities that the person or company disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of such disposition determined on a per security basis) and

(i) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 trading days following the disclosure of the material change in the manner required under this Act, or

(ii) if there is no published market, then the amount that the court considers just.

(3) Notwithstanding subsections (1) and (2), assessed damages shall not include any amount that the defendant proves is attributable to a change in the market price of securities unrelated to the misrepresentation or the failure to make timely disclosure.

5. Proportionate Liability

(1) In an action under section 2, the court shall determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each such defendant shall be liable, subject to the limits set out in subsection 6(1), to the plaintiffs only for that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.

(2) Despite subsection (1), where, in an action under section 2 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from such defendant.

(3) Each defendant in respect of whom the court has made a determination under subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made a determination under subsection (2).

(4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action.

6. Limits on Damages

(1) Despite section 4, the damages payable by a person or company in an action under section 2 is the lesser of,

(a) the aggregate damages assessed against the person or company in the action, and,

(b) the liability limit for such person or company less the aggregate of all damages assessed after appeals, if any, against the person or company in all other actions brought under section 2, and under comparable legislation in other provinces or territories in Canada, in respect of that misrepresentation or failure to make timely disclosure, and less any amounts paid in settlement of any such actions.

(2) Subsection (1) does not apply to a person or company, other than the responsible issuer, if the plaintiff proves that the person or company authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure.

7. Leave to Proceed

(1) No action may be commenced under section 2 without leave of the court granted upon motion with notice to each defendant. The court shall only grant leave where it is satisfied that (a) the action is being brought in good faith; and (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

(2) Upon an application under this section 7 the plaintiff and each defendant shall serve and file one or more affidavits setting forth the material facts upon which each intends to rely.

(3) The maker of such an affidavit may be examined thereon in accordance with the rules of court as to discovery.

(4) A copy of the application for leave to proceed and any affidavits filed in connection therewith shall be sent to the Commission when filed.

8. Notice

A person or company that has been granted leave to commence an action under section 2 shall:

(a) promptly issue a news release disclosing that leave has been granted to commence an action under section 2;

(b) within seven days send a written notice to the Commission together with a copy of the news release; and

(c) send a copy of the statement of claim or other originating document to the Commission when filed.

9. Court Approval to Settle

An action brought under section 2 shall not be stayed, discontinued, settled or dismissed for delay without the approval of the court given on such terms as the court thinks fit, including, without limitation, as to costs, and in determining whether to approve the settlement of an action brought under section 2, the court shall consider, among other things, whether there are any other actions outstanding which have been brought under section 2 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation or failure to make timely disclosure.

10. Costs

Notwithstanding anything to the contrary in the *Courts of Justice Act* (Ontario) and the *Class Proceedings Act* (Ontario), the prevailing party in an action under section 2 shall be

entitled to costs determined by a court in accordance with applicable rules of civil procedure.

11. Power of the Commission

The Commission may intervene in an action under section 2 and in an application for leave under section 7.

12. No Derogation from Other Rights

The right of action for damages and the defences to an action under section 2 are in addition to and without derogation from any other rights or defences the plaintiff or defendant may have in an action brought other than under this Part.

13. Limitation Period

No action shall be commenced under section 2:

(a) in the case of misrepresentation in a document, later than the earlier of,

(i) three years after the date on which the document containing the misrepresentation was first released; and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 2 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation;

(b) in the case of a misrepresentation in a public oral statement, later than the earlier of,

(i) three years after the date on which the public oral statement containing the misrepresentation was made; and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 2 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation;

(c) in the case of a failure to make timely disclosure, later than the earlier of,

(i) three years after the date on which the requisite disclosure was required to be made; and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under this section 2 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure.

Securities Rules

PART ●
CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

1. For the purposes of clause 1(2)(b) in PART ● of the Act, the exemption from sections 53 and 62 of the Act prescribed is the exemption contained in clause 72(7)(b) of the Act.

2. For the purposes of clause 1(2)(c) in PART ● of the Act, the take-over bids prescribed are those described in clauses 93(1)(a), (b) and (e) and, the issuer bids prescribed are those described in clauses 93(3)(e), (f) and (h) of the Act.

Regulations to the Securities Act

PART ●

CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

1. For the purposes of PART ● of the Act, "equity securities" means securities of an issuer that carry a residual right to participate in earnings of the issuer and, on liquidation or winding up of the issuer, in its assets.

2. For the purposes of PART ● of the Act, "market capitalization" means, in respect of an issuer, the aggregate of the following:

   (a) for each class of equity securities for which there is a published market, the amount calculated by multiplying (i) the average of the number of outstanding securities of the class at the close of trading on each of the 10 trading days immediately before the day on which the misrepresentation was made or before the day on which the failure to make timely disclosure first occurred by (ii) the trading price of the securities of the class, on the principal market on which the securities trade, as determined in accordance with this Part, for the 10 trading days before the day on which the misrepresentation was made or before the day on which the failure to make timely disclosure first occurred; and

   (b) for each class of equity securities not traded on a published market, the fair market value of the outstanding securities of that class as of the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred.

3. For the purposes of PART ● of the Act, "trading price" means, for a security of a class for which there is a published market,

   (a) except as provided in clauses (b) or (c),

      (i) if the published market provides a closing price, the average of the closing prices of securities of that class on the published market for each trading day on which there was a closing price for the period during which the trading price is being determined, weighted by the volume of securities traded on each day, and

      (ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities traded, the average of the weighted averages of the highest and lowest prices of the securities of that class for each of the trading days on which there were highest and lowest prices for the period during which the trading price is being determined;

   (b) if there has been trading of the securities of the class in the published market on fewer than half of the trading days for the period during which the trading price is being determined, the average of the following amounts established for each trading day of the period during which the trading price is being determined,

      (i) the average of the highest bid and lowest ask prices as of the close of trading for each trading day on which there was no trading, and

      (ii) either

         (A) the average of the closing price of the securities of that class for each trading day on which there has been trading, if the published market provides a closing price, or

         (B) the weighted average of the highest and lowest prices of the securities of that class for each trading day on which there has been trading, if the published market provides only the highest and lowest prices of securities traded on a trading day; or

   (c) if there has been no trading of the securities of the class in the published market on any of the trading days during which the trading price is being determined, the fair market value of the security.

4. For the purposes of PART ● of the Act, "principal market" means, for a class of securities of a responsible issuer,

   (a) the published market in Canada on which the greatest volume of trading in securities of that class occurred during the 10 trading days immediately before the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred; or

   (b) if there is no published market in Canada, the market on which the greatest volume of trading in securities of that class occurred during the 10 trading days immediately before the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred.

1.1.3 Remarks by David Brown, Chair, OSC, Building Markets Starts with Building Credibility

BUILDING MARKETS STARTS WITH BUILDING CREDIBILITY

by David A. Brown

Chair Ontario Securities Commission

Dialogue with the OSC October 31, 2000

Building Markets Starts with Building Credibility

I'm delighted at the attendance for today's session, in Ottawa and London as well as Toronto. More and more people in the market are recognizing the role regulation must play in ensuring Canada's ability to compete. Countries around the world are chasing after overlapping pools of investment dollars. Given the globalization of capital, regulators must examine our policies and operations, and apply twin tests:

- Are we creating a viable market that is attractive to Canadian and foreign investors?
- Are we helping our market participants to compete globally?

Ultimately, the ability to attract capital to Canada depends a great deal on how Canadian markets are perceived – both at home and abroad. One of our most important responsibilities is to avoid a market credibility gap.

In that respect, there is some good news. Foreign investment in Canada is increasing at a record pace. Obviously, that's due to a number of factors, including improving value among Canadian companies. But it's also a signal of confidence in our marketplace. It underlines the importance of maintaining global respect for Canadian regulation and enforcement.

Then there's the bad news. In recent years Canada has been the scene of several high-profile failures of major public companies in which investors have lost hundreds of millions of dollars.

We must ensure that when investors look at Canada, the only risks they see are the inevitable ones associated with any marketplace, the dynamic ebb and flow that drives wealth creation – not the risks of fraud, unfairness, and lack of compliance that stall it.

How do we build investor confidence, rather than allow it to become eroded?

We have to start by recognizing the forces of change that are making confidence both more important, and potentially more fragile.

- First of all, market confidence becomes especially important when investment is so widespread.

Last May, the TSE's Canadian Shareowner Survey found that 49 per cent of Canadians are invested in the markets. That's twice as many as were invested 11 years ago. A nation of savers has become a nation of investors. And a nation of investors must have continual reassurance about the quality of markets.

- Secondly, market confidence is important when investment is so mobile.

The Internet is driving that trend at cyberspeed. There are no borders on the web.

As a relatively small market competing to attract international investment, Canada needs to distinguish itself among increasingly indistinguishable world markets.

- Thirdly, market confidence and integrity is especially important in light of the growth in the past two years of the retail buy-side of the market.

When the chief function of brokers is to execute trades rather than recommend them, it becomes increasingly important to ensure equal access of information to the people actually initiating the decision – retail investors.

Consider this: The TSE survey that I mentioned a moment ago showed that more than 1 in 4 of those who traded last year used the Internet for some of their transactions. Four years ago, when the last survey was undertaken, Internet trading didn't exist.

- What else increases the importance of market credibility? Unprecedented media attention.

Twenty years ago, business news was reported in the back section of your newspaper, following the sports pages and obituaries. Today, a major business story is likely to be run on the front page. We have ROB-TV and other cable networks focused on the markets.

During the World Series, fans at Shea Stadium could follow the market by watching the electronic ticker on the scoreboard between innings. There may have been more fans rooting for a market rally than for a Mets rally.

Last Tuesday evening it seems that virtually every radio and television newscast reported on the afterhours trading in Nortel followed by a prediction of a sharp decline in share price at the opening the next morning. Morning editions of daily newspapers carried the same predictions, often on page 1.

Close scrutiny of markets is welcome. But it is also a challenge. Issuing companies and traders must both be able to stand up under inquiry.

- Market confidence becomes potentially brittle in a world where electronic information is overtaking paper-based communication.

Consider this. When information is provided on paper, readers automatically recognize that it is vouched for as accurate and complete at a given time. When it is posted on a website, it takes on an assumption of being up-to-the-minute at all times.

How well are companies meeting Internet-generated expectations? When investors look at a corporate website, what do they see? Some material that is up to the minute. Sitting alongside it may be an eight-month-old prospectus, or a four-month-old Annual Report. Some of it may be boilerplate language drafted years ago, perhaps before most of us knew what the Internet was.

The television coverage of recent Olympics provided an interesting allegory. You could watch an event on NBC that you thought was being broadcast live, and you might not have realized until it was over that it was four hours old. Indeed, many Americans preferred the CBC's coverage, much of which was live.

In today's world, everyone wants and expects information in real time.

- And of course, market confidence becomes especially challenging when the stakes are so high.

With so much capital invested, a difference of a penny or two per share in earnings can lead to a difference of a billion or two in market cap. The quarterly report has become a quarterly report card – with the attendant pressure to get straight As. This is leading to what one might call "the street effect." Management is so worried about the word on the street, that they're tempted to employ creative or aggressive accounting techniques to make sure that the street isn't disappointed.

But investor confidence takes a long time to build. Accounting sleight-of-hand can make it disappear in the blink of an eye.

Given these new and growing potential strains on the fabric of market confidence, Canadian regulators have to ask ourselves: what are we doing to ensure that investors have reason to assign credibility to Canadian listed companies?

- First, to ensure confidence and credibility, we need a regulatory structure that reflects market reality.

One of the best examples of that challenge is the regulatory balkanization of securities, pension funds, and insurance.

Consider how securities and insurance have been converging. Not only are many of the products similar, so are many of the people selling them. About 70 per cent of life insurance agents in Ontario are also registered to sell securities. Whether they have been regulated by the OSC or the Financial Services Commission of Ontario has depended upon what product they were selling at a given moment.

The Ontario Government has recognized the need to provide an effective one-window regulatory process. That is why it is proceeding with the merger of the OSC and FSCO to create a comprehensive financial services regulator.

The Superintendent and CEO of FSCO, Dina Palozzi, and I will have more to say about the merger in a few minutes. The one point I want to emphasize at the moment is that securities, insurance and pension regulators will no longer travel on different paths – no longer duplicate each other, or contradict one another.

What else is required to ensure confidence and credibility? Today's break-out sessions provide an opportunity to explore these and other issues. I'd like to review some of them.

- Confidence and credibility must be assured in an investment industry that has assumed a central role in wealth creation – mutual funds.

The explosive growth in the investment fund industry is one of the principal reasons that retail investing has grown beyond Bay Street to Main Street. It's important to ensure that regulation keeps pace with change in the marketplace.

Next year, as you know, will see the launch of the Mutual Fund Dealers Association, a move fostered by the Commission and our colleagues among the Canadian Securities Administrators.

Now we are advancing an even more ambitious project: the design and implementation of a national mutual fund governance regime. This year, we are considering the recommendations of a report by Stephen Erlichman. It proposed establishment of an independent governance regime for each mutual fund complex, and would require registration of all fund managers, compliance plans filed with the Canadian Securities Administrators, and investor compensation plans in the case of fraud or insolvency.

In Break-Out Session 3, Rebecca Cowdery, Manager for Investment Funds, will chair a panel looking at the Erlichman Report, and address product, management and disclosure. In Break-Out Session 2, Toni Ferrari, our Manager for Compliance, will chair a session in Toronto that will be broadcast in Ottawa and London, to address the launch of MFDA and issues relating to distribution structures for dealers.

- Confidence and credibility depend upon price transparency.

One of the most important emerging developments is the growth of Alternative Trading Systems, computerized order matching systems that also have the potential to increase transparency and choice. The final rules governing them should be in place by the end of this year, introducing greater competition into the marketplace.

This morning, Randee Pavalow, our Manager of Market Regulation, will chair a Break-Out session on changes in the Canadian marketplace, including Alternative Trading Systems. It too will be available by satellite.

- One of the elements crucial to confidence and credibility is firm enforcement of securities regulation.

As Charlie pointed out, the OSC has dramatically increased the number of major investigations and enforcement initiatives. That sends a strong message – to potential offenders and potential investors.

During Break-Out Session 1 in Toronto, our Director of Enforcement, Michael Watson, will chair a discussion of enforcement trends.

- To ensure confidence and credibility, a regulator must also be an educator. The best-protected investor is a

well-informed one. And well-informed investors build well-respected markets.

That's why the Commission is creating the Investor Education Foundation. We are committed to narrowing the gap between investment activity and investment knowledge.

During Break-Out Session 2, our Manager of Investor Education, Nancy Stow will chair a session that looks at how we are enhancing investor understanding of the securities industry.

- And of course, when so many people have so much invested, confidence and credibility hinges on the integrity of financial reporting, and the effectiveness of corporate boards of directors.

According to a study the TSE helped conduct last year, fewer than a quarter of audit committees meet more than twice a year. In today's environment, when continuous disclosure plays such a vital role in the day-to-day operation of the market, how can an audit committee that meets only twice a year have meaningful input into a company's financial reporting?

A clear set of books is one of the fundamental underpinnings of accountability. Over 500 years ago, when Christopher Columbus set sail for the New World, his voyage included an accountant. Space may have been tight on the Nina, the Pinta and the Santa Maria, but Ferdinand and Isabella wanted a clean balance sheet.

Royalty has its advantages. How about shareholders? Who ensures them that an audit provides them with an accurate snapshot of a company's finances?

Earlier this year, the OSC published for comment two proposed rules that will upgrade current quarterly reporting requirements.

- Currently, interim financial reports may include only an income statement, a cash flow statement, and a minimal note disclosure. The new rules would also require a balance sheet and enhanced note disclosure.

- Currently, the reports can be released without review or approval by either the audit committee or the board. The new rules would require board review of interim financial statement before they are released.

I expect that financial reporting will be a focus of the study of corporate governance by the committee that was appointed this summer by the TSE, CDNX, and The Canadian Institute of Chartered Accountants. Several questions need to be considered. For example:

- Should audit committees be composed exclusively of independent directors?
- Should they consist of a minimum number of directors who are financially literate? Should at least one committee member have expertise in accounting and financial reporting?
- Should we require external auditor review of interim financial statements, the same as is required of annual financial statements?

Current financial reporting and auditing issues will be covered in a Break-Out session this afternoon chaired by Chief Accountant John Carchrae.

- And with the secondary market now accounting for 90 per cent of all securities transactions, it's crucial to mandate and monitor disclosure beyond the initial IPO. Confidence and credibility depends on timely, quality disclosure in the secondary market.

Later this morning, General Counsel, Susan Wolburgh-Jenah, will chair a Break-Out session on strengthening the secondary market. It will include legislative, regulatory and operational changes regarding Continuous Disclosure, Integrated Disclosure, and Selective Disclosure. The session will also review our new web based system for filing insider trading reports.

Let me just focus for a few minutes on selective disclosure.

Fairness depends upon all investors having access to the same information, at the same time.

Just last week, the SEC's new rules on selective disclosure came into effect, requiring U.S. corporations to divulge important information about their performance to everybody at the same time. In Ontario, there is already a law on the books. The Securities Act prohibits selective disclosure of a material change in the affairs of a reporting issuer.

Selective disclosure is a form of select advantage. It creates bumps in what should be a level playing field, and digs chasms in the integrity of the market.

A corporate survey we released in August found there were too many bumps and chasms. Too few companies have reliable safeguards against selective disclosure. More than two thirds did not have written corporate disclosure policies. More than 80 per cent do not invite retail investors to the quarterly conference call. More than 80 per cent have one-on-one meetings with analysts. And 98 per cent typically comment in some form on draft analyst reports -- in effect defining analyst expectations.

Clearly there is a gap between the law and common practice.

It's a gap that has to be closed. Ten years ago, before the dramatic growth of the retail market, disclosure to analysts was disclosure to the **entire market**. Today, it represents an early advance warning system for a select few, and an unfair disadvantage to the left-out majority.

While I'm not going to comment on any particular case or company, I can assure you that the Commission will continue to pursue rigorous enforcement.

And while the law is clear, we still want to provide listed companies with guidance. Early next year, based on the OSC study, the CSA will be publishing for comment a policy statement. The national statement will suggest practical steps for companies to ensure they meet regulatory requirements, both in letter and in spirit. Some of the areas we expect to provide guidance on include the importance of written disclosure policies, and using advances in technology to achieve better information dissemination.

In a market in which information is the most valuable commodity, all investors have to be brought into the loop.

All of these areas – including disclosure, financial reporting, and enforcement – are crucial to the dynamism of our markets. Ultimately, the ability to attract capital to Canada depends a great deal on how Canadian markets are perceived and respected – both in Canada and internationally.

Building respect for Canada's market integrity has to be a vital element of building the Canadian market brand. It's an integral part of the mandate of Canadian regulators – and crucial to the growth of Canadian companies.

Regulators have a role to play by establishing clear, unambiguous rules that are relevant to a modern economy, and by vigorously enforcing them. The stewards of Canadian business also have a role to play – demonstrating that Canadian enterprises are governed by wise people, dedicated to preserving and enhancing shareholder value.

In an era when capital can reverberate around the world with the touch of a computer key, a competitive marketplace must inspire investor confidence – and investor confidence depends on credibility.

Thank you.

1.1.4 The Toronto Stock Exchange - Amendments to the Rules of The Toronto Stock Exchange - Recognition of Indexes and Trading of Securities Similar to Index Participation Funds - Notice of Commission Approval

THE TORONTO STOCK EXCHANGE
AMENDMENTS TO THE RULES OF THE TORONTO STOCK EXCHANGE
RECOGNITION OF INDEXES AND TRADING OF SECURITIES
SIMILAR TO INDEX PARTICIPATION FUNDS
NOTICE OF COMMISSION APPROVAL

On October 30, 2000, the Commission approved the *Amendments to the Rules of The Toronto Stock Exchange Recognition of Indexes and Trading of Securities Similar to Index Participation Funds*. The proposed rule amendments were initially published on August 4, 2000 at (2000) 23 OSCB 5491.

1.2 Notice of Hearings

1.2.1 Mark Bonham, SVC O'Donnell Fund Management Inc. and Bonham & Co. Inc. - s. 127

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

AND

IN THE MATTER OF
MARK BONHAM, SVC O'DONNELL FUND MANAGEMENT INC. AND BONHAM & CO. INC.

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in the Large Hearing Room, 17th Floor, 20 Queen Street West, Toronto, Ontario commencing on Monday, the 6th day of November, 2000, at 10:00 a.m. or as soon thereafter as the hearing can be held:

TO CONSIDER whether, pursuant to sections 127(1) and 127.1 of the Act, it is in the public interest for the Commission to make an order that:

(a) the registration of Mark Bonham, SVC O'Donnell Fund Management Inc. and Bonham & Co. Inc. (together referred to as the "Respondents") be suspended or restricted permanently or for such time as the Commission may direct;

(b) terms and conditions be imposed on the registrations of the Respondents;

(c) the Respondents cease trading in securities permanently or for such period as the Commission may direct;

(d) the Respondent, SVC O'Donnell Fund Inc. submit to a review of its practices and procedures and institute such changes as may be ordered by the Commission;

(e) the Respondents be reprimanded;

(f) the Respondent, Mark Bonham be prohibited from becoming or acting as a director officer of an issuer;

(g) the Respondents pay the costs of the Commission's investigation;

(h) the Respondents pay the costs of the Commission's hearing; and

(i) contains such other terms and conditions as the Commission may deem appropriate;

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

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

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

October 30th, 2000.

"John Stevenson"

1.2.2 Mark Bonham, SVC O'Donnell Fund Management Inc. and Bonham & Co. Inc. - Statement of Allegations

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

AND

IN THE MATTER OF
MARK BONHAM, SVC O'DONNELL FUND MANAGEMENT INC. AND BONHAM & CO. INC.

STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

Bonham, SVC O'Donnell and Bonham & Co. Inc.

1. Mark Bonham ('Bonham") is an individual who resides in the Province of Ontario. During the period July 31, 1997 to June 30, 1998 (the "material time"), Bonham was registered with the Commission pursuant to the *Securities Act* (the "Act") as Investment Counsel/Portfolio Manager. During the material time Bonham acted as the Portfolio Manager with respect to seven mutual funds managed by SVC O'Donnell Fund Management Inc. ("SVC").

2. SVC is a corporation organized pursuant to the laws of Canada. During the material time, SVC was registered with the Commission as Investment Counsel/Portfolio Manager.

3. Bonham & Co. Inc. ("B&C") is a corporation organized pursuant to the laws of Canada. During the material time, B&C was registered with the Commission as an Investment Counsel Portfolio Manager. During the material time B&C was Bonham's employer and the sponsor of Bonham's registration.

Manual Pricing of Shares in the Portfolios of SVC Funds

4. During the material time, Bonham manually priced certain shares held by three of the seven mutual funds Bonham managed for SVC, The Strategic Value Fund, The Canadian Equity Value Fund and the Dividend Fund.

5. SVC received a price feed from a third party source on a daily basis ("price feed"). The feed contained the "end of the day" share prices to be used in the valuation of SVC's mutual funds.

6. SVC's accounting department highlighted items on the price feed if:

   (a) a share price on the price feed was 3% higher or lower than the previous day's closing price of the share; or

   (b) the price feed did not contain a price for the shares.

7. Bonham would then review the highlighted items and determine a value of the shares based on his own discretion. The majority of the highlighted items were of the nature of category (a).

8. If the price determined by Bonham was different than the price received via the price feed, Bonham's price would be substituted and used in the calculation of the value of the mutual fund.

9. The valuation of the mutual fund is used to calculate the net asset value per share ("NAVPS"). The NAVPS is used to determine the purchase and redemption prices that investors pay or receive.

10. During the relevant period, SVC did not have a written policy governing manually pricing shares and Bonham did not apply a specific or consistent methodology in manually pricing shares.

11. Bonham did not record or maintain any notes with respect to the determination of the manual price.

12. The result of the manual pricing undertaken by Bonham is as follows:

    (a) The Strategic Value Fund was overvalued (i.e dollar difference as a percentage of net asset value per unit) for 201 of the 231 trading days during the material time.

    (b) The Canadian Equity Value Fund was overvalued for 123 of the 231 trading days during the material time.

    (c) The Dividend Fund was overvalued for 60 of the 231 trading days during the material time.

SVC O'Donnell Fund Management

13. The board of directors of SVC (the "Directors") were responsible for determining when a valuation methodology for the shares held in the portfolios of the mutual funds other than market value would be used.

14. SVC did not have any written policies or procedures in place governing under what circumstances Bonham should value the securities in the portfolios of the mutual funds and the valuation methodology to be used.

15. The Directors relied on Bonham to make the day-to-day security valuation determinations.

16. The Directors (or a primary delegate) did not supervise or review the manual prices determined by Bonham.

17. The Directors (or a primary delegate) did not implement internal controls to ensure a segregation of duties in the performance of the daily valuation of the mutual funds.

18. SVC did not take adequate steps to monitor and prevent the conduct of Bonham as set out in the allegations.

Bonham & Co.

19. B&C, as the sponsor of Bonham's registration was responsible for supervising Bonham's activities and did not properly supervise Bonham in regard to the conduct of Bonham as set out in the allegations.

20. Staff reserves the right to make such further and other allegations as Staff may submit and the Commission may allow.

DATED at Toronto this 30th day of October, 2000.

1.2.3 Mark Bonham, SVC O'Donnell Fund Management Inc. and Bonham & Co. Inc. - Amended Statement of Allegations

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

AND

IN THE MATTER OF MARK BONHAM, SVC O'DONNELL FUND MANAGEMENT INC. AND BONHAM & CO. INC.

AMENDED STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

Bonham, SVC O'Donnell and Bonham & Co. Inc.

1. Mark Bonham ('Bonham") is an individual who resides in the Province of Ontario. During the period July 31, 1997 to June 30, 1998 (the "material time"), Bonham was registered with the Commission pursuant to the *Securities Act* (the "Act") as Investment Counsel/Portfolio Manager. During the material time Bonham acted as the Portfolio Manager with respect to seven mutual funds managed by SVC O'Donnell Fund Management Inc. ("SVC").

2. SVC is a corporation organized pursuant to the laws of Canada. During the material time, SVC was registered with the Commission as Investment Counsel/Portfolio Manager.

3. Bonham & Co. Inc. ("B&C") is a corporation organized pursuant to the laws of Canada. During the material time, B&C was registered with the Commission as an Investment Counsel Portfolio Manager. During the material time B&C was Bonham's employer and the sponsor of Bonham's registration.

Manual Pricing of Shares in the Portfolios of SVC Funds

4. During the material time, Bonham manually priced certain shares held by three of the seven mutual funds Bonham managed for SVC, The Strategic Value Fund, The Canadian Equity Value Fund and the Dividend Fund.

5. SVC received a price feed from a third party source on a daily basis ("price feed"). The feed contained the "end of the day" share prices to be used in the valuation of SVC's mutual funds.

6. SVC's accounting department highlighted items on the price feed if:

   (a) a share price on the price feed was 3% higher or lower than the previous day's closing price of the share; or

(b) the price feed did not contain a price for the shares.

7. Bonham would then review the highlighted items and determine a value of the shares based on his own discretion. The majority of the highlighted items were of the nature of category (a).

8. If the price determined by Bonham was different than the price received via the price feed, Bonham's price would be substituted and used in the calculation of the value of the mutual fund.

9. The valuation of the mutual fund is used to calculate the net asset value per share ("NAVPS"). The NAVPS is used to determine the purchase and redemption prices that investors pay or receive.

10. During the relevant period, SVC did not have a written policy governing manually pricing shares and Bonham did not apply a specific or consistent methodology in manually pricing shares.

11. Bonham did not record or maintain any notes with respect to the determination of the manual price.

12. The result of the manual pricing undertaken by Bonham is as follows:

(a) The Strategic Value Fund was overvalued (i.e dollar difference as a percentage of net asset value per unit) for 201 of the 231 trading days during the material time.

(b) The Canadian Equity Value Fund was overvalued for 123 of the 231 trading days during the material time.

(c) The Dividend Fund was overvalued for 60 of the 231 trading days during the material time.

13. By his conduct during the material time, Bonham: a) failed to act honestly, in good faith and in the best interests of the mutual fund; and b) failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, contrary to section 116(1) of the Act.

SVC O'Donnell Fund Management

14. The board of directors of SVC (the "Directors") were responsible for determining when a valuation methodology for the shares held in the portfolios of the mutual funds other than market value would be used.

15. SVC did not have any written policies or procedures in place governing under what circumstances Bonham should value the securities in the portfolios of the mutual funds and the valuation methodology to be used.

16. The Directors relied on Bonham to make the day-to-day security valuation determinations.

17. The Directors (or a primary delegate) did not supervise or review the manual prices determined by Bonham.

18. The Directors (or a primary delegate) did not implement internal controls to ensure a segregation of duties in the performance of the daily valuation of the mutual funds.

19. SVC did not take adequate steps to monitor and prevent the conduct of Bonham as set out in the allegations.

20. During the material time, SVC: a) failed to act in the best interest of the mutual fund; and b) failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances contrary to section 116(1) of the Act.

Bonham & Co.

21. B&C, as the sponsor of Bonham's registration was responsible for supervising Bonham's activities and did not properly supervise Bonham in regard to the conduct of Bonham as set out in the allegations, contrary to its obligations under Ontario Securities Commission Rule 31-505 (3.1).

22. Staff reserves the right to make such further and other allegations as Staff may submit and the Commission may allow.

DATED at Toronto this 1st day of November, 2000.

1.3 News Releases

1.3.1 MSC and OSC Rule on Application to Cease Trade Shareholders Rights Plan Relating to Aspen Properties Take-over Bid for Consolidated Properties

October 27, 2000

MSC and OSC Rule on Application to Cease Trade Shareholders Rights Plan Relating to Aspen Properties Take-over Bid for Consolidated Properties

WINNIPEG and TORONTO -- The Manitoba Securities Commission and the Ontario Securities Commission held a joint hearing considering an application made by Aspen Properties Ltd. to cease trade the shareholders rights plan of Consolidated Properties Ltd. in connection with the take-over bid by Aspen for 30% of the common shares of Consolidated Properties Ltd..

The Commissions gave an oral decision that the shareholders rights plan of Consolidated Properties Ltd. be cease traded with respect to the offer by Aspen on Friday, November 3 at 5:00 p.m. Central Standard Time provided that Aspen extends the time during which shares may be tendered to their bid.

Written reasons for the decision will follow.

The MSC and OSC are industry funded provincial agencies responsible for maintaining the efficiency and integrity of the capital markets by administering securities legislation in their respective jurisdictions. Together with other members of the Canadian Securities Administrators, the MSC and OSC develop and operate the Canadian Securities Regulatory System.

References:

Ainsley Cunningham
Educational Officer
Manitoba Securities Commission
(204) 945-4733

Frank Switzer
Director, Communications
Ontario Securities Commission
(416) 593-8120

1.3.2 Mark Bonham, SVC O'Donnell Fund Management Inc. and Bonham & Co. Inc.

October 30, 2000

MARK BONHAM, SVC O'DONNELL FUND MANAGEMENT INC. and BONHAM &CO. INC.

Toronto - The Ontario Securities Commission (the "Commission") has commenced proceedings against Mark Bonham, SVC O'Donnell Fund Management Inc. and Bonham & Co. Inc. as outlined in the attached Statement of Allegations. The first hearing date in the matter is scheduled for November 6, 2000 at 10:00 a.m. in the Commission's Large Hearing Room, 17th Floor, 20 Queen Street West, Toronto, Ontario.

The purpose of the hearing on November 6, 2000 is to consider a proposed settlement agreement with SVC O'Donnell Fund Management Inc. Terms of the proposed settlement agreement will only be released if and when the Commission approves the proposal. At the proceeding on November 6, 2000 a hearing date will be set with respect to the Respondents Mark Bonham and Bonham & Co. Inc.

Copies of the Notice of Hearing and the Statement of Allegations can be obtained from OSC website at www.osc.gov.on.ca.

References:

Frank Switzer
Director, Communications
(416) 593-8120

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

1.3.3 Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall

October 31, 2000

DUAL CAPITAL MANAGEMENT LIMITED, WARREN LAWRENCE WALL AND SHIRLEY JOAN WALL

TORONTO - On October 30, 2000, The Honourable Judge J.J. Douglas of the Ontario Court of Justice sentenced Warren Lawrence Wall ("Warren Wall") to a prison term for a total of 30 months (18 months in relation to the distribution of securities contrary to Ontario securities law, and 12 months in relation to trading in securities contrary to Ontario securities law), and Shirley Joan Wall ("Joan Wall") to a prison term for a total of 22 months (13 months in relation to the distribution of securities contrary to Ontario securities law, and 9 months in relation to trading in securities contrary to Ontario securities law). A fine in the amount of $1,000,000 was imposed against Dual Capital Management Limited, the general partner of Dual Capital Limited Partnership. During the period from October 1994 to December 1996, Dual Capital Management Limited, Warren Wall and Joan Wall sold units in Dual Capital Limited Partnership to 49 investors residing throughout Ontario and raised funds in the amount of approximately U.S. $1,500,000. Warren Wall and Joan Wall are officers and directors of Dual Capital Management Limited.

Following 12 days of trial in which the prosecution (the Ontario Securities Commission) called 17 witnesses and the defence called several witnesses, the defendants, Dual Capital Management Limited, Warren Wall and Joan Wall each entered a plea of guilty to charges under the Ontario Securities Act (set out in the attached Appendix) relating to the distribution and sale of units in Dual Capital Limited Partnership without registration and without a prospectus contrary to the provisions of the Ontario Securities Act. The Honourable Judge J.J. Douglas accepted the guilty pleas and convicted the defendants on the basis of the evidence submitted during the trial.

In passing sentence, the Honourable Judge J.J. Douglas stated that the breaches of securities law at issue were at the heart of conduct the Ontario Securities Act seeks to prevent and should be punished accordingly. He further underscored the dishonesty and greed motive of Warren Wall and Joan Wall in the creation and operation of the investment scheme, as well as the vulnerability of the elderly investors from whom funds were solicited.

After serving their prison terms, Warren Wall and Joan Wall will be subject to a probation term of two years, requiring the Walls, among other things, to refrain from trading, distributing and promoting insurance products or securities.

References:

Frank Switzer
Director, Communications
Telephone: 416-593-8120

Michael Watson
Director, Enforcement Branch
Telephone: 416-593-8156

APPENDIX

1. DUAL CAPITAL MANAGEMENT LIMITED and WARREN LAWRENCE WALL between October 13, 1994 and December 4, 1996, at the City of Barrie, County of Simcoe in the Central East Region and elsewhere in the Province of Ontario did trade in securities, namely, limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Securities Act, R.S.O. 1990, c.S.5, as amended and did thereby commit an offence contrary to section 122(1)(c) of the Securities Act, R.S.O. 1990, c.S.5, as amended;

2. SHIRLEY JOAN WALL between October 13, 1994 and June 27, 1995, at the City of Barrie, County of Simcoe in the Central East Region and elsewhere in the Province of Ontario did trade in securities, namely, limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Securities Act, R.S.O. 1990, c.S.5, as amended and did thereby commit an offence contrary to section 122(1)(c) of the Securities Act, R.S.O. 1990, c.S.5, as amended;

3. WARREN LAWRENCE WALL and SHIRLEY JOAN WALL, between October 13, 1994 and December 4, 1996, in the City of Barrie, County of Simcoe in the Central East Region and elsewhere in the Province of Ontario, being a director or officer of Dual Capital Management Limited did authorize, permit or acquiesce in the offence committed by Dual Capital Management Limited described in count 1 and did thereby commit an offence contrary to section 122(3) of the Securities Act, R.S.O. 1990, c.S.5, as amended;

4. DUAL CAPITAL MANAGEMENT LIMITED, WARREN LAWRENCE WALL, and SHIRLEY JOAN WALL, between October 13, 1994 and December 4, 1996, in the City of Barrie, County of Simcoe in the Central East Region and elsewhere in the Province of Ontario did trade in securities, namely limited partnership units of Dual Capital Limited Partnership where such trading was a distribution of such securities, without having filed a preliminary prospectus and a prospectus and obtaining receipts therefor from the Director as required by section 53(1) of the Securities Act, R.S.O. 1990, c.S.5, as amended and did thereby commit an offence contrary to section 122(1)(c) of the Securities Act, R.S.O. 1990, c.S.5, as amended;

5. WARREN LAWRENCE WALL and SHIRLEY JOAN WALL, between October 13, 1994 and December 4, 1996, in the City of Barrie, County of Simcoe in the Central East Region and elsewhere in the Province of Ontario, being a director or officer of Dual Capital Management Limited did authorize, permit or acquiesce in the offence committed by Dual Capital Management Limited described in count 4 and did thereby commit an offence contrary to section 122(3) of the Securities Act, R.S.O. 1990, c.S.5, as amended.

1.3.4 Joseph Curia

November 1, 2000

IN THE MATTER OF THE APPLICATION FOR REGISTRATION OF JOSEPH CURIA

Toronto - A Director of the Commission released reasons today in the matter of the application for registration of Joseph Curia. These reasons follow the decision of that Director made September 27, 2000, wherein the application to transfer Mr. Curia's registration was not allowed.

From 1994 until 1999, the applicant was employed at A.C. MacPherson and Company Inc. ("MacPherson"). On April 3, 2000, the Commission approved a settlement agreement, which among other sanctions, resulted in the winding up of MacPherson. The settlement was presented to the Commission for consideration as a result of high mark ups charged to its clients by MacPherson. In MacPherson and in other cases, the Commission has established that principal sales by a dealer at excessive mark-ups is a breach of the duty a registrant owes to its client.

The Director found that registered salespeople owe a statutory duty to act fairly, honestly and in good faith with their clients. This duty requires a salesperson to be informed of the sales practices of the firm where he or she is employed. Where those practices involve high mark ups, a salesperson who participates in that practice will not be acting fairly or in good faith with his or her clients. Accordingly, the transfer of registration was denied.

Copies of the Decision can be obtained from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario or are available on the Commission's web site at www.osc.gov.on.ca.

References:

Rowena McDougall
Sr. Communications Officer
(416) 593-8117

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

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 AEC Pipelines, L.P. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Decision that a corporation be deemed to have ceased to be a reporting issuer following the acquisition of all of its outstanding securities by another issuer.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am. s. 83

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

AND

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

AND

**IN THE MATTER OF
AEC PIPELINES, L.P.**

MRRS DECISION DOCUMENT

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Alberta, British Columbia, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from AEC Pipelines, L.P. ("AEC LP") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") deeming AEC LP to have ceased to be a reporting issuer pursuant to the Legislation;

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

3. **AND WHEREAS AEC LP** has represented to the Decision Makers that:

 3.1 AEC LP was established on December 20, 1996 pursuant to the *Partnership Act* (Alberta);

 3.2 AEC LP maintains its head office in Calgary, Alberta;

 3.3 AEC Pipelines Ltd.("APL") is the general partner of AEC LP;

 3.4 the authorized capital of AEC LP consists of an unlimited number of Class A Units ("A Units") and an unlimited number of Class B Units ("B Units"), of which 32,010,400 A Units are issued and outstanding and 74,691,100 B Units are issued and outstanding;

 3.5 AEC LP is a reporting issuer or the equivalent in the Jurisdictions and is not in default of any of the requirements of the Legislation;

 3.6 Alberta Energy Company Ltd. ("AEC") and APL, a wholly owned subsidiary of AEC, collectively own all of the issued and outstanding B Units;

 3.7 pursuant to a take-over bid dated August 14, 2000 and subsequent compulsory acquisition, AEC became the sole holder of all issued and outstanding A Units;

 3.8 the A Units were delisted from The Toronto Stock Exchange on September 21, 2000, and the A Units and the B Units are not traded or listed on any market or exchange in Canada;

 3.9 AEC LP has no publicly held securities, including debt securities, currently issued and outstanding;

 3.10 AEC LP does not intend to seek public financing by way of an offering of securities;

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

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

6. **THE DECISION** of the Decision Makers under the Legislation is that AEC LP is deemed to have ceased to be a reporting issuer or the equivalent under the Legislation, effective as of the date of this Decision Document.

DATED at Calgary, Alberta this 19th day of October, 2000.

"Glenda A.Campbell"

2.1.2 Charles Schwab Canada, Co. and Schwab Canada Self-Managed Services - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the Suitability Requirements, as reflected in paragraph 1.5(1)(b) of OSC Rule 31-505, pursuant to section 4.1 of OSC Rule 31-505, subject to the terms and conditions set out in the Decision Document.

Decision pursuant to s.21.1(4) of the Act, that the IDA Suitability Requirements do not apply to the Filer, subject to the terms and conditions set out in the Decision Document.

Applicable Ontario Statute

Securities Act R.S.O. 1990, c.S.5, as amended, s.21.1(4).

Rules Cited

Ontario Securities Commission Rule 31-505 "Conditions of Registration" (1999) 22 O.S.C.B. 731.

IDA Regulations Cited

IDA Regulation 1300.1(b), 1800.5(b), 1900.4.

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

AND

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

AND

IN THE MATTER OF CHARLES SCHWAB CANADA, CO.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Newfoundland, Nova Scotia and Ontario (collectively, the "Jurisdictions") has received an application from Charles Schwab Canada, Co. (the "Filer") regarding the operation of the separate division, Schwab Canada Self-Managed Services (the "Division") for:

1. a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements of the Legislation requiring the Division and its registered salespersons, partners, officers and directors ("Registered Representatives") to make inquiries of each client of the Division as are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to determine (a) the general investment needs and objectives of the client and (b) the suitability of a proposed purchase or sale of a security for the client (such requirements, the "Suitability Requirements") do not apply to the Division and its Registered Representatives; and

2. a decision under the Legislation, other than the securities legislation of Newfoundland and Nova Scotia, that the requirements of the Investment Dealers Association of Canada (the "IDA"), in particular IDA Regulation 1300.1(b), 1800.5(b) and 1900.4, requiring the Division and its Registered Representatives to make inquiries of each client of the Division as are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to determine (a) the general investment needs and objectives of the client and (b) the suitability of a proposed purchase or sale of a security for the client (such requirements, the "IDA Suitability Requirements") do not apply to the Division and its Registered Representatives;

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 Filer and the Division have represented to the Decision Makers that:

1. the Filer is a corporation incorporated under the Nova Scotia Business Corporations Act;

2. the Division is a distinct internal operating division of the Filer;

3. the head office of the Filer is located in Ontario and the Division also maintains offices and has executive officers and Registered Representatives in Ontario and has Registered Representatives resident in each Jurisdiction;

4. the Filer is registered under the Legislation as an investment dealer and is a member of the IDA;

5. Schwab Canada Self-Managed Services is a trade name of the Filer registered with each of the Jurisdictions;

6. the Division operates independently and operates using its own letterhead, accounts, Registered Representatives and account documentation;

7. the Division and its Registered Representatives do not and will not, except as provided in 14 below, provide advice or recommendations regarding the purchase or sale of any security and the Filer and the Division have adopted policies and procedures to ensure the Division and the Division's Registered Representatives do not and will not, with such exception, provide advice or recommendations regarding the purchase or sale of any security;

8. when the Division provides trade execution services to clients it would, in the absence of this Decision, be required to comply with the Suitability Requirements and IDA Suitability Requirements;

9. clients who request the Division or its Registered Representatives to provide advice or recommendations or advice as to suitability will be referred to the full-service division of the Filer or another full-service dealer;

10. the Division does not and will not compensate its Registered Representatives on the basis of transactional values;

11. each client of the Division will be advised of the Decision of the Decision Makers and requested to acknowledge that:

    (a) no advice or recommendation will be provided by the Division or its Registered Representatives regarding the purchase or sale of any security, and

    (b) the Division and its Registered Representatives will no longer determine the general investment needs and objectives of the client or the suitability of a proposed purchase or sale of a security for the client; (both (a) and (b) shall constitute the "Client Acknowledgement");

12. the Client Acknowledgement will provide the client with sufficient detail and will explain to each client the significance of not receiving either investment advice or a recommendation from the Filer, including the significance of the Filer not determining the general investment needs and objectives of the client, or the suitability of a proposed purchase or sale of a security for the client;

13. each client of the Division will be advised that he or she has the option of transferring his or her account or accounts to the full-service division of the Filer or another dealer at no cost to the client if the client does not wish to provide a Client Acknowledgement (the "Account Transfer Option");

14. the Division and its Registered Representatives will continue to comply with the Suitability Requirements and IDA Suitability Requirements for client accounts for which no Client Acknowledgement is received for six months following the date of this Decision;

15. after the date six months following the date of this Decision, the Division will not permit a transaction in an account for which a Client Acknowledgement has not been received unless the transaction is a sale for cash or a transfer of assets to another account;

16. all prospective clients of the Division will be advised and required to acknowledge that:

    (a) no advice or recommendations will be provided by the Division or its Registered Representatives regarding the purchase or sale of any security, and

    (b) the Division and its Registered Representatives will not determine the general investment needs and objectives of the client or the suitability of a proposed purchase or sale of a security for the client, (both (a) and (b) shall constitute the "Prospective Client Acknowledgement"),

    prior to the Division opening an account for such prospective client;

17. the Prospective Client Acknowledgement will provide the client with sufficient detail and will explain to each client the significance of not receiving either investment advice or a recommendation from the Filer, including the significance of the Filer not determining the general investment needs and objectives of the client, or the suitability of a proposed purchase or sale of a security for the client;

18. the Filer and the Division have adopted policies and procedures to ensure:

    (a) that evidence of all Client Acknowledgements, Prospective Client Acknowledgements and Account Transfer Options is established and retained pursuant to the record keeping requirements of the Legislation and the IDA,

    (b) all client accounts of the Division are appropriately designated as being a client account to which a Client Acknowledgement or Prospective Client Acknowledgement has been received or being a client account to which a Client Acknowledgement has not been received, and

    (c) for any client of the Division who does not provide a Client Acknowledgement and chooses to exercise the client's Account Transfer Option, the Division will transfer the client's account in an expeditious manner and at no cost to the client; and

19. the Filer has adopted policies and procedures to ensure that:

    (a) the Division operates separately from the full-service division of the Filer,

    (b) Registered Representatives of the Division are clearly employed by the Division and do not handle the business or clients of the full-service division of the Filer, and

    (c) a list of Registered Representatives of the Division is maintained at all times;

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 Suitability Requirements contained in the Legislation shall not apply to the Division and its Registered Representatives so long as:

1. except as permitted by 6 below, the Division and its Registered Representatives do not provide any advice or recommendations regarding the purchase or sale of any security;

2. clients who request the Division or its Registered Representatives to provide advice or recommendations or advice as to suitability are referred to the full-service division of the Filer or a full-service dealer;

3. the Division operates independently and operates using its own letterhead, accounts, Registered Representatives and account documentation;

4. the Division does not compensate its Registered Representatives on the basis of transactional values;

5. each client of the Division is advised of the Decision of the Decision Makers and requested to make a Client Acknowledgement or transfer his or her account to the full-service division of the Filer or another dealer if the client does not wish to make a Client Acknowledgement;

6. the Division and its Registered Representatives continue to comply, for six months following the date of this Decision, with their Suitability Requirements and IDA Suitability Requirements for client accounts for which no Client Acknowledgement is received;

7. commencing six months following the date of this Decision, the Division will not permit transactions in an account for which a Client Acknowledgement has not been received unless the transaction is a sale for cash or a transfer of assets to another account;

8. each prospective client of the Division is advised of the Decision of the Decision Makers and required to make a Prospective Client Acknowledgement prior to the Division or its Registered Representation servicing such prospective client;

9. evidence of all Client Acknowledgements, Prospective Client Acknowledgements and Account Transfer Options is established and retained pursuant to the record keeping requirements of the Legislation and the IDA;

10. for any client who elects to exercise the client's Account Transfer Option, the Division transfers such account or accounts to the full-service division of the Filer or another dealer in an expeditious manner and at no cost to the client;

the Division accurately identifies and distinguishes client accounts for which a Client Acknowledgement or Prospective Client Acknowledgement has been provided and client accounts for which no Client Acknowledgement has been provided;

the Filer has in force policies and procedures to ensure that:

(a) the Division continues to operate separately from the full-service division of the Filer,

(b) Registered Representatives of the Division are clearly employed by the Division and do not handle the business or clients of the full-service division of the Filer, and

(c) a list of Registered Representatives of the Division is maintained at all times; and

13. if an IDA rule addressing the IDA Suitability Requirements comes into effect, the Decision with respect to the Suitability Requirements will terminate one year following the date such rule comes into force, unless the Decision Maker determines otherwise.

November 1st, 2000.

"William R. Gazzard"

THE DECISION of the Decisions Makers, other than Newfoundland and Nova Scotia, is that the IDA Suitability Requirements do not apply to the Division and its Registered Representatives so long as:

1. except as permitted by 6 below, the Division and its Registered Representatives do not provide any advice or recommendations regarding the purchase or sale of any security;

2. clients who request the Division or its Registered Representatives to provide advice or recommendations or advice as to suitability are referred to the full-service division of the Filer or a full-service dealer;

3. the Division operates independently and operates using its own letterhead, accounts, Registered Representatives and account documentation;

4. the Division does not compensate its Registered Representatives on the basis of transactional values;

5. each client of the Division is advised of the Decision of the Decision Makers and requested to make a Client Acknowledgement or transfer his or her account to the full-service division of the Filer or another dealer if the client does not wish to make a Client Acknowledgement;

6. the Division and its Registered Representatives continue to comply, for six months following the date of this Decision, with their Suitability Requirements and

IDA Suitability Requirements for client accounts for which no Client Acknowledgement is received;

7. commencing six months following the date of this Decision, the Division will not permit transactions in an account for which a Client Acknowledgement has not been received unless the transaction is a sale for cash or a transfer of assets to another account;

8. each prospective client of the Division is advised of the Decision of the Decision Makers and required to make a Prospective Client Acknowledgement prior to the Division or its Registered Representation servicing such prospective client;

9. evidence of all Client Acknowledgements, Prospective Client Acknowledgements and Account Transfer Options is established and retained pursuant to the record keeping requirements of the Legislation and the IDA;

10. for any client who elects to exercise the client's Account Transfer Option, the Division transfers such account or accounts to the full-service division of the Filer or another dealer in an expeditious manner and at no cost to the client;

11. the Division accurately identifies and distinguishes client accounts for which a Client Acknowledgement or Prospective Client Acknowledgement has been provided and client accounts for which no Client Acknowledgement has been provided;

12. the Filer has in force policies and procedures to ensure that:

    (a) the Division continues to operate separately from the full-service division of the Filer,

    (b) Registered Representatives of the Division are clearly employed by the Division and do not handle the business or clients of the full-service division of the Filer, and

    (c) a list of Registered Representatives of the Division is maintained at all times; and

13. if an IDA rule addressing the IDA Suitability Requirements comes into effect, the Decision with respect to the IDA Suitability Requirements will terminate one year following the date such rule comes into force, unless the Decision Maker determines otherwise.

November 1st, 2000.

"Robert W. Davis" "Morley P. Carscallen"

2.1.3 CHC Helicopter Corporation - MRRS Decision

Headnote

Rule 61-501 - Related party transactions - Applicant proposes to sell certain assets of a subsidiary to a newly-incorporated entity in which former senior officers of the subsidiary will have a minority interest but the majority of the common shares will be held by each of the applicant and an independent institutional investor - controlling shareholder of applicant supporting transaction - interest of controlling shareholder of applicant and its minority shareholders aligned in these circumstances - applicant previously marketed substantial portion of subsidiary's assets to third parties - transaction negotiated at arm's length - transaction is part of applicant's business strategy to divest non-core assets and repay indebtedness - transaction exempt from requirement to prepare valuation and obtain minority approval

Ontario Rules Cited

Rule 61-501 - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions, ss. 5.5, 5.7 and 9.1

IN THE MATTER OF ONTARIO SECURITIES COMMISSION RULE 61-501 AND QUEBEC SECURITIES COMMISSION POLICY STATEMENT NO. Q-27

AND

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

AND

IN THE MATTER OF CHC HELICOPTER CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Makers") in each of Ontario and Quebec has received an application from CHC Helicopter Corporation ("CHC") for a decision pursuant to section 9.1 of Ontario Securities Commission Rule 61-501 (the "Rule") and section 9 of Quebec Securities Commission Policy Statement No. Q-27 ("Q-27") that the proposed sale of certain assets of Canadian Helicopters Limited ("CHL"), a wholly-owned subsidiary of CHC, not be subject to the valuation and minority approval requirements for related party transactions under the Rule and Q-27;

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 CHC has represented to the Decision Makers that:

1. CHC is a corporation incorporated under the *Canada Business Corporations Act* and is a reporting issuer (or equivalent) in each of the provinces of Canada and, to the best of its knowledge, is not in default of any of the requirements of the *Securities Act* (Ontario) or the *Securities Act* (Quebec) or of the respective regulations or rules made thereunder.

2. As of August 31, 2000, the outstanding share capital of CHC consisted of 12,436,066 Class A subordinate voting shares ("Class A Shares") each carrying one vote per share, 2,973,528 Class B multiple voting shares ("Class B Shares") each carrying 10 votes per share, and 11,000,000 ordinary shares ("Ordinary Shares") which carry one vote for every 10 shares held.

3. The Class A Shares are listed on the Toronto Stock Exchange (the "TSE") and on NASDAQ and the Class B Shares are listed on the TSE.

4. Craig L. Dobbin ("CLD") is the Chairman and Chief Executive Officer of CHC and holds indirectly 1,656,615 Class A Shares, 2,757,616 Class B Shares and 11,000,000 Ordinary Shares representing, in the aggregate, approximately 66% of the votes attached to all of the outstanding shares of CHC.

5. CHC is one of the largest providers of commercial helicopter transportation services in the world. It primarily provides helicopter transportation services for exploration and production activities in the oil and gas industry and to the emergency medical services and search and rescue sectors. As at August 31, 2000, CHC owned or leased 311 light, medium and heavy helicopters.

6. CHC has undertaken a series of strategic initiatives in recent years to expand its international presence, increase its focus on offshore oil and gas activities, and reduce costs and repay indebtedness. These transactions involved the disposition of certain of CHC's assets and operations not primarily related to oil and gas activities.

7. CHC has concluded that the provision of onshore light and medium helicopter services operated in Canada by its wholly-owned subsidiary, CHL, does not represent part of its core business and has determined to sell the assets and operations of the Eastern Division and the Western Division of CHL, other than any assets or operations relating to offshore oil and gas operations (the "Business").

8. CHC appointed a financial advisor in February, 2000 to assist in the sale of certain Canadian onshore helicopter assets and entered into negotiations with various potential purchasers, all of whom dealt at arm's-length with CHC, but CHC was unable to come to an agreement with any of such groups. Such potential purchasers were provided with all material information in connection with the potential sale.

9. CHC has now entered into conditional agreements with Don Wall ("Wall") and Jean-Pierre Blais ("Blais"), and with Fonds de Solidarité ("FTQ") providing for the sale of the Business (the "Transaction") to a newly-incorporated company ("Newco") in which Blais, Wall, FTQ and CHC will each have an interest. Newco will lease certain aircraft owned by CHC or its subsidiaries and will have certain options or rights of first refusal with respect to such leased aircraft.

10. Wall and Blais are senior officers of CHL but neither is a director, officer or employee of CHC and neither was involved in the prior negotiations with the arm's length potential purchasers, other than the provision of certain "due diligence" information to a potential purchaser.

11. FTQ is a Government of Quebec labour fund. FTQ is not a "related party" of CHC or CHL.

12. FTQ will acquire 45% of the common shares of Newco and certain other securities and interests in Newco.

13. CHL will acquire 45% of the common shares of Newco and certain other securities and interests in Newco.

14. Each of Wall and Blais will separately acquire 5% of the outstanding common shares of Newco for an aggregate subscription price of $500,000 each.

15. Each of FTQ, CHC, Wall and Blais will enter into a shareholders' agreement providing for, among other things, matters relating to the sale of shares of Newco, Newco's board representation and the approval of major decisions of Newco.

16. Each of Wall and Blais will enter into employment agreements with Newco, on terms approved by FTQ and CHC. Such agreements will allow each of Wall and Blais to earn additional common shares of Newco, to a maximum of an additional 5% each, if certain conditions are satisfied.

17. Following completion of the Transaction, neither Wall nor Blais will be a director, officer, or employee of CHL or CHC.

18. CLD, the principal shareholder of CHC, supports the Transaction. CLD will not realize any benefit from the Transaction other than as a shareholder of CHC. No director or officer of CHC will have any interest in Newco, other than through CHL's interest.

19. Newco is a related party of CHC under the Rule and Q-27.

20. CHL is a related party of CHC under the Rule and Q-27.

21. Wall and Blais are senior officers of CHL and, as such, are related parties of CHC under the Rule and Q-27.

22. The Transaction will be a "related party transaction" as defined in the Rule and Q-27.

23. The Transaction has been approved by the board of directors of CHC. No board member (including CLD) or officer of CHC will have any interest in Newco.

24. As the Transaction is supported by CLD, the controlling shareholder of CHC, and since CLD will not realize any benefit from the Transaction other than as a shareholder of CHC, there is no conflict between CLD's interests and those of any other shareholder of CHC.

26. The Transaction has been negotiated on an arm's-length basis. Negotiations on behalf of CHC have been carried out by officers of CHC. No officers of CHC will become employees of Newco. Further, FTQ, a party that is not related to CHC or CHL, has played a significant role in negotiating the Transaction and will have a far greater equity interest in Newco than Wall and Blais. CHC has no reason to confer a benefit on FTQ. The employment arrangements between Wall and Blais, on the one hand, and Newco on the other, will require the approval of FTQ.

AND WHEREAS, pursuant to the System, this MRRS Decision Document evidences the determination of the Decision Makers (the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Rule and Q-27 that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Rule and Q-27 is that the valuation and minority approval requirements for related party transactions contained in the Rule and Q-27 shall not apply to the Transaction.

October 26th, 2000.

"Stan Magidson"

2.1.4 Edge Energy Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Decision declaring corporation to be no longer a reporting issuer following the acquisition of all of its outstanding securities pursuant to a plan of arrangement.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am. s. 83

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

AND

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

AND

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

MRRS DECISION DOCUMENT

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Alberta, British Columbia, Saskatchewan, Ontario and Quebec (the "Jurisdictions") has received an application from Edge Energy Inc. ("Edge") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that Edge be deemed to have ceased to be a reporting issuer or the equivalent thereof under the Legislation;

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

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

   3.1 Edge is a corporation which was amalgamated under the Business Corporations Act (Alberta) (the "ABCA") on June 30, 1999 and is a reporting issuer, or the equivalent thereof under the Legislation;

   3.2 Edge is not in default of any of its obligations as a reporting issuer, or the equivalent thereof, under the Legislation;

   3.3 the principal office of Edge is located in the City of Calgary, in the Province of Alberta;

3.4 the authorized capital of Edge consists of an unlimited number of common shares (the "Common Shares") and an unlimited number of preferred shares (the "Preferred Shares") issuable in series, of which 31,671,940 Common Shares are currently issued and outstanding;

3.5 pursuant to an arrangement under section 186 of the ABCA, on August 11, 2000 Edge became a wholly owned subsidiary of Ventus Energy Ltd. ("Ventus");

3.6 at the close of trading on August 23, 2000, the Common Shares were delisted by The Toronto Stock Exchange, and as a result, Edge does not have any securities listed on any exchange or organized market;

3.7 Ventus is the sole security holder of Edge, and there are no securities, including debt securities, currently issued and outstanding other than the Common Shares; and

3.8 Edge does not intend to seek public financing by way of an offering of securities;

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

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

6. **THE DECISION** of the Decision Makers under the Legislation is that Edge is deemed to have ceased to be a reporting issuer as of the date of this Decision.

DATED at Calgary, Alberta this 6th day of October, 2000.

"Patricia Johnston"

2.1.5 Hewlett-Packard Company - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - First trade by a former employee in common shares acquired pursuant to employee share purchases plans shall not be subject to section 25 of the Act, subject to certain conditions.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am. ss. 25, 74(i)

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

AND

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

AND

IN THE MATTER OF HEWLETT-PACKARD COMPANY

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker", and collectively, the "Decision Makers") in each of Alberta, British Columbia, Newfoundland, Nova Scotia, Ontario and Saskatchewan (the "Jurisdictions") has received an application (the "Application") from Hewlett-Packard Company ("HP" or the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirements") and to file and obtain a receipt for the preliminary prospectus and a prospectus (the "Prospectus Requirements") (collectively, the "Registration and Prospectus Requirements") shall not apply to certain trades in common shares (the "Common Shares") in the capital of the Filer and in options for Common Shares made in connection with the HP 2000 Employee Stock Purchase Plan and the HP 2000 Stock Plan;

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

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

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

2. The Filer is subject to the requirements of the United States *Securities Exchange Act of 1934*, as amended (the "1934 Act") and it is not exempt from the reporting requirements of the 1934 Act under any rule.

3. The authorized share capital of the Filer is 4,800,000,000 Common Shares with a par value of $0.01 each and 300,000,000 shares of preferred stock with a par value of $0.01 each. As at July 31, 2000, there were 988,695,125 Common Shares issued and outstanding.

4. The Common Shares are listed and posted for trading on the New York Stock Exchange, Inc. (the "NYSE") and the Pacific Stock Exchange.

5. Hewlett-Packard (Canada) Ltd. ("HP Canada") is a corporation incorporated under the federal laws of Canada.

6. HP Canada is not a reporting issuer under the Legislation of any of the Jurisdictions and does not have the present intention of becoming a reporting issuer in any of the Jurisdictions.

7. All of the persons who are eligible to purchase Common Shares under the HP 2000 Employee Stock Purchase Plan ("Stock Eligible Employees") or to whom options may be granted under the HP 2000 Stock Plan ("Option Eligible Employees"), in the Jurisdictions, are employed by HP Canada, which is an indirect wholly-owned subsidiary, and therefore an affiliate, of the Filer.

8. HP has established the HP 2000 Employee Stock Purchase Plan, to be effective as of November 1, 2000 (the "Stock Purchase Plan"), whereby it will allow Stock Eligible Employees to acquire the Common Shares. All regular full-time and regular part-time employees (those employees who work 20 hours or more per week on a regular schedule) of HP Canada are Stock Eligible Employees. Any Stock Eligible Employee's participation in the Stock Purchase Plan shall be effective after he or she has initiated his or her enrollment. The purpose of the Stock Purchase Plan is to provide an opportunity for Stock Eligible Employees to purchase Common Shares and to have additional incentive to contribute to the prosperity of the Filer.

9. As at September 6, 2000, there were approximately 80 Stock Eligible Employees resident in Alberta, 88 Stock Eligible Employees resident in British Columbia, 1 Stock Eligible Employee resident in Newfoundland, 14 Stock Eligible Employees resident in Nova Scotia, 988 Stock Eligible Employees resident in Ontario and 3 Stock Eligible Employees resident in Saskatchewan.

10. Participation in the Stock Purchase Plan by Stock Eligible Employees is voluntary and the Stock Eligible Employees have not been and will not be induced to participate in the Stock Purchase Plan by expectation of employment or continued employment with the Filer, HP Canada or any other affiliated entity of the Filer.

11. Generally, each Stock Eligible Employee may elect to make contributions under the Stock Purchase Plan by payroll deduction of any amount up to, but not exceeding, 10% of his or her base earnings.

12. The Stock Purchase Plan is implemented by offering periods lasting for two years (an "Offering Period"). The first two-year Offering Period will commence on November 1, 2000. Common Shares are purchased under the Stock Purchase Plan every six months (a "Purchase Period"), unless the participant withdraws or terminates employment earlier. A Purchase Period commences after one purchase date and ends on the next purchase date. The entry date is the first trading day of the Offering Period or, for new participants, the first trading day of the Purchase Period after the Stock Eligible Employee becomes eligible (the "Entry Date").

13. Each Stock Eligible Employee who participates in the Stock Purchase Plan is automatically granted an option to purchase Common Shares on his or her Entry Date. The option expires at the end of the Offering Period or on termination of employment, whichever is earlier. The option is automatically exercised at the end of each Purchase Period to the extent of the payroll deductions accumulated during the Purchase Period. Stock Eligible Employees may not purchase more than 5,000 Common Shares during a Purchase Period, or U.S. $25,000 in a calendar year (by reference to the market value at the Stock Eligible Employee's Entry Date).

14. The purchase price of the Common Shares under the Stock Purchase Plan ("the Purchase Price") will be the lower of the price that is not less than 85% of the closing price of the Common Shares on the NYSE, on:

    (i) the Entry Date; or

    (ii) the last trading day of the Purchase Period.

15. Generally a Stock Eligible Employee may withdraw from the Stock Purchase Plan during a Purchase Period prior to the applicable enrolment deadline. The committee(s) of the Board of Directors of HP may establish rules limiting the frequency with which participants may withdraw and re-enrol in the Stock Purchase Plan and may establish a waiting period for re-enrollment.

16. Termination for any reason (including death) immediately cancels a Stock Eligible Employee's option and participation in the Stock Purchase Plan. In such event the payroll deductions credited to the Stock Eligible Employee's account will be returned without interest to him or her, or in the case of death to his or her heirs or estate.

17. The Stock Eligible Employees who purchase Common Shares will be provided with all the disclosure documentation that holders of Common Shares resident in the United States and employees of HP resident in the United States who purchase Common Shares under the Stock Purchase Plan are entitled to receive.

18. An exemption from the Registration Requirements and Prospectus Requirements is not available in all of the Jurisdictions for trades in Common Shares acquired under the Stock Purchase Plan by Stock Eligible Employees, former Stock Eligible Employees or the legal representatives of such present or former Stock Eligible Employees.

19. Because there is no market for the Common Shares in Canada and none is expected to develop, any trades of the Common Shares by Stock Eligible Employees will be effected through the facilities of and in accordance with the rules of a stock exchange or recognized market outside of Canada on which the Common Shares are traded and in accordance with all laws applicable to such trading.

20. HP has established the HP 2000 Stock Plan (the "Stock Option Plan") whereby it will issue to Option Eligible Employees certain options to acquire the Common Shares (the "Options"). It is anticipated that Options will be awarded to various Option Eligible Employees on certain dates (the "Grant Date"). In addition, stock awards and cash awards may be granted under the Stock Option Plan. The Stock Option Plan shall continue for a term of ten years unless terminated as permitted pursuant to its terms. Each Option shall be designated in the agreement between HP and the Option Eligible Employee (the "Award Agreement") as a non-statutory stock option. HP may grant additional options in the future to Option Eligible Employees pursuant to the Stock Option Plan. The purpose of the Stock Option Plan is to encourage ownership in HP by employees whose long-term employment is important to HP.

21. As at September 6, 2000, there were approximately 80 Option Eligible Employees resident in Alberta, 88 Option Eligible Employees resident in British Columbia, 1 Option Eligible Employee resident in Newfoundland, 14 Option Eligible Employees resident in Nova Scotia, 988 Option Eligible Employees resident in Ontario and 3 Option Eligible Employees resident in Saskatchewan.

22 Participation in the Stock Option Plan is voluntary and the Option Eligible Employees will not be induced to exercise Options by expectation of employment or continued employment with the Filer, HP Canada or any other affiliated entity of the Filer.

23. All Options granted under the Stock Option Plan to the Option Eligible Employees shall be determined by the relevant committee(s) of the Board of Directors of HP (the "Stock Option Plan Administrator") and stated in the Award Agreements. The Stock Option Plan Administrator administers the Stock Option Plan.

24. At the time an Option is granted, the Stock Option Plan Administrator shall fix the period within which the Option may be exercised and shall determine the terms of the Option and any conditions that must be satisfied before the Option may be exercised. Generally, the term of the Options shall not exceed 10 years from the Grant Date.

25. The Options are non-transferable during an Option Eligible Employee's life and except as described below or otherwise provided in the Award Agreement, an Option Eligible Employee's Options will terminate immediately upon the termination of employment. Upon death, an Option Eligible Employee's personal representative may exercise his or her Options in full for one (1) year following his or her death.

26. Generally, if an Option Eligible Employee's employment terminates because of his or her permanent disability or retirement due to age, then he or she may exercise his or her Option in full within the earlier of three (3) years of the date of such disability or retirement or the expiration of the term of such Option.

27. If an Option Eligible Employee ceases to be an employee of HP Canada as a result of participation in HP Canada's voluntary severance incentive program, all Options shall be exercisable in full within the earlier of three (3) months following the Option Eligible Employee's termination or the expiration of the term of such Option.

28. If an Option Eligible Employee ceases to be a participant because of a divestiture of HP Canada, the Stock Option Plan Administrator may make such employee's Options exercisable in full for a period of time to be determined by the Stock Option Plan Administrator.

29. At any time, the Stock Option Plan Administrator may buy out for a payment in cash or Common Shares an Option previously granted based on such terms and conditions as the Stock Option Plan Administrator shall establish.

30. Option Eligible Employees who are issued Options under the Stock Option Plan will be provided with all the disclosure documentation that holders of Common Shares resident in the United States and employees of HP who are resident in the United States who receive Options under the Stock Option Plan are entitled to receive.

31. An exemption from the Registration Requirements and Prospectus Requirements is not available in all of the Jurisdictions for trades in Common Shares acquired under the Stock Option Plan by the Option Eligible Employees, former Option Eligible Employees or the legal representatives of such present or former Option Eligible Employees.

32. Because there is no market for the Common Shares in Canada and none is expected to develop, any trades of the Common Shares by Option Eligible Employees will be effected through the facilities of and in accordance with the rules of a stock exchange or recognized market outside of Canada on which the Common Shares are traded and in accordance with all laws applicable to such trading.

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

THE DECISION of the Decision Makers under the Legislation is that:

1. the Registration and Prospectus Requirements shall not apply to:

   (a) the distribution of options by the Filer to Stock Eligible Employees, the exercise of such options and the distribution of Common Shares pursuant to such exercise in connection with the Stock Purchase Plan; or

   (b) the distribution of Options and stock awards by the Filer to Option Eligible Employees, the exercise of such Options and the distribution of Common Shares pursuant to such exercise in connection with the Stock Option Plan;

   provided that the first trade in the Common Shares acquired pursuant to this paragraph 1 is a distribution subject to the Prospectus Requirements; and

2. the first trade in any Common Shares acquired under the Stock Purchase Plan or the Stock Option Plan is not subject to the Registration and Prospectus Requirements where the first trade is made by a Stock Eligible Employee, Option Eligible Employee, former Stock Eligible Employee, former Option Eligible Employee or the legal representatives of such present or former Stock Eligible Employee or Option Eligible Employee, provided that:

   (a) at the time of the acquisition of the Common Shares or the Options, persons or companies whose last address as shown on the books of the Filer in any one of the Jurisdictions did not hold, in the aggregate, more than 10% of the outstanding Common Shares and did not represent in number more than 10% of the total number of holders of Common Shares;

   (b) at the time of the acquisition of the Common Shares or the Options, persons or companies who were resident in any one of the Jurisdictions and who beneficially owned Common Shares did not beneficially own more than 10% of the outstanding Common Shares and did not represent in number more than 10% of the total number of holders of Common Shares;

   (c) at the time of the trade of any Common Shares, the Filer is not a reporting issuer under any of the Legislation; and

   (d) such first trade is executed:

      (i) through the facilities of a stock exchange outside of Canada;
      (ii) on the NASDAQ Stock Market; or
      (iii) on the Stock Exchange Automated Quotation System of the London Stock Exchange Limited;

      in accordance with the rules of such exchange or market and all applicable laws and through an agent qualified to trade in securities in the jurisdiction where such exchange or market is located.

October 24th, 2000.

"J. A. Geller" "Robert W. Davis"

2.1.6 Hydro One Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the requirement that issuer must be a reporting issuer for at least 12 months to permit issuer to distribute non-convertible debt securities or preferred shares under the POP system

Applicable Ontario Policies

National Policy Statement 47 - *Prompt Offering Qualification System*

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

AND

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

AND

**IN THE MATTER OF
HYDRO ONE INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan (the "Jurisdictions") has received an application from Hydro One Inc. ("Hydro One") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in National Policy Statement 47 ("NP 47") and the applicable securities legislation of Quebec including, but not limited to, Title II and Title III of the Quebec *Securities Act* and the Quebec Regulation Respecting Securities (collectively, the "POP Legislation"), which provide that an issuer shall have been a reporting issuer or equivalent in the Jurisdictions for the 12 calendar months immediately preceding the date of filing of its annual information form (the "Eligibility Requirement") in order to be eligible to issue non-convertible debt securities or preferred shares in the Jurisdictions under the prompt offering qualification system pursuant to NP 47 and the simplified prospectus regime in Quebec (collectively, the "POP System") and under the shelf prospectus regime in Quebec (the "Shelf System"), shall not apply to Hydro One;

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

AND WHEREAS Hydro One has represented to the Decision Maker as follows:

1. Hydro One was incorporated under the *Business Corporations Act* (Ontario). Its registered office is located at 483 Bay Street, 10th Floor, Toronto, Ontario, M5G 2P5. Hydro One is one of the successor corporations to Ontario Hydro and was formed as part of a major restructuring of Ontario's electricity industry. Hydro One and its subsidiaries have total assets in excess of $10 billion. Through its subsidiaries, Hydro One owns and operates Ontario's high voltage electricity transmission system and a largely rural low voltage distribution system operating throughout Ontario.

2. Hydro One became a reporting issuer (or equivalent) under the Legislation on May 24, 2000 in connection with its initial public offering of CDN$1,000,000,000 principal amount of unsecured debentures (the "Debentures") in Canada, the United States and elsewhere. Hydro One is not in default of any of the requirements of the Legislation.

3. Hydro One's authorized share capital consists of an unlimited number of preferred shares and an unlimited number of common shares. As of the date of this application, the issued and outstanding share capital of Hydro One consists of 12,920,000 5.5% cumulative preferred shares and 100,000 common shares, all of which are owned by the Government of the Province of Ontario.

4. The Debentures have been assigned ratings of A+, A, A1 and AA- by Canadian Bond Rating Service Inc., Dominion Bond Rating Service Limited, Moody's Investor Service Inc., and Standard & Poor's Ratings Services, respectively.

5. Hydro One's primary sources of liquidity and capital resources have traditionally consisted of, and will continue to be, funds generated from operations, debt capital market borrowings and bank financing. Hydro One expects to incur significant amounts of debt primarily to retire existing debt when due.

6. In order for Hydro One to gain access to the debt capital markets in an efficient and cost effective manner, Hydro One requires the maximum degree of flexibility in considering potential financing arrangements. Accordingly, Hydro One wishes to become eligible for the POP System and the Shelf System and to avail itself of the opportunity to issue non-convertible debt securities or preferred shares by way of either a short form or shelf prospectus.

7. Hydro One proposes to file an initial annual information form (the "Initial AIF") pursuant to the POP Legislation in respect of its fiscal year ended December 31, 1999.

8. Assuming that the Initial AIF is accepted by the securities regulatory authorities in the Jurisdictions and that Hydro One is not in default of any of the Legislation of the Jurisdictions, Hydro One would be eligible to

participate in the POP System pursuant to subsection 4.3(1) of NP 47 but for the fact that it has not been a reporting issuer for 12 months.

9. Hydro One is followed by a broad range of research analysts, investment advisors and other users of financial information.

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

AND WHEREAS the 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 Eligibility Requirement shall not apply to Hydro One in connection with the issuance of non-convertible debt securities or preferred shares under the POP System and under the Shelf System, provided that Hydro One complies with all other requirements and procedures and each of the other eligibility requirements of the POP Legislation.

October 18th, 2000.

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

2.1.7 Lotus Balanced Fund et al. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - application for mutual fund lapse date extension of 3 months and 3 weeks. Extension granted. British Columbia principal regulator.

Applicable Provisions

Securities Act, R.S.O., 1990, c.S.5 as am., ss.62(5).

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

AND

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

AND

IN THE MATTER OF
LOTUS BALANCED FUND
LOTUS INCOME FUND
LOTUS CANADIAN EQUITY FUND
LOTUS BOND FUND
(collectively, the "Funds")

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario (the Jurisdictions") has received an application from HSBC Investment Funds (Canada) Inc. ("HIFC") as manager of the Funds, for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the time limits pertaining to the distribution of units (the "Units") under the simplified prospectus and annual information form of the Funds dated October 5, 1999 (the "Prospectus") be extended to those time limits that would be applicable if the lapse date of the Prospectus was January 31, 2001;

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

AND WHEREAS HIFC has represented to the Decision Makers that:

1. HIFC is the manager, principal distributor and promoter of the Funds and is an indirect wholly-owned subsidiary of HSBC Bank Canada, a Schedule II chartered bank under the *Bank Act* (Canada);

2. HIFC is registered under the Legislation and applicable securities legislation in each of the other provinces of Canada, with the exception of Prince Edward Island, as a mutual fund dealer (or its equivalent);

3. The Funds are reporting issuers under the Legislation and are not in default of any of the requirements of the Legislation made thereunder;

4. The Funds are open-end unit investment trusts, established under the laws of British Columbia pursuant to separate trust indentures and are qualified to distribute Units in the Jurisdictions by means the Prospectus;

5. The lapse date for the distribution of Units of the Funds in the Jurisdictions is October 5, 2000 with the exception of Ontario where the lapse date is October 8, 2000;

6. In accordance with time limits prescribed by the Legislation, the Funds were required to file a pro forma simplified prospectus and annual information form by September 5, 2000, are due to file a final simplified prospectus and annual information form (the "Renewal Prospectus") by October 15, 2000 and obtain a final receipt for the Renewal Prospectus by October 25 in order to continue distributing Units after the October 5, 2000 lapse date (later dates apply re Ontario legislation);

7. Due to the relatively small size of the Funds, HIFC is considering whether it would be in the best interests of Unitholders to terminate the Funds, to continue to offer Units of the Funds in reliance on exemptions from the prospectus requirements of the Legislation or to file a Renewal Prospectus and continue incurring the substantial offering costs associated with the preparation, filing and delivery of materials related to the public offering of Units;

8. The request to extend the lapse date for the Funds is to permit HIFC sufficient time to consider the appropriate direction to take in respect of the Funds and, if HIFC determines it would be in the best interests of Unitholders to terminate the Funds, to allow sufficient time for an orderly and tax-efficient transition of Unitholder investments into other investment opportunities. If the decision on the future direction of the Funds represents a significant change for which an amendment to the Prospectus is appropriate, such amendment will be promptly filed.

9. The Funds have not issued any Units under the Prospectus between the applicable lapse date in the Jurisdictions and the date of this lapse extension order;

10. There have been no material changes in the affairs of the Funds since the date of the Prospectus;

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 time limits provided by the Legislation as they apply to the distribution of Units under the Prospectus are hereby extended to the times that would be applicable if the lapse date for the distribution of securities under the Prospectus was January 31, 2001.

DATED at Vancouver, British Columbia on October 6, 2000

"Wayne Redwick"

2.1.8 Merrill Lynch Triple A 50 RSP Fund et al. - MRRS Decision

Headnote

Investment by RSP fund in securities of another mutual fund that is under common management for specified purpose exempted from the reporting requirements and self-dealing prohibitions of clauses 111(2)(a) and (b) and clauses 117(1)(a) and (d).

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

Statutes Cited

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

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

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

AND

**IN THE MATTER OF
MERRILL LYNCH TRIPLE A 50 RSP FUND
MERRILL LYNCH GLOBAL GROWTH RSP FUND
ATLAS ASSET MANAGEMENT INC.**

DECISION DOCUMENT

WHEREAS the Canadian 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 Atlas Asset Management Inc. or an affiliate or a successor affiliate thereof ("Atlas"), as manager and trustee of the Merrill Lynch Triple A 50 RSP Fund and Merrill Lynch Global Growth RSP Fund (the "New Funds") and other mutual funds managed by Atlas having an investment objective or strategy that is linked to the returns or portfolio of another specified Atlas mutual fund while remaining 100% eligible for registered plans (together with the New Funds, 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 Atlas, as the case may be, in respect of certain investments to be made by the RSP Funds in their applicable corresponding Atlas mutual fund from time to time (the funds in which such investments are to be made being collectively referred to as the "Underlying Funds"):

A. 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;

B. 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;

C. 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 securityholder of the mutual fund, its management company or distribution company has a significant interest;

D. the provision prohibiting a portfolio manager or, in British Columbia, the mutual fund, 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 Atlas has represented to the Decision Makers that:

1. Atlas is a corporation incorporated under the laws of Canada and its head office is located in Ontario. Atlas 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 units of the Funds are or will be qualified for distribution in all of the provinces and territories of Canada (the "Prospectus Jurisdictions") pursuant to simplified prospectus(es) and annual information form(s) (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 Prospectus will contain disclosure with respect to the investment objective, investment practices and restrictions of the Funds.

5. The investment objectives of the RSP Funds are or will be similar to that of the applicable Underlying Fund.

The RSP Funds will seek to achieve their investment objective primarily by investing in:

a) forward contracts or other derivatives that are linked to the returns earned by their Underlying Funds;

b) bank deposits and/or money market instruments to support their obligations under the forward contracts; and

c) units of their Underlying Funds.

All purchases by the RSP Funds of units of their Underlying Funds will be made through Atlas.

6. Each RSP Fund will make investments such that its units will be "qualified investments" for registered retirement savings plans and other registered plans (collectively, the "Registered Plans") under the Income Tax Act (Canada) (the "Act") and, based on an opinion of counsel to Atlas, will not constitute "foreign property" to a Registered Plan.

7. The investment objectives of the Underlying Funds will be achieved through investment primarily in foreign securities.

8. The direct investment by the RSP Funds in their Underlying Funds will be in an amount not to exceed the amount prescribed from time to time as the maximum permitted amount which may be invested in "foreign property" under the Tax Act without the imposition of tax under Part XI of the Act (the "Foreign Property Maximum").

9. The direct investment by the RSP Funds in their Underlying Funds will be within the Foreign Property Maximum (the "Permitted RSP Fund Investment"). The amount of direct investment by each RSP Fund in its 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 (or its portfolio securities) will equal 100% of the net assets of that 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 (or their affiliates) will likely, but are not required to, purchase units of the applicable Underlying Fund.

12. There may be directors and/or officers of Merrill Lynch Canada Inc. ("Merrill Lynch") and its affiliates that are also directors and/or officers of Atlas and its affiliates.

13. The RSP Funds may enter into forward contracts with Merrill Lynch or its affiliates (the "Related Counterparties") as counterparty.

14. Except for the transaction costs payable to a Related Counterparty in relation to any forward contracts with a Related Counterparty, none of the RSP Funds, the Underlying Funds, Atlas 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.

15. The Prospectus will disclose the involvement of Related Counterparties in acting as Counterparty as well as all applicable charges in connection with any forward contracts with a Related Counterparty.

16. 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 their Underlying Funds have been or will be structured to comply with the investment restrictions of the Legislation and NI 81-102.

17. In the absence of this Decision, each of the RSP Funds is prohibited from knowingly making and holding an investment in their Underlying Funds in which the RSP Fund alone or together with one or more related mutual funds is a substantial securityholder.

18. In the absence of this Decision, each of the RSP Funds is prohibited from knowingly making and holding an investment in securities of Merrill Lynch or any of its affiliates.

19. In the absence of this Decision, the Legislation would require Atlas to file a report on every purchase or sale of securities of an Underlying Fund by an RSP Fund.

20. In the absence of this Decision, the Legislation would require Atlas to file a report on every purchase or sale of securities of Merrill Lynch or any of its affiliates.

21. Each of the RSP Funds investment in or redemption of units of their Underlying Funds or investment in forward contracts issued by Merrill Lynch or any of its affiliates represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the RSP Funds.

AND WHEREAS pursuant to the System this Decision Document evidences the Decision of each Decision Maker;

AND WHEREAS each Decision Maker is satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision have been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the Applicable Requirements shall not apply to the RSP Fund, Atlas or a portfolio sub-adviser, as the case may be, in respect of investments to be made by the RSP Fund in units of the Underlying Fund, or in forward contracts issued by Merrill Lynch or any one of its affiliates;

PROVIDED THAT IN RESPECT OF the investment by the RSP Fund in units of the Underlying Fund:

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 N1 81-102; and

2. the Decision shall apply only to investments in, or transactions with, the Underlying Fund that are made by the RSP Fund in compliance with the following conditions:

   a) the RSP Fund and the Underlying Fund are under common management, and the units of both are offered for sale in the jurisdiction of each Decision Maker, pursuant to a prospectus that has been filed with and accepted by the Decision Maker;

   b) the RSP Fund restricts its aggregate direct investment in units of the Underlying Fund to a percentage of its assets that is within the Foreign Property Maximum;

   c) the investment by the RSP Fund in units of the Underlying Fund is compatible with the fundamental investment objectives of the RSP Fund;

   d) each RSP Fund will not invest in an Underlying Fund whose investment objective includes investing directly or indirectly in other mutual funds;

   e) the Prospectus discloses the intent of the RSP Fund to invest in units of the Underlying Fund;

   f) the RSP Fund may change the Permitted RSP Fund Investment if it change its fundamental investment objectives in accordance with the Legislation;

   g) no sales charges are payable by the RSP Fund in relation to purchases of units of the Underlying Fund;

   h) there are compatible dates for the calculation of the net asset values of the RSP Fund and the Underlying Fund for the purpose of the issue and redemption of securities of such mutual funds;

   i) no redemption fees or other charges are charged by the Underlying Fund in respect of the redemption by the RSP Fund of units of the Underlying Fund owned by the RSP Fund;

   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 units of the Underlying Fund;

   k) the arrangements between or in respect of the RSP Fund and the Underlying Fund are such as to avoid the duplication of management fees;

   l) in the event of the provision of any notice to unitholders of the Underlying Fund, as required by applicable laws or the constating documents of the Underlying Fund, the notice will also be delivered to the unitholders of the RSP Fund; all voting rights attached to the units of the Underlying Fund that are owned by the RSP Fund will be passed through to the unitholders of the RSP Fund;

   m) in the event that a meeting of unitholders 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 unitholders of the RSP Fund; each unitholder will be entitled to direct a representative of the RSP Fund to vote that unitholder'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 unitholders of the RSP Fund so direct;

   n) in addition to receiving the annual and, upon request, the semi-annual financial statements of the RSP Funds, unitholders 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 the financial statements of both the RSP Fund and the Underlying Fund, or in a separate report containing the financial statements of the Underlying Fund; and

   o) to the extent that the RSP Fund and the Underlying Fund do not use a combined simplified prospectus, annual information form and financial statements containing disclosure about the RSP Fund and the Underlying Fund, copies of the simplified prospectus, annual information form and financial statements relating to the Underlying Fund may be obtained upon request by a unitholder of the RSP Fund.

AND PROVIDED THAT IN RESPECT OF the investment by the RSP Fund in the forward contracts, the Decision applies to the investments in forward contracts of Merrill Lynch, or an affiliate of Merrill Lynch, as counterparty that are made in compliance with the following conditions:

a) the pricing terms offered by the Related Counterparties to the RSP Fund under the forward contracts are at least as favourable as the terms committed by the Related Counterparties 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 a Related Counterparty, the independent auditors of the RSP Fund will review the

pricing offered by the Related Counterparty to the RSP Fund against the pricing offered by the Related Counterparty 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 (and each renewal thereof) discloses the independent auditors' role and their review of the forward contracts, as well as the involvement of the Related Counterparties; and

e) the RSP Fund will enter into forward contracts with Related Counterparties only once confirmation of favourable pricing is received from the independent auditors of the RSP Fund.

October 27th, 2000.

"J. A. Geller" "Robert W. Davis"

2.1.9 RBC Dominion Securities Inc. et al. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer is a "connected issuer", but not a "related issuer", in respect of the applicants who are four Bank-owned registrants which are underwriting part of a distribution of securities of the Issuer - Applicants exempt from the requirement in the legislation that an independent underwriter underwrite a portion of the distribution equal to the aggregate of the portions being underwritten by the non-independent underwriters.

Applicable Ontario Statutory Provisions

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

Applicable Ontario Regulations

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

Applicable Ontario Rules

Proposed Multi-Jurisdictional Instrument 33-105 Underwriting Conflicts (1998), 21 OSCB 781. 33-5B - In the Matter of Limitations on a Registrant Underwriting Securities of a Related or a Connected Issuer of the Registrant (1997), 20 OSCB 1217, as varied by (1999), 22 OSCB 149.

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, NEWFOUNDLAND, ONTARIO AND QUÉBEC

AND

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

AND

IN THE MATTER OF RBC DOMINION SECURITIES INC., MERRILL LYNCH CANADA INC., TD SECURITIES INC., NATIONAL BANK FINANCIAL INC., HSBC SECURITIES (CANADA) INC. AND PRECISION DRILLING CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Newfoundland, Ontario and Québec (the "Jurisdictions") have received an application from RBC Dominion Securities Inc., TD Securities Inc., National Bank Financial Inc., and HSBC Securities (Canada) Inc. (collectively, the "Bank-Affiliated Underwriters") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the Bank-Affiliated Underwriters be exempt from the restriction contained in the Legislation prohibiting an underwriter from

acting in connection with a distribution of securities of a related or connected issuer of the underwriter unless a portion of the distribution at least equal to that portion underwritten by non-independent underwriters is underwritten by independent underwriters and unless an independent underwriter underwrites a portion of the offering which is not less than the largest portion of the distribution underwritten by a non-independent underwriter (the "Independent Underwriter Requirement") in connection with a proposed distribution of debentures (the "Debentures") of Precision Drilling Corporation (the "Issuer") to be made by way of a short form prospectus (the "Offering");

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 Bank-Affiliated Underwriters have represented to the Decision Makers that:

1. The Issuer was incorporated on March 25, 1985 pursuant to the provisions of the *Business Corporations Act* (Alberta) and maintains its head office and principal place of business at Suite 4200, 150 6th Avenue S.W., Calgary, Alberta, T2P 3Y7.

2. The Issuer is a reporting issuer under the securities laws of the Province of Ontario and is a reporting issuer, or the equivalent thereof, in each of the other provinces of Canada.

3. The Issuer intends to enter into an underwriting agreement (the "Underwriting Agreement") with the Bank-Affiliated Underwriters and Merrill Lynch Canada Inc.(collectively, the "Underwriters") relating to the public offering of the Debentures.

4. The Debentures will be sold on a non-fixed price basis.

5. The proportion of the Debentures to be purchased by the Underwriters (the "Syndicate Composition") pursuant to the Underwriting Agreement is as follows:

RBC Dominion Securities Inc.	-	37.5%
Merrill Lynch Canada Inc.	-	37.5%
TD Securities Inc.	-	10.0%
National Bank Financial Inc.	-	7.5%
HSBC Securities (Canada) Inc.	-	7.5%

6. The Issuer has filed a preliminary short form prospectus and will file a short form prospectus (collectively, the "Prospectuses") with the securities regulatory authorities in each of the provinces of Canada and will obtain a receipt therefor in order to qualify the Debentures for distribution in those provinces. Alberta will be designated as the principal jurisdiction for filing of the Prospectuses.

7. The Underwriters will not benefit in any manner from the Offering other than the payment of underwriting fees and the difference between the price paid for the Debentures by the Underwriters and the price paid by purchasers. However, it is currently intended that the net proceeds of the Offering will be used to repay bank indebtedness.

8. The Issuer is indebted to the four Canadian chartered banks (the "Banks") which are affiliated with the Bank-Affiliated Underwriters.

9. The nature of the relationship among the Issuer and each of the Bank-Affiliated Underwriters and the Banks will be described in the Prospectuses.

10. The Prospectuses will contain a certificate signed by each Underwriter in accordance with Item 20 of Appendix B of National Policy 47.

11. The net proceeds of the Offering will be used to reduce indebtedness to the Banks.

12. The Issuer is not, in connection with the Offering, a "related issuer" , or equivalent, of any of the Underwriters for the purposes of the Legislation. However, by virtue of the relationships described above, the Issuer may, in connection with the Offering, be a "connected issuer" , or equivalent, of the Bank-Affiliated Underwriters for the purposes of the Legislation.

13. The decision to undertake the Offering was made, and the determination of the terms of the distribution will be made, through negotiation between the Issuer and the Underwriters, without involvement of the Banks.

14. Merrill Lynch Canada Inc. is an independent registrant that has participated and will participate in the due diligence carried out prior to the filing of the Prospectuses and the negotiation of the price of the Debentures.

15. More than 20% of the Offering will be underwritten by Merrill Lynch Canada Inc. which is independent of the Issuer. The Prospectuses will comply with Proposed Multi-Jurisdictional Instrument 33-105 (the "Proposed Instrument") including disclosure of the information set out in Appendix C of the Proposed Instrument. The Issuer is not in financial difficulty and the Issuer is not a "specified party" as defined in the Proposed Instrument.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each of the Decision Makers (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 Independent Underwriter Requirement shall not apply to the Bank-Affiliated Underwriters in connection with the Offering provided that the Issuer is not a "related issuer", or equivalent, to the Bank Affiliated Underwriters at the time of the Offering and is not a "specified party", as defined in the Proposed Instrument, at the time of the Offering.

October 23rd, 2000.

"Robert W. Davis" "J. F. Howard"

2.1.10 Royop Properites Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - decision declaring that corporation is deemed to have ceased to be a reporting issuer following the acquisition of all of its outstanding securities by another issuer.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5 as am. s. 83.

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

AND

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

AND

**IN THE MATTER OF
ROYOP PROPERTIES CORPORATION**

MRRS DECISION DOCUMENT

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan and Ontario (the "Jurisdictions") have received an application from Royop Properties Corporation ("Royop") for a decision pursuant to the securities legislation of each of the Jurisdictions (the "Legislation") that Royop cease to be a reporting issuer or equivalent thereof under the Legislation;

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

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

   3.1 Royop was incorporated under the Canadian Business Corporations Act on February 10, 1997. Royop's head office is located in Calgary, Alberta;

   3.2 Royop is a reporting issuer, or the equivalent, in each of the Jurisdictions and is not in default of any of the requirements of the Legislation;

   3.3 Royop's authorized capital consists of an unlimited number of common shares (the "Common Shares") of which 39,677,017 Common Shares are issued and outstanding;

3.4 pursuant to a plan of arrangement effective August 31, 2000, H&R Real Estate Investment Trust ("H&R") acquired all of the outstanding Common Shares, through Royop Acquisition Corp., a wholly owned subsidiary of H&R;

3.5 the Common Shares were delisted from The Toronto Stock Exchange effective September 5, 2000. Royop currently does not have any of its securities listed or quoted on any market or exchange in Canada;

3.6 Royop has no securities, including debt securities, issued and outstanding other than the Common Shares;

3.7 Royop does not currently intend to seek public financing by way of an offering of securities;

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

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

6. **THE DECISION** of the Decision Makers pursuant to the Legislation is that Royop is deemed to have ceased to be a reporting issuer or the equivalent thereof under the Legislation.

DATED at Calgary, Alberta this 13th day of October, 2000.

"Patricia M. Johnston"

2.1.11 TD Managed Income Portfolio et al. - MRRS Decision

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

AND

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

AND

IN THE MATTER OF
TD MANAGED INCOME PORTFOLIO
TD MANAGED INCOME & MODERATE GROWTH PORTFOLIO
TD MANAGED BALANCED GROWTH PORTFOLIO
TD MANAGED AGGRESSIVE GROWTH PORTFOLIO
TD MANAGED MAXIMUM EQUITY GROWTH PORTFOLIO
TD MANAGED INCOME RSP PORTFOLIO
TD MANAGED INCOME & MODERATE GROWTH RSP PORTFOLIO
TD MANAGED BALANCED GROWTH RSP PORTFOLIO
TD MANAGED AGGRESSIVE GROWTH RSP PORTFOLIO
TD MANAGED MAXIMUM EQUITY GROWTH RSP PORTFOLIO
TD MANAGED INDEX INCOME PORTFOLIO
TD MANAGED INDEX INCOME & MODERATE GROWTH PORTFOLIO
TD MANAGED INDEX BALANCED GROWTH PORTFOLIO
TD MANAGED INDEX AGGRESSIVE GROWTH PORTFOLIO
TD MANAGED INDEX MAXIMUM EQUITY GROWTH PORTFOLIO
TD MANAGED INDEX INCOME RSP PORTFOLIO
TD MANAGED INDEX INCOME & MODERATE GROWTH RSP PORTFOLIO
TD MANAGED INDEX BALANCED GROWTH RSP PORTFOLIO
TD MANAGED INDEX AGGRESSIVE GROWTH RSP PORTFOLIO
TD MANAGED INDEX MAXIMUM EQUITY GROWTH RSP PORTFOLIO
TD FUNDSMART MANAGED INCOME PORTFOLIO
TD FUNDSMART MANAGED INCOME & MODERATE GROWTH PORTFOLIO
TD FUNDSMART MANAGED BALANCED GROWTH PORTFOLIO
TD FUNDSMART MANAGED AGGRESSIVE GROWTH PORTFOLIO
TD FUNDSMART MANAGED MAXIMUM EQUITY GROWTH PORTFOLIO
TD FUNDSMART MANAGED INCOME RSP PORTFOLIO
TD FUNDSMART MANAGED INCOME & MODERATE GROWTH RSP PORTFOLIO

TD FUNDSMART MANAGED BALANCED GROWTH RSP PORTFOLIO
TD FUNDSMART MANAGED AGGRESSIVE GROWTH RSP PORTFOLIO
TD FUNDSMART MANAGED MAXIMUM EQUITY GROWTH RSP PORTFOLIO
(individually a "Portfolio" and collectively, the "Portfolios")

MRRS DECISION DOCUMENT

WHEREAS the securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Yukon Territory, Northwest Territories and Nunavut Territory (the "Jurisdictions") has received an application from TD Asset Management Inc. ("TDAM") in its capacity as trustee, manager, principal distributor and promoter of the Green Line Managed Assets Portfolios for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the time limits pertaining to the distribution of securities under the simplified prospectus' and annual information forms (collectively the "Disclosure Documents") of each Portfolio be extended to those time limits that would be applicable if the lapse date of the Disclosure Documents were January 31, 2001;

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 TDAM and the Portfolios have represented to the Decision Makers that:

1. TDAM is a wholly-owned subsidiary of The Toronto-Dominion Bank ("TD Bank").

2. The Portfolios consist of 30 open-end mutual fund trusts established under the laws of Ontario by declarations of trust.

3. The Portfolios are qualified for distribution in the Jurisdictions by means of the Disclosure Documents (being 30 simplified prospectuses and 3 annual information forms) that have been prepared and filed in accordance with the Legislation.

4. Pursuant to the Legislation the earliest lapse date for the distribution of securities of the Portfolios under the Disclosure Documents is November 10, 2000 (the "Lapse Date").

5. Pursuant to the Legislation the earliest date by which *pro forma* versions of the Disclosure Documents must be filed with Canadian securities regulatory authorities is October 11, 2000 in the absence of the exemptive relief granted hereby.

6. Each Portfolio is a reporting issuer in each of the Jurisdictions and is not in default of any of the requirements of the securities laws of such Jurisdictions.

7. There have been no material changes in the affairs of the Portfolios since the date of the Disclosure Documents in respect of which an amendment to the Disclosure Documents has not been prepared and filed in accordance with the Legislation.

AND WHEREAS TDAM has represented to the Decision Makers that:

1. On February 1, 2000, TD Bank acquired all of the outstanding common shares of CT Financial Services Inc. (the "Merger") and the Merger has resulted in TD Bank acquiring control of CT Investment Management Group Inc. ("CTIMG").

2. TDAM and CTIMG have been engaged since April 2000 in the process of integrating and restructuring their respective mutual fund complexes (the "Fund Integration"). The Fund Integration process has taken several weeks longer than anticipated and TDAM is currently considering changing a number of the mutual funds underlying the Portfolios and/or modifying the target weightings for such funds.

3. The lapse date extensions will provide TDAM with the additional time which it requires to adequately consider and finalize the Fund Integration as well as the underlying fund modifications before renewing the Disclosure Documents in accordance with National Instruments 81-101 and 81-102.

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

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

THE DECISION of the Decision Makers pursuant to the Legislation is that the time limits prescribed by the Legislation as they apply to a distribution of securities of each Portfolio be extended to the time limits that would be applicable if the Lapse Date for the distribution of securities of each Portfolio under the Disclosure Documents were January 31, 2001.

October 25th, 2000.

"Paul A. Dempsey"

2.1.12 TD Securities Inc. et al. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer is a "connected issuer" but not a "related issuer" of the registrants that are to act as underwriters in a proposed distribution of securities of the Issuer – Issuer is not a "specified party" as defined in Draft Multi-Jurisdictional Instrument 33-105 Underwriter Conflicts – Registrant underwriters exempted from independent-underwriter requirements, provided that, at the time of the distribution, the Issuer is not a "specified party" as defined in the Draft Instrument, and in the case of each registrant, is not a "related issuer".

Applicable Ontario Statutes

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

Applicable Ontario Regulations

Regulation made under the *Securities Act*, R.R.O. 1990, Reg. 1015, as am., ss. 219, 220

Applicable Ontario Rules

In the Matter of the Limitations on a Registrant Underwriting Securities of Related Issuer or Connected Issuer of the Registrant, (1997) 20 OSCB 1217, as varied by (1999) 22 OSCB 6295.

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

AND

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

AND

**IN THE MATTER OF
TD SECURITIES INC., SCOTIA CAPITAL INC.,
CIBC WORLD MARKETS INC.,
AND ABN AMRO CAPITAL MARKETS CANADA LIMITED**

AND

SHAW COMMUNICATIONS INC.

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Quebec and Newfoundland (the "Jurisdictions") has received an application from TD Securities Inc. ("TD Securities"), Scotia Capital Inc. ("Scotia Capital"), CIBC World Markets Inc. ("CIBC") and ABN AMRO Capital Markets Canada Inc. ("ABN") (collectively, the "Filers") for a decision, pursuant to the securities legislation of the Jurisdictions (the "Legislation"), that the requirement (the "Independent Underwriter Requirement") contained in the Legislation which restricts a registrant from acting as an underwriter in connection with a distribution of securities of an issuer made by means of prospectus, and in addition in Quebec which restricts a dealer from recommending the purchase, sale or holding of an issuer, where the issuer is a connected issuer (or the equivalent) of the registrant, shall not apply to the Filers in respect of a proposed distribution (the "Offering") of Senior Notes (the "Notes") of Shaw Communications Inc. (the "Issuer"), pursuant to a short form prospectus (the "Prospectus") expected to be filed with the Decision Maker in each of the provinces and territories of Canada;

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

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

1. Each of the Filers is registered as a dealer under the Legislation of each of the Jurisdictions.

2. The Issuer, a corporation incorporated under the laws of Alberta, is a reporting issuer under the Legislation of each Jurisdiction and is not in default of any requirements of the Legislation.

3. The Issuer, whose head office is located in Calgary, Alberta, is a diversified Canadian communications company with core cable television, Internet and satellite businesses.

4. The Class A Participating Shares and the Class B Non-Voting Shares of the Issuer are listed on The Toronto Stock Exchange and the New York Stock Exchange.

5. The Issuer has filed a preliminary short form prospectus dated October 2, 2000 (the "Preliminary Prospectus") in the Jurisdictions.

6. The Filers and Merrill Lynch Canada Inc. ("Merrill Lynch") are proposing to act as underwriters in connection with the Offering. The Issuer is neither a "connected issuer" nor a "related issuer" in relation to Merrill Lynch for the purposes of the Legislation. In connection with the underwriting, the proportionate share of the Offering underwritten by Merrill Lynch and each of the Applicants is expected to be as follows:

Underwriter	Proportionate Share
TD Securities	40%
Scotia Capital	20%
Merrill Lynch	20%
CIBC	15%
ABN	5%

7. The Issuer maintains a credit facility (the "Credit Facility") of up to CDN $1.02 billion with a syndicate of Canadian banks, including, but not limited to, The Bank of Nova Scotia, The Toronto-Dominion Bank, the Canadian Imperial Bank of Commerce and ABN AMRO Bank of Canada (collectively, the "Lenders"). The Credit Facility provides for secured borrowings at floating rates. As at May 31, 2000, the Issuer had borrowings of approximately CDN $542.8 million outstanding under the Credit Facility. We are advised that the Issuer is in compliance with the terms of the Credit Facility.

8. The net proceeds from the sale of the Offered Notes will be used for general corporate purposes, including to repay indebtedness owing under the Credit Facility.

9. TD Securities is a wholly-owned subsidiary of The Toronto-Dominion Bank. Scotia Capital is a wholly-owned subsidiary of The Bank of Nova Scotia. CIBC is a wholly-owned subsidiary of the Canadian Imperial Bank of Commerce. ABN is a wholly-owned subsidiary of ABN AMRO Bank of Canada.

10. The nature of the relationship among the Issuer, the Lenders and the Filers has been described in the Preliminary Prospectus and will be described in the Prospectus.

11. The Lenders did not participate in the decision to make the Offering or in the determination of its terms.

12. The Filers will not benefit in any manner from the Offering other than the payment of their underwriting fees in connection with the Offering.

13. By virtue of the Credit Facility the Issuer may, in connection with the Offering, be considered a connected issuer (or the equivalent) of each of the Filers.

14. The Issuer is not a related issuer (or the equivalent) of any of the Filers.

15. The Prospectus will contain the information specified in Appendix "C" of draft Multi-Jurisdictional Instrument 33-105 *Underwriting Conflicts* (the "MJ Instrument"), on the basis that the Issuer is a "connected issuer" of the Filer as such term is defined in the MJ Instrument.

16. The certificate in the Preliminary Prospectus has been and in the Prospectus will be signed by each of the Underwriters.

17. The Issuer is in good financial condition, is not in financial difficulty, and is not under any immediate financial pressure to proceed with the Offering and has not been requested or required by the Lenders to repay the amounts owing under the Loan Facilities. The Issuer is not a "specified party" as defined in the MJ Instrument.

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 Independent Underwriter Requirement shall not apply to any of the Filers in connection with the Offering provided that, at the time of the Offering, and in the case of each Filer:

(i) the Issuer is not a related issuer (or the equivalent) of any of the Filers; and

(ii) the Issuer is not a specified party, as such term is defined in the MJ Instrument.

October 10th, 2000.

"Morley P. Carscallen" "Robert W. Korthals"

2.1.13 Versus Technologies Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer has only one security holder - issuer deemed to have ceased being a reporting issuer.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am. s. 83.

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

AND

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

AND

**IN THE MATTER OF
VERSUS TECHNOLOGIES INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from VERSUS Technologies Inc. ("VERSUS") for a decision pursuant to the securities legislation of each of the Jurisdictions (the "Legislation") declaring that VERSUS be deemed to have ceased to be a reporting issuer or equivalent under the Legislation;

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

AND WHEREAS VERSUS has represented to the Decision Makers that:

1. VERSUS is a corporation incorporated under the Canada Business Corporations Act (the "CBCA") and is a reporting issuer, or the equivalent thereof, under the Legislation;

2. VERSUS's head office is located in the City of Toronto in the Province of Ontario;

3. VERSUS is not in default of any of the requirements of the Legislation in any of the Jurisdictions;

4. The authorised capital of VERSUS consists of an unlimited number of common shares and an unlimited number of First Preferred shares, of which 12,906,900 common shares and no First Preferred shares were issued and outstanding as of the date of the application.

5. On August 24, 2000 shareholders of VERSUS approved a plan of arrangement (the "Arrangement") involving VERSUS, E*TRADE Group, Inc. ("EGI") and its indirect wholly-owned subsidiary, EGI Canada Corporation ("ECC") which became effective on August 28, 2000, pursuant to which each holder of VERSUS common shares received 0.724757 Exchangeable Shares of ECC (or 0.724757 common shares of EGI for those who so elected) for each VERSUS share held. Each Exchangeable Share is exchangeable for one EGI common share. As a result of the Arrangement, EGI became the beneficial owner of all of the outstanding VERSUS common shares upon on August 28, 2000;

6. VERSUS common shares were delisted from the Toronto Stock Exchange following the close of trading on August 29, 2000 and no securities of VERSUS are currently listed or quoted on any exchange or market;

7. VERSUS has no securities outstanding other than its common shares, all of which are owned beneficially by EGI and two indirect wholly-owned subsidiaries, and has no outstanding debt securities;

8. VERSUS does not currently 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 the Decision Maker with the jurisdiction to make the Decision has been met;

The Decision of each of the Decision Makers pursuant to the Legislation is that VERSUS is deemed to have ceased to be a reporting issuer, or the equivalent thereof, under the Legislation.

October 24th, 2000.

"John Hughes"

2.2 Orders

2.2.1 Adam Technologies, Inc. - s. 144

Headnote

Section 144 - partial revocation of cease trade order.

Statutes Cited

Securities Act, R.S.O., c.S.5, as am. ss. 127 and 144.

Regulations Cited

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

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

AND

IN THE MATTER OF ADAM TECHNOLOGIES, INC.

ORDER (Section 144)

WHEREAS the securities of ADAM Technologies, Inc. ("ADAM") are subject to a temporary order of the Manager, Market Operations (the "Manager") of the Ontario Securities Commission (the "Commission") dated December 16, 1996 and extended by an order of the Manager dated December 23, 1996 made under section 127 of the Act (collectively referred to as the "Cease Trade Order") directing that trading in the securities of ADAM cease;

AND WHEREAS ADAM has applied to the Commission pursuant to section 144 of the Act (the "Application") for a partial revocation of the Cease Trade Order;

AND UPON ADAM having represented to the Commission as follows:

1. ADAM is a reporting issuer in Ontario and Alberta and was incorporated under the laws of the Province of Alberta by Articles of Incorporation effective on April 2, 1993 as MRS Travel Ltd.; its name was changed to ADAM Technologies, Inc. by Articles of Amendment dated September 27, 1995.

2. ADAM became a reporting issuer in Ontario on September 16, 1995 and in Alberta on April 23, 1993.

3. The authorized capital of ADAM consists of an unlimited number of common shares and an unlimited number of preferred shares of which 12,100,000 common shares are issued and outstanding as fully paid and non-assessable; 1,460,000 common shares of ADAM are issuable pursuant to the conversion of certain convertible debentures of ADAM (the "Convertible Debentures").

4. ADAM has had little business activity since the Cease Trade Order and its audited financial statements for the fiscal year ended June 30, 1999 disclose assets in the amount of $55,277 and liabilities in the amount of $390,993.

5. The Cease Trade Order was issued due to the failure of ADAM to file with the Commission and concurrently send to its shareholders, its audited financial statements for the year ended June 30, 1996 as required by the Act; ADAM did not file its 1996 financial statements with the Commission or send them to its shareholders because it lacked requisite funds to pay for the preparation and audit of such statements.

6. The audited financial statements for the periods ending June 30, 1996, June 30, 1997, June 30, 1998 and June 30, 1999 as well as unaudited interim financial statements for the three, six, and nine month periods, as the case may be, during such periods (collectively the "Financial Statements") were not filed with the Commission or sent to the shareholders of ADAM in a timely manner because ADAM did not have the funds necessary to do so.

7. ADAM has filed the Financial Statements and all materials required to be filed by ADAM pursuant to the Act, and has sent the Financial Statements to the shareholders of ADAM.

8. A cease trade order (the "Alberta Cease Trade Order") has also been issued by the Alberta Securities Commission ("ASC") against ADAM for its failure to file with the ASC and to concurrently send to shareholders, the annual audited financial statements for the year ended June 30, 1999 and its interim financial statements for the periods ending December 31, 1998, March 31, 1999, September 30, 1999 and December 31, 1999 (the "Statements in Arrears in Alberta").

9. ADAM has sent the Statements in Arrears in Alberta to its shareholders and has filed them with the ASC and the Commission.

10. ADAM is planning to complete a reverse take-over transaction (the "RTO") with IRGateway.com, Inc. ("IRGateway"), a private Ontario corporation (not a reporting issuer under the Act) which is involved in the business of investor relations software.

11. Under the terms of the RTO, ADAM will purchase all of the issued and outstanding shares of IRGateway in exchange for 16,680,000 fully paid, issued and outstanding common shares of ADAM, such that the former shareholders of IRGateway will own 80% of ADAM.

12. In order to complete the RTO ADAM proposes to undertake the following reorganizational steps:

    (a) cancel 8,000,000 shares currently held in escrow;

(b) pursuant to a private placement, issue 2,780,000 common shares in satisfaction of a debt in the amount of $250,000;

(c) issue 1,460,000 common shares to holders of the Convertible Debentures;

(d) consolidate its common shares on a one (1) for two (2) basis;

(e) change its name to "IRGateway.com Corporation"; and

(f) file Articles of Continuance in Ontario.

13. At a meeting held on May 1, 2000 (the "Meeting"), the shareholders of ADAM approved the RTO and ADAM has otherwise obtained all necessary regulatory and other approvals relating to completion of the RTO.

14. In connection with the Meeting, ADAM sent to all of its shareholders of record as of March 27, 2000, the audited financial statements for the year ended June 30, 1999 including comparatives for the year ended June 30, 1998, together with a Notice of Meeting and Management Information Circular containing prospectus level disclosure concerning ADAM, IRGateway and the proposed business of ADAM following the completion of the RTO.

15. Except for the Cease Trade Order, ADAM is not in default of any requirement of the Act or the rules or regulations made thereunder.

16. ADAM has taken all necessary steps to have the ASC revoke the Alberta Cease Trade Order and to this end has applied to the ASC pursuant to section 186(1) of the *Securities Act* of Alberta (S.A. 1981, c. S-6.1, as amended).

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 144 of the Act, that the Cease Trade Order be and is hereby partially revoked solely to permit the issuance of common shares of ADAM, as set out in paragraphs 11 and 12 above, pursuant to the RTO.

October 19th, 2000.

"Iva Vranic"

2.2.2 DG Financial Markets LLC - s. 211, Regulation

Headnote

Section 211 - Order pursuant to section 211 of the Regulation made under the Act to exempt DG Financial Markets LLC from the requirement in subsection 208(2) of the Regulation that DG Financial Markets LLC carry on the business of an underwriter in a country other than Canada in order to register in Ontario as an international dealer.

Statutes Cited

Securities Act R.S.O. 1990, c. S. 5, as am.
United States Bank Holding Company Act

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015 as am., s. 98 para. 4,
ss. 100(3), ss. 208(2) and s. 211.

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

AND

**REGULATION 1015 MADE UNDER THE SECURITIES ACT,
R.R.O. 1990, AS AMENDED (THE "REGULATION")**

AND

**IN THE MATTER OF
DG FINANCIAL MARKETS LLC**

**ORDER
(Section 211 of the Regulation)**

UPON the application of DG Financial Markets LLC ("DGFM") to the Ontario Securities Commission (the "Commission") for an order pursuant to section 211 of the Regulation that DGFM be exempt from the requirement under subsection 208(2) of the Regulation in connection with DGFM's application for registration as a dealer in the category of international dealer on the terms and conditions set forth below;

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

AND UPON DGFM having represented to the Commission that:

1. Subsection 208(2) of the Regulation states that no person or company may register as an international dealer unless the person or company carries on the business of a dealer and underwriter in a country other than Canada;

2. DGFM filed a registration application dated August 30, 2000 (the "Registration Application") with the

Commission for registration in Ontario as a dealer in the category of international dealer under paragraph 4 of section 98 and section 208 of the Regulation and applied pursuant to section 211 of the Regulation requesting that DGFM be exempted from the requirement under subsection 208(2) of the Regulation that DGFM carry on the business of an "underwriter" in a country other than Canada in connection with DGFM's Registration Application as a dealer in the category of international dealer in Ontario;

3. DGFM is a limited liability company organized in the State of Delaware and having its principal place of business at 609 Fifth Avenue, New York, New York 10017. DGFM is a wholly owned subsidiary of DG BANK AG, a German company having its principal place of business at Am Platz der Republik, 60265 Frankfurt am Main, Germany. Neither DGFM nor any of its affiliates are registered in any capacity with the Commission;

4. DGFM is proposing that it be exempted from the requirement under subsection 208(2) of the Regulation requiring that DGFM carry on the business of an "underwriter" in a country other than Canada in connection with DGFM's Registration Application as a dealer in the category of international dealer;

5. In respect of DGFM's Registration Application, DGFM has certified that it is duly registered with the United States Securities and Exchange Commission as a fully registered broker-dealer in the United States and that such registration permits DGFM to carry on dealing and underwriting activities in the United States. However, because of restrictions under the United States Bank Holding Company Act and the fact that DGFM is wholly owned by a foreign bank, DGFM is currently restricted from carrying on the activities of an underwriter in the United States;

6. In the absence of the requested exemption, subsection 208(2) of the Regulation would render DGFM ineligible for registration as a dealer in the category of international dealer in Ontario because the United States Bank Holding Company Act prohibits the firm from acting as an underwriter in the United States as a consequence of DGFM being wholly owned by a foreign bank;

7. DGFM respectfully submits that the requirement under subsection 208(2) of the Regulation that DGFM carry on the activities of an "underwriter" in a country other than Canada in connection with DGFM's Registration Application would impose an undue burden on DGFM because, as a United States limited liability company whose principal broker-dealer activities are confined to institutional clients in the United States, DGFM will not, otherwise, be able to engage in securities transactions with institutional clients located in Ontario; and

8. Notwithstanding subsection 100(3) of the Regulation, DGFM will not engage in the activities of an underwriter in Canada.

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

IT IS ORDERED, pursuant to section 211 of the Regulation, that DGFM is exempt from the requirement under subsection 208(2) of the Regulation that it carry on the business of an underwriter in a country other than Canada in connection with its Registration Application as a dealer in the category of international dealer in Ontario provided that:

(1) DGFM carries on the business of a dealer in a country other than Canada; and

(2) notwithstanding subsection 100(3) of the Regulation, DGFM shall not engage in the activities of an underwriter in Ontario.

October 31st, 2000.

"Morley P. Carscallen" "Robert W. Davis"

2.2.3 Fidelity International Limited - ss. 38(1), CFA

Headnote

Subsection 38(1) of the Commodity Futures Act (Ontario) - relief from the requirements of subsection 22(1)(b) of the CFA, for a period of three years, in respect of the proposed advisory services, subject to certain terms and conditions.

Statutes Cited

Commodity Futures Act, R.S.O. 1990. c. C20., as am., ss. 22(1)(b), 38(1).

IN THE MATTER OF THE COMMODITY FUTURES ACT, R.S.O. 1990 c. 20

AND

IN THE MATTER OF FIDELITY INTERNATIONAL LIMITED

ORDER (Subsection 38(1))

UPON the application of Fidelity International Limited (the "Applicant") to the Ontario Securities Commission (the "Commission") for a ruling under subsection 38(1) of the Commodity Futures Act, R.S.O. 1990, c.20 (the "CFA") that the Applicant and its officers, partners and directors are not subject to the requirement of paragraph 22(1)(b) of the CFA;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation organized under the laws of Bermuda and is resident in Bermuda.

2. The Applicant is proposing to enter into an investment sub-advisory agreement with Fidelity Investments Canada Limited ("FICL"), whereby FICL would act as the portfolio adviser to certain of the Fidelity Funds offered in Canada (the "Funds"), including ancillary activities, in respect of purchases and sales of commodity futures contracts or related products traded on commodity futures exchanges and cleared through acceptable clearing corporations, and the Applicant would act as sub-adviser to FICL (the "Proposed Advisory Services"). In no case will the investment activities involving commodities futures or products traded on commodities futures exchanges constitute the primary focus or investment objective of any of the Funds.

3. FICL is a corporation continued under the laws of Ontario and is resident in Ontario. FICL is currently registered with the Commission as a Mutual Fund Dealer and an Adviser in the categories of Investment Counsel and Portfolio Manager. FICL is currently registered with the Commission as an Adviser in the category of Commodity Trading Manager under the CFA. FICL acts as trustee, manager and principal distributor of the Funds and is responsible for the investment advice provided by the Applicant.

4. In connection with the Proposed Advisory Services, the Applicant would enter into a written agreement with FICL outlining the duties and obligations of the Applicant.

5. FICL will assume responsibility to the Funds for all advice provided by the Applicant.

6. The Applicant will only provide advice to FICL where FICL has contractually agreed with the Funds to be responsible for any loss that arises out of the failure of the Applicant (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, (the "Standard of Care") and that this responsibility cannot be waived.

7. The Applicant will only provide advice to FICL in connection with Funds, the offering documents for which disclose that FICL is responsible for any loss that arises out of the failure of the Applicant to meet the Standard of Care in providing advice to the Fund, the difficulty in enforcing legal rights against the Applicant and that all or substantially all of the Applicant's assets are situated outside of Ontario.

AND UPON being satisfied that it would not be prejudicial to public interest for the Commission to grant the exemptions requested on the basis of the terms and conditions proposed,

IT IS ORDERED pursuant to subsection 38(1) that the Applicant, its officers, partners and directors are not subject to the requirements of paragraph 22(1) (b) of the CFA in respect of the Proposed Advisory Services provided that:

(a) the obligations and duties of the Applicant are set out in a written agreement with FICL;

(b) FICL will contractually agree with the Funds to be responsible for any loss that arises out of the failure of the Applicant to (i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, (the "Standard of Care") and that this responsibility cannot be waived; and

(c) the offering documents for the Funds disclose that FICL is responsible for any loss that arises out of the failure of the Applicant to meet the Standard of Care in providing advice to the Funds, the difficulty in enforcing legal rights against the Applicant and that all or substantially all of the Applicant's assets are situated outside of Ontario.

(d) FICL will remain a registrant under the CFA so long as the Proposed Advisory Services are provided by the Applicant; and

(e) this order shall terminate three years from October 20, 2000.

October 20th, 2000.

"Robert W. Davis" "J. F. Howard"

2.2.4 Fidelity Investments Money Management, Inc. - ss. 38(1), CFA

Headnote

Subsection 38(1) of the Commodity Futures Act (Ontario) - relief from the requirements of subsection 22(1)(b) of the CFA, for a period of three years, in respect of the proposed advisory services, subject to certain terms and conditions.

Statutes Cited

Commodity Futures Act, R.S.O. 1990. c. C20., as am., ss. 22(1)(b), 38(1).

IN THE MATTER OF THE
COMMODITY FUTURES ACT, R.S.O. 1990 c. 20

AND

IN THE MATTER OF
FIDELITY INVESTMENTS MONEY MANAGEMENT, INC.

ORDER
(Subsection 38(1))

UPON the application of Fidelity Investments Money Management, Inc. (the "Applicant") to the Ontario Securities Commission (the "Commission") for a ruling under subsection 38(1) of the Commodity Futures Act, R.S.O. 1990, c.20 (the "CFA") that the Applicant and its officers, partners and directors are not subject to the requirement of paragraph 22(1)(b) of the CFA;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation organized under the laws of the State of New Hampshire and is resident in United States. The Applicant is currently registered under the Securities Act (Ontario) as a Non-Canadian Adviser in the categories of Investment Counsel and Portfolio Manager.

2. The Applicant is proposing to enter into an investment sub-advisory agreement with Fidelity Investments Canada Limited ("FICL"), whereby FICL would act as the portfolio adviser to certain of the Fidelity Funds offered in Canada (the "Funds"), including ancillary activities, in respect of purchases and sales of commodity futures contracts or related products traded on commodity futures exchanges and cleared through acceptable clearing corporations, and the Applicant would act as sub-adviser to FICL (the "Proposed Advisory Services"). In no case will the investment activities involving commodities futures or products traded on commodities futures exchanges constitute the primary focus or investment objective of any of the Funds.

3. FICL is a corporation continued under the laws of Ontario and is resident in Ontario. FICL is currently registered with the Commission as a Mutual Fund Dealer and an Adviser in the categories of Investment Counsel and Portfolio Manager. FICL is currently registered with the Commission as an Adviser in the category of Commodity Trading Manager under the CFA. FICL acts as trustee, manager and principal distributor of the Funds and is responsible for the investment advice provided by the Applicant.

4. In connection with the Proposed Advisory Services, the Applicant would enter into a written agreement with FICL outlining the duties and obligations of the Applicant.

5. FICL will assume responsibility to the Funds for all advice provided by the Applicant.

6. The Applicant will only provide advice to FICL where FICL has contractually agreed with the Funds to be responsible for any loss that arises out of the failure of the Applicant (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, (the "Standard of Care") and that this responsibility cannot be waived.

7. The Applicant will only provide advice to FICL in connection with Funds, the offering documents for which disclose that FICL is responsible for any loss that arises out of the failure of the Applicant to meet the Standard of Care in providing advice to the Fund, the difficulty in enforcing legal rights against the Applicant and that all or substantially all of the Applicant's assets are situated outside of Ontario.

AND UPON being satisfied that it would not be prejudicial to public interest for the Commission to grant the exemptions requested on the basis of the terms and conditions proposed,

IT IS ORDERED pursuant to subsection 38(1) that the Applicant, its officers, partners and directors are not subject to the requirements of paragraph 22(1) (b) of the CFA in respect of the Proposed Advisory Services provided that:

(a) the obligations and duties of the Applicant are set out in a written agreement with FICL;

(b) FICL will contractually agree with the Funds to be responsible for any loss that arises out of the failure of the Applicant to (i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, (the "Standard of Care") and that this responsibility cannot be waived; and

(c) the offering documents for the Funds discloses that FICL is responsible for any loss that arises out of the failure of the Applicant to meet the Standard of Care in providing advice to the Funds, the difficulty in enforcing legal rights against the Applicant and that all or substantially all of the Applicant's assets are situated outside of Ontario.

(d) FICL will remain a registrant under the CFA so long as the Proposed Advisory Services are provided by the Applicant; and

(e) this order shall terminate three years from October 20, 2000.

October 20th, 2000.

"Robert W. Davis" "J. F. Howard"

2.2.5 Fidelity Management & Research Company - ss. 38(1), CFA

Headnote

Subsection 38(1) of the Commodity Futures Act (Ontario) - relief from the requirements of subsection 22(1)(b) of the CFA, for a period of three years, in respect of the proposed advisory services, subject to certain terms and conditions.

Statutes Cited

Commodity Futures Act, R.S.O. 1990. c. C20., as am., ss. 22(1)(b), 38(1).

IN THE MATTER OF THE COMMODITY FUTURES ACT, R.S.O. 1990 c. 20

AND

IN THE MATTER OF FIDELITY MANAGEMENT & RESEARCH COMPANY

ORDER (Subsection 38(1))

UPON the application of Fidelity Management & Research Company (the "Applicant") to the Ontario Securities Commission (the "Commission") for a ruling under subsection 38(1) of the Commodity Futures Act, R.S.O. 1990, c.20 (the "CFA") that the Applicant and its partners, officers and directors are not subject to the requirement of paragraph 22(1)(b) of the CFA;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation organized under the Commonwealth of Massachusetts and is resident in United States.

2. The Applicant is proposing to enter into an investment sub-advisory agreement with Fidelity Investments Canada Limited ("FICL"), whereby FICL would act as the portfolio adviser to certain of the Fidelity Funds offered in Canada (the "Funds"), including ancillary activities, in respect of purchases and sales of commodity futures contracts or related products traded on commodity futures exchanges and cleared through acceptable clearing corporations, and the Applicant would act as sub-adviser to FICL (the "Proposed Advisory Services"). In no case will the investment activities involving commodities futures or products traded on commodities futures exchanges constitute the primary focus or investment objective of any of the Funds.

3. FICL is a corporation continued under the laws of Ontario and is resident in Ontario. FICL is currently registered with the Commission as a Mutual Fund Dealer and an Adviser in the categories of Investment Counsel and Portfolio Manager. FICL is currently registered with the Commission as an Adviser in the category of Commodity Trading Manager under the CFA. FICL acts as trustee, manager and principal distributor of the Funds and is responsible for the investment advice provided by the Applicant.

4. In connection with the Proposed Advisory Services, the Applicant would enter into a written agreement with FICL outlining the duties and obligations of the Applicant.

5. FICL will assume responsibility to the Funds for all advice provided by the Applicant.

6. The Applicant will only provide advice to FICL where FICL has contractually agreed with the Funds to be responsible for any loss that arises out of the failure of the Applicant (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, (the "Standard of Care") and that this responsibility cannot be waived.

7. The Applicant will only provide advice to FICL in connection with certain of the Funds, the offering documents for which disclose that FICL is responsible for any loss that arises out of the failure of the Applicant to meet the Standard of Care in providing advice to the Fund, the difficulty in enforcing legal rights against the Applicant and that all or substantially all of the Applicant's assets are situated outside of Ontario.

AND UPON being satisfied that it would not be prejudicial to public interest for the Commission to grant the exemptions requested on the basis of the terms and conditions proposed,

IT IS ORDERED pursuant to subsection 38(1) that the Applicant, its officers, partners and directors are not subject to the requirements of paragraph 22(1) (b) of the CFA in respect of the Proposed Advisory Services provided that:

(a) the obligations and duties of the Applicant are set out in a written agreement with FICL;

(b) FICL will contractually agree with the Funds to be responsible for any loss that arises out of the failure of the Applicant to (i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, (the "Standard of Care") and that this responsibility cannot be waived; and

(c) the offering documents for the Funds disclose that FICL is responsible for any loss that arises out of the failure of the Applicant to meet the Standard of Care in providing advice to the Funds, the difficulty in enforcing legal rights against the Applicant and that all or

substantially all of the Applicant's assets are situated outside of Ontario;

(d) FICL will remain a registrant under the CFA so long as the Proposed Advisory Services are provided by the Applicant; and

(e) this order shall terminate three years from October 20, 2000.

October 20th, 2000.

"Robert W. Davis" "J. F. Howard"

2.2.6 North American Palladium Ltd. and Kaiser-Francis Oil Company - Rule 61-501 Section 9.1

Headnote

Rule 61-501 - Related party transaction - Valuation and minority approval requirements - As part of a capital restructuring, applicant proposed to sell a portion of the shares offered in a public offering to the applicant's majority shareholder and using a portion of the proceeds from such public offering to repay the debt owed to the majority shareholder - Applicant would be in serious financial difficulty without public offering and capital restructuring - Due to market volatility, applicant unable to arrange for shareholders' meeting prior to completion of the public offering - Shareholders other than the majority shareholder given priority with respect to subscribing for shares in the public offering - Granting exemption from valuation and minority approval requirements not prejudicial to public interest.

Ontario Rules Cited

Rule 61-501 - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions, ss. 5.5, 5.7 and 9.1

IN THE MATTER OF ONTARIO SECURITIES COMMISSION RULE 61-501 ("Rule 61-501")

AND

IN THE MATTER OF NORTH AMERICAN PALLADIUM LTD. AND CIS OIL COMPANY

Rule 61-501 (Section 9.1)

UPON the application (the "Application") of North American Palladium Ltd. (the "Company") to the Director for a decision pursuant to section 9.1 of Rule 61-501 that the Proposed Transactions (as defined in paragraph 18 below) between the Company and Kaiser-Francis Oil Company ("Kaiser-Francis") to be effected in connection with, among other things, a public offering (the "Public Offering") by the Company of its common shares (the "Common Shares") and the Preferred Share Conversion (as defined in subparagraph 16(d) below) shall not be subject to the requirements in sections 5.5 and 5.7 (collectively, the "Valuation and Minority Approval Requirements") of Rule 61-501;

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

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

The Company

1. The Company is a corporation incorporated under the *Canada Business Corporations Act* (the "CBCA").

2. The Company is a reporting issuer in Ontario and is not on the list of defaulting reporting issuers maintained by the Commission.

3. The Company's authorized capital consists of an unlimited number of Common Shares and an unlimited number of special shares issuable in series, of which only one series, being Series A preferred shares (the "Preferred Shares") limited in number to 10,000,000 shares, has been designated. As at October 4, 2000, 12,587,675 Common Shares and 10,000,000 Preferred Shares were issued and outstanding.

4. The Common Shares are listed on The Toronto Stock Exchange (the "TSE"). The closing price of the Common Shares on the TSE on October 4, 2000 was $10.05.

5. The Company's principal asset and only mining operation is an open-pit palladium mine, known as the Lac des Iles Mine (the "Mine"). The Mine commenced commercial production on December 1, 1993 and currently operates at the rate of approximately 2,400 tonnes per day.

6. In 1999 the Company completed an extensive exploration program and, based on the outcome, is in the process of expanding the Mine's production capacity to 15,000 tonnes per day. The Company has obtained a feasibility study, prepared by AGRA Simons Limited, an engineering, construction and technology company, which concludes that the expansion (the "Expansion Project") is technically feasible and economically viable. The capital cost of the Expansion Project is estimated to be $207.5 million.

Relationship with Kaiser-Francis and the Company's Current Financial Position

7. Kaiser-Francis, a privately-held oil and gas company based in Oklahoma, is indirectly owned by George B. Kaiser and his family. Kaiser-Francis is the Company's largest shareholder. Kaiser-Francis currently holds 1,843,086 Common Shares, representing 14.6% of the total number issued, and all of the 10,000,000 Preferred Shares.

8. The Mine has a history of losses. As a result of these historical losses, the Company had a shareholders' deficit of $48.8 million as of December 31, 1999. During the first six months of 2000, primarily as a result of higher palladium prices, the Company had net income of $20.8 million and the shareholders' deficit was reduced to $27.3 million.

9. As at June 30, 2000 the Company's balance sheet showed total assets of $140.6 million, total liabilities of $167.9 million (including $137.3 million of indebtedness to Kaiser-Francis) and total shareholders' deficiency of $27.3 million. The shareholders' deficiency is made up of $31.5 million of Common Share stated capital, $50 million of Preferred Share stated capital and a cumulative deficit of $108.8 million.

10. Historically, the Company has been able to sustain itself despite operating losses by virtue of periodic advances from Kaiser-Francis totalling, in the aggregate, $128.6 million from 1995 to the present.

11. In the fall of 1997 the Company effected a capital reorganization (the "1997 Reorganization") pursuant to which it: (i) issued to Kaiser-Francis 10,000,000 Preferred Shares for $50,000,000; (ii) used the proceeds from the share issuance to reduce the Company's indebtedness to Kaiser-Francis; and (iii) consolidated its remaining indebtedness to Kaiser-Francis into a term note dated October 15, 1997 in the principal amount of US$ 52,441,451.24 (approximately Cdn$ 78.4 million) (the "Initial Term Note"). The 1997 Reorganization was subject to, and effected in a manner consistent with, the valuation and minority approval provisions of OSC Policy 9.1.

12. The Preferred Shares: (i) currently bear cumulative dividends, payable quarterly, at the U.S. commercial prime rate plus 2% (plus 4% after December 31, 2002 and plus 6% after December 31, 2005); (ii) are convertible at any time at the holder's option on the basis of 1.0869565 Common Shares (plus an adjustment for accrued and unpaid dividends) for each Preferred Share converted; (iii) are redeemable by the Company at any time on payment of $5.00, plus accrued and unpaid dividends, for each Preferred Share redeemed; (iv) are non-voting unless the Company fails to pay dividends for a period of two years, in which event they are entitled to one vote per Preferred Share; and (v) are entitled to payment of $5.00 per Preferred Share, together with accrued and unpaid dividends, in the event of the Company's liquidation, dissolution or winding up. No dividends have been paid on the Preferred Shares since the date they were issued and, as a result, the Preferred Shares currently have full voting rights. As at September 30, 2000, the amount of accrued and unpaid dividends on the Preferred Shares was approximately $15,946,000.

13. As the Preferred Shares currently have voting rights, Kaiser-Francis is entitled to cast 52.5% of the total number of votes attached to all voting shares. Upon conversion of the Preferred Shares in accordance with their terms, Kaiser-Francis would, as at October 4, 2000, hold approximately 56.8% of the total number of Common Shares then issued. The Company does not have the funds to redeem the Preferred Shares and, unless the Public Offering and the Capital Restructuring (as defined in paragraph 19 below) are effected, would not be in a legal position under the applicable CBCA solvency tests to do so.

14. The Initial Term Note issued to Kaiser-Francis bore interest at the Canadian prime rate plus 2%, was secured by all of the Company's assets and was due and payable on December 31, 2002. Interest began to accrue on the Initial Term Note from the date of issue and became payable on a monthly basis commencing

on January 1, 1999. On January 1, 2000, the Initial Term Note, subsequent advances by Kaiser-Francis to the Company, and accrued interest on the Initial Term Note and the subsequent advances was consolidated into a new term note (the "Note") having the same terms as the Initial Term Note. Kaiser-Francis granted to the Company waivers of payment of monthly interest payments until April 30, 2000. No consideration has been paid to Kaiser-Francis in respect of such waivers. Since that date, the Note has been in default. As at September 30, 2000, the Company's total indebtedness under the Note was $134 million (the "Note Indebtedness").

15. With the assistance of Kaiser-Francis and Mr. Kaiser, the Company has obtained a non-revolving term credit facility (the "Credit Facility") in the principal amount of US $90 million from a syndicate of three Canadian chartered banks. The purpose of the Credit Facility is to finance part of the capital costs, working capital and interest during construction of the Expansion Project. The Company is only permitted to draw down US$45 million under the Credit Facility until the Public Offering is completed. Initially, the Company was not permitted to draw down under the Credit Facility at all. During this period, Kaiser-Francis provided the Company with bridge financing of $8.9 million to enable the Expansion Project to proceed on schedule, which amount has since been repaid from amounts drawn under the Credit Facility. In addition, as a condition to obtaining the Credit Facility, Kaiser-Francis and Mr. Kaiser agreed with the banks to: (i) unconditionally and irrevocably guarantee all amounts outstanding or due under the Credit Facility; (ii) subordinate the security granted under the Notes to the amounts outstanding or due under the Credit Facility; (iii) fund by way of subordinated loans or equity any cost overruns or cash deficiencies that occur prior to the completion of the Expansion Project; and (iv) use their best efforts to ensure that the Expansion Project is completed by June 30, 2002. In the absence of the guarantee by Kaiser-Francis, the Credit Facility would not have been available on the same terms, or possibly at all. Kaiser-Francis is entitled to a guarantee fee equal to 0.5% per annum of amounts drawn under the Credit Facility.

Public Offering and Capital Restructuring

16. The Company proposes to finance the Expansion Project (along with necessary working capital until the commencement of commercial production) and to restructure its capital so as to substantially improve its balance sheet going forward by:

    (a) (borrowing U.S.$90 million under the Credit Facility;

    (b) raising additional equity (excluding any portion subscribed by Kaiser-Francis under 18(b) below) through the Public Offering to purchasers other than Kaiser-Francis (the "Independent Purchasers") pursuant to a fully marketed public offering of Common Shares in Canada and the United States;

    (c) concurrent with completion of the Public Offering, eliminating the Note Indebtedness; and

    (d) prior to completion of the Public Offering, having Kaiser-Francis convert the Preferred Shares into Common Shares in accordance with their existing terms (the "Preferred Share Conversion").

17. The Public Offering is being effected under the Multijurisdictional Disclosure System as set out in National Instrument 71-101. The Company filed a preliminary prospectus in Canada on August 30, 2000, and a registration statement on Form F-10 with the United States Securities and Exchange Commission on August 31, 2000. Completion of the Public Offering is conditional upon the Preferred Share Conversion having occurred.

18. The transactions contemplated with Kaiser-Francis to eliminate the Note Indebtedness (collectively, the "Proposed Transactions") are as follows:

    (a) the proceeds of the Public Offering will be used to repay the Note Indebtedness, in accordance with the terms of the Note (the "Debt Repayment");

    (b) it is expected that substantially all of the funds used to make the Debt Repayment, subject to paragraph 20 below, will be derived from the purchase of Common Shares (the "Kaiser-Francis Shares") by Kaiser-Francis under the Public Offering (the "Share Subscription") at the Public Offering price (the "Offering Price"); and

    (c) a cash payment of $7 million (the "Kaiser-Francis Payment") will be made to Kaiser-Francis in consideration for its past and continuing financial support, and for its agreement to implement the Preferred Share Conversion.

19. The financing and capital restructuring of the Company can only be effected by the implementation of both the Proposed Transactions and the Preferred Share Conversion (collectively, the "Capital Restructuring"). Therefore, no aspect of the Capital Restructuring can occur unless they all occur.

20. The TSE advised the Company that, as a condition of its acceptance of notice of the Public Offering and the Proposed Transactions (the "Notice"), it would require that existing shareholders of the Company, other than Kaiser-Francis (the "Minority Shareholders"), be entitled, in priority to Kaiser-Francis, to subscribe for the Kaiser-Francis Shares. A copy of the preliminary prospectus, together with a letter approved by the TSE, was sent to the Minority Shareholders advising them of the foregoing. The Minority Shareholders were not restricted as to the number of Common Shares they could subscribe for (unless in aggregate such subscriptions exceeded the number of Kaiser-Francis Shares). Accordingly, if all of the Kaiser-Francis Shares had been subscribed for by the Minority

Shareholders, Kaiser-Francis would not have purchased any Common Shares under the Public Offering. To the extent market response had been greater than anticipated, the number of Kaiser-Francis Shares available to be purchased by Kaiser-Francis (and by the Minority Shareholders through the foregoing priority mechanism) would have been correspondingly reduced.

21. To the extent that Independent Purchasers do not subscribe for all the Common Shares offered under the Public Offering, Kaiser-Francis has expressed its interest in taking up the remainder of such Common Shares at the Offering Price as part of the Share Subscription. However, Kaiser-Francis has agreed that it will limit its proportionate ownership interest in the Common Shares to the maximum percentage that it would have held if it had converted the Preferred Shares and there had been no Public Offering (being 56.8% of the outstanding Common Shares as at October 4, 2000).

22. Based upon (i) the closing price for the Common Shares on October 4, 2000, (ii) certain assumptions concerning the number of Common Shares to be issued in the Public Offering, (iii) the Share Subscription being equal to approximately 100% of the Note Indebtedness (and no Common Shares being purchased by Minority Shareholders), and (iv) the Preferred Share Conversion, Kaiser-Francis would own approximately 56.8% of the then issued Common Shares upon completion of the Proposed Transactions, which is equal to the percentage it would hold upon completion of the Preferred Share Conversion alone.

23. Kaiser-Francis is a related party with respect to the Company within the meaning of paragraph (d) of the definition of "related party" in subsection 1.1(1) of Rule 61-501. The Proposed Transactions constitute a related party transaction within the meaning of paragraphs (d) and (g) of the definition of "related party transaction" in subsection 1.1(3) of Rule 61-501. Unless discretionary relief is granted, the Proposed Transactions would, in the aggregate, be subject to, among other things, the Valuation and Minority Approval Requirements because the aggregate fair market value of the subject matter of the Proposed Transactions exceeds 25% of the Company's market capitalization, determined in accordance with Rule 61-501.

24. The constituent elements of the Proposed Transactions, when viewed in isolation, either are exempt from certain of the Valuation and Minority Approval Requirements or have been determined by the Company's board of directors (the "Board") to be in the best interests of the Company. In particular:

    (a) the Debt Repayment is exempt from the Valuation and Minority Approval Requirements pursuant to subsections 5.6(11)(b) and 5.8(3), respectively, as it represents the repayment, pursuant to its terms, of the Note;

    (b) the Share Subscription is exempt from the Valuation Requirement pursuant to subsection 5.6(14) of Rule 61-501 but not exempt from the Minority Approval Requirement set out in section 5.7 of Rule 61-501; and

    (c) the Board has determined that the Kaiser-Francis Payment is reasonable and fair in the circumstances of the Company and in light of Kaiser-Francis' past and continuing financial support and its agreement to implement the Preferred Share Conversion.

25. The Company is in default of its obligations to Kaiser-Francis under the Note and is in arrears with respect to the payment of dividends on the Preferred Shares. Although, in the circumstances, the Company cannot rely upon the financial hardship exemptions in subsections 5.6(8) and 5.8(5) of Rule 61-501, the Company will be in serious financial difficulty if the Public Offering is not completed, unless Kaiser-Francis continues to provide substantial additional financial support. BMO Nesbitt Burns Inc. ("Nesbitt"), the lead underwriter for the Public Offering, has advised the Company, and the Board concurs with Nesbitt's conclusion, that it is not feasible to effect a public offering of the size that must be carried out to achieve the Company's objectives unless the Preferred Share Conversion and the Debt Repayment are effected.

26. The dynamics of settling the terms of the Capital Restructuring and the volatile market for the Common Shares have made it impracticable for the Company to hold a special meeting to obtain the approval of the Minority Shareholders (although the Company has no reason to believe that such approval would not be forthcoming). The structure of the Proposed Transactions was not finalized until just prior to the filing of the preliminary prospectus and, based on the marketing timetable for the Public Offering, it would not have been possible to call a meeting in a timely fashion between the time the Proposed Transactions were finalized and the closing of the Public Offering. Nesbitt advised the Company that it could not assure the successful marketing of the Public Offering if it were necessary to delay closing until a shareholders' meeting could be held to approve the Proposed Transactions.

27. Kaiser-Francis will purchase the Kaiser-Francis Shares at the Offering Price. The Offering Price was determined by negotiation between the Company and its underwriters based upon the extensive marketing campaign and the expressions of interest received from the public. The Kaiser-Francis Shares will be the Common Shares offered to the public but not purchased by the Independent Purchasers. Kaiser-Francis was not involved in the determination of the Offering Price except to the extent that it has the option of purchasing or refusing to purchase the Kaiser-Francis Shares at such price.

28. In accordance with the TSE's conditions for accepting the Notice, the Minority Shareholders were given priority over Kaiser-Francis to subscribe for the Kaiser-Francis Shares. Accordingly, any Minority Shareholder

who wished to do so would have been able to participate in the Public Offering in priority to Kaiser-Francis. Given all of the other relevant factors, the success of the Public Offering would have been jeopardized and, at worst, would have been unmarketable, if the Proposed Transactions were conditional upon approval by the Minority Shareholders.

29. The Company's Board has determined that the Proposed Transactions are in the best interests of the Company. Members of the Board unrelated to Kaiser-Francis unanimously support the Proposed Transactions as being reasonable in the circumstances and the most practicable manner by which to achieve the Company's objectives and unanimously support the Company's request for exemptive relief.

AND UPON the Director having received, in support of the Application and confirming certain of the foregoing representations: (i) a certified resolution of the Board passed on August 29, 2000 and dated September 15, 2000, (ii) a certified supplemental resolution of the Board passed on October 6, 2000 and dated October 11, 2000, and (iii) a letter dated September 14, 2000 from Nesbitt;

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

IT IS DECIDED pursuant to section 9.1 of Rule 61-501, that the Proposed Transactions shall not be subject to the Valuation and Minority Approval Requirements of Rule 61-501, provided that the Company complies with the other applicable provisions of Rule 61-501.

October 12th, 2000.

"Iva Vranic"

2.3 Rulings

2.3.1 Cosine Communications, Inc. - ss. 74(1)

Headnote

Subsection 74(1) - issuance of shares to certain Ontario residents by non-reporting issuer pursuant to a directed share program in connection with its U.S. initial public offering exempt from section 53 of Act - first trade is a distribution unless made in accordance with subsection 72(4) or made through the facilities of a stock exchange or market outside of Ontario, subject to certain conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 53, 72(4) and 74(1).

Rules Cited

Rule 14-501 - *Definitions* (1997), 20 OSCB 4054, as amended, (1999), 22 OSCB 1173.

Rule 45-501 - *Exempt Distributions* (1998), 21 OSCB 6548.

Rule 72-501 - *Prospectus Exemption for First Trade Over A Market Outside Ontario* (1998) 21 OSCB 3873.

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

AND

IN THE MATTER OF
COSINE COMMUNICATIONS, INC.

RULING
(Subsection 74(1))

UPON the application (the "Application") of CoSine Communications, Inc. ("CoSine") to the Ontario Securities Commission (the "Commission") for a ruling pursuant to subsection 74(1) of the Act that certain trades in the Shares of Common Stock of CoSine (the "Shares") to be made pursuant to a proposed Directed Share Program (the "Program") to family members of senior employees of CoSine and to senior employees of business associates of CoSine residing in the Province of Ontario, who elect to participate in the Program (the "Ontario Program Participants"), shall not be subject to section 53 of the Act;

AND UPON considering the Application and recommendation of the staff of the Commission and upon CoSine having represented to the Commission as follows:

1. CoSine is a corporation incorporated under the laws of Delaware and is not a reporting issuer under the Act and has no present intention of becoming a reporting issuer under the Act.

2. CoSine is currently in the process of completing an initial public offering (the "IPO") in the United States and in connection therewith has filed a registration statement on Form S-1, as amended (the "Preliminary Prospectus").

3. CoSine proposes to offer 10,000,000 Shares under the IPO.

4. Upon completion of the IPO, the Shares will be quoted on the Nasdaq National Market.

5. The Program is being made available to directors, officers and employees of CoSine, as well as to some of its customers and suppliers and other persons associated with CoSine ("CoSine Program Participants"), including the Ontario Program Participants (CoSine Program Participants and Ontario Program Participants collectively known as "Program Participants"), in connection with the IPO, all on the same terms and conditions.

6. Participation in the Program is voluntary and the Preliminary Prospectus will be forwarded to each Ontario Program Participant who chooses to participate in the Program.

7. The Shares will be offered at a price equal to the price of the Shares of Common Stock of CoSine in connection with the IPO.

8. The Ontario Program Participants are as follows: sixteen (16) family members of senior employees of CoSine and senior employees of business associates of the Applicant.

9. After giving effect to the IPO, the aggregate number of Shares held by Ontario Program Participants will be less than 5% of the issued and outstanding shares of CoSine.

10. There is not expected to be a market for the Shares in Ontario and it is intended that any resale of Shares acquired under the Program will be effected through the facilities of the Nasdaq National Market in accordance with its rules and regulations.

11. As a result of the relationship between CoSine and the Ontario Program Participants, each of the Ontario Program Participants possess knowledge of the business and affairs of CoSine.

12. The annual reports, proxy materials and other materials generally distributed to CoSine shareholders resident in the United States will be provided to Ontario Program Participants at the same time and in the same manner as the documents would be provided to United States resident shareholders.

13. Ontario Program Participants will be provided with a notice advising that an Ontario Program Participant will not have any rights against CoSine under provincial securities laws and, as a result, must rely on other remedies which may be available, including common law rights of action for damages or rescission or rights of action under the civil liability provisions of U.S. federal securities laws.

14. The Shares will be traded to the Ontario Program Participants through RBC Dominion Securities Inc., which is registered as a dealer under the Act.

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

IT IS RULED, pursuant to subsection 74(1) of the Act, that trades in Shares pursuant to the Program to Ontario Program Participants are not subject to section 53 of the Act, provided that the first trade in any of the Shares acquired by an Ontario Program Participant pursuant to this ruling shall be a distribution unless:

A. such trade is executed in accordance with the provisions of subsection 72(4) of the Act as modified by section 3.10 of Commission Rule 45-501 *Prospectus Exempt Distributions* as if the Shares were acquired pursuant to an exemption referred to in subsection 72(4) of the Act, except that, for these purposes, it shall not be necessary to satisfy the requirements in clause 72(4)(a) of the Act (that the issuer not be in default of any requirement of the Act or the regulations) if the seller is not in a special relationship with the issuer, or if the seller is in a special relationship with the issuer, the seller has reasonable grounds to believe that the issuer is not in default under the Act or the regulations, where, for these purposes, "special relationship" shall have the same meaning as in Commission Rule 14-501 *Definitions*; or

B. such trade is made in accordance with the provisions of subsection 2.1 of Commission Rule 72-501 *Prospectus Exemption For First Trade Over a Market Outside Ontario*.

September 29th, 2000.

"J. A. Geller" "Howard I. Wetson"

2.3.2 ElectroBusiness.com Inc. - ss. 74(1)

Headnote

Subsection 74(1) - trades in securities acquired by incoming director of application not subject to prospectus requirements, subject to certain conditions

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53, 74(1)

Applicable Rules

Ontario Securities Commission Rule 45-501 - *Exempt Distributions* (1998) 21 O.S.C.B. 6548.
Ontario Securities Commission Rule 45-503 - Trades to Employees, Executives and Consultants (1998) 21 O.S.C.B. 117.

Ontario Securities Commission Rule 72-501 - *Prospectus Exemption for a First Trade Over a Market Outside Ontario* (1998) 21 O.S.C.B. 3873.

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

AND

IN THE MATTER OF ELECTROBUSINESS.COM INC.

RULING (Subsection 74(l))

UPON the application of electroBusiness.com Inc. (the "Applicant") to the Ontario Securities Commission (the "Commission") for an order pursuant to section 74(1) of the Act that the first trade in 300,000 common shares of the Applicant (the "Subject Shares") to be acquired by Mr. Keith Powell, a director of the Applicant, from two former directors of the Applicant, shall not be subject to section 53(1) of the Act, subject to certain conditions;

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

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

1. The Applicant was incorporated under the *Business Corporations Act* (Alberta) on October 1, 1999; the Applicant's head office is located in Calgary, Alberta.

2. The Applicant is a reporting issuer in Alberta, British Columbia and Saskatchewan but is not, and has no current intention of becoming, a reporting issuer in Ontario.

3. The authorized capital of the Applicant consists of an unlimited number of common shares and an unlimited number of preferred shares, of which 12,425,546 common shares and no preferred shares were issued and outstanding as at September 11, 2000.

4. The Applicant has been listed for trading on the Canadian Venture Exchange Inc. (the "Exchange") since March 2, 2000, as a junior capital pool company.

5. The Applicant is not in default of any of the requirements of the Act or any similar legislation in any other jurisdiction.

6. According to information provided by Computershare Investor Services (formerly Montreal Trust Company of Canada) as at September 11, 2000, the Applicant had 798 beneficial shareholders, of which 129 (16.1%) were resident in Ontario beneficially holding an aggregate of 134,576 common shares (1.08%) of the Applicant.

7. The Subject Shares are subject to an escrow agreement dated December 31, 1999 (the "Escrow Agreement") and, pursuant to the Escrow Agreement, are subject to release from escrow as to 1/3 of the Subject Shares on each of the first, second and third anniversaries of the date of completion of the Applicant's Major Transaction (as defined below); in total, 2,460,000 common shares of the Applicant are subject to the Escrow Agreement.

8. The Applicant entered into a letter of intent dated February 24, 2000, and a lock up agreement dated February 24, 2000 with electroBusiness Connections Inc. ("Connections") and the principal shareholders of Connections for the acquisition of all of the issued and outstanding securities of Connections as the proposed major transaction (the "Major Transaction") of the Applicant pursuant to the junior capital pool provisions of the Alberta Securities Commission.

9. On August 21, 2000, the shareholders of the Applicant approved the Major Transaction; effective the same date, Mr. John T. Ramsay and Mr. Keith Powell were elected as directors of the Applicant (the "Incoming Directors"), and Mr. Dennis Kwan and Mr. Sydney Dutchak resigned as directors of the Applicant (the "Outgoing Directors").

10. On August 31, 2000, the Applicant completed the acquisition of Connections as its Major Transaction; in connection with the Major Transaction the Incoming Directors will acquire an equity position in the Applicant by acquiring common shares, including the Subject Shares, from the Outgoing Directors and from certain associates of the Outgoing Directors.

11. Only one of the Incoming Directors, Mr. Keith Powell, is a resident of Ontario; Mr. Keith Powell will acquire the Subject Shares pursuant to a transfer under the Escrow Agreement (the "Transfer") from the Outgoing Directors in accordance with Part 8 of Commission Rule 45-503- *Trades to Employees, Executives and Consultants*.

12. The Transfer, and the price to be paid in connection therewith, was based on arm's length negotiations between the parties to the Major Transaction.

13. Management of the Applicant believe that the Transfer is in the best interests of the Applicant because it provides one of the Incoming Directors, Mr. Keith Powell, with an equity position in the Applicant, which ensures his commitment to the continuing success of the Applicant.

14. Notwithstanding the Transfer, the Subject Shares will continue to be subject to escrow in accordance with the terms of the Escrow Agreement.

15. Although upon completion of the Transfer only approximately 3.4% of the total number of outstanding common shares of the Applicant will be beneficially held in Ontario, first trades in the Subject Shares cannot be made in reliance on the first trade exemption contained in Commission Rule 72-501 *Prospectus Exemption For First Trade Over A Market Outside Ontario* because upon completion of the Transfer approximately 17% of the number of beneficial shareholders of common shares of the Applicant will reside in Ontario.

16. In accordance with the Escrow Agreement, the Applicant has obtained the consent of the Alberta Securities Commission to permit to the Transfer.

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

IT IS RULED pursuant to section 74(1) of the Act that the first trade in the Subject Shares shall not be subject to section 53(1) of the Act, provided that

(i) such trade is made through the facilities of a stock exchange outside Ontario; and

(ii) upon completion of the Transfer, not more than 17% of the beneficial shareholders of the Applicant will reside in Ontario.

October 13th, 2000.

"J. A. Geller" "Robert W. Davis"

2.3.3 Financial Services Income Streams Corporation - ss. 74(1) and s. 59, Schedule 1, Regulation

Headnote

Ruling exempts from sections 25 and 53 of the Act trades made in connection with certain over-the-counter covered call options by a mutual fund operation.

Ruling also exempts corporation from requirement to pay fees otherwise payable in respect of trades pursuant to the ruling under section 28 of Schedule 1 of the Regulation.

Statutes Cited

Securities Act, R.S.O. 1990, C. S.5, as am., ss. 25, 53 ,74(1), 143.3(1).

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 28 and 59(1) of Schedule 1.

Rules Cited

Ontario Securities Commission Rule 91-504 Over-the-Counter Derivatives, (2000), 23 OSCB 6189.

Instruments Cited

National Instrument 81-102 Mutual Funds

IN THE MATTER OF THE SECURITIES ACT (THE "Act")

AND

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

AND

IN THE MATTER OF FINANCIAL SERVICES INCOME STREAMS CORPORATION

RULING AND EXEMPTION (Subsection 74(1) of the Act and Section 59 of Schedule 1 of the Regulation)

UPON the application (the "Application") of Financial Services Income STREAMS Corporation (the "Company") to the Ontario Securities Commission (the "Commission") for:

(i) a ruling, pursuant to subsection 74(1) of the Act, that the writing of certain over-the-counter covered call options ("OTC Options") by the Company shall not be subject to section 25 or 53 of the Act; and

(ii) an exemption, pursuant to subsection 59(1) of Schedule 1 of the Regulation, from requirements to pay any fees required to be paid under section 28 of Schedule 1 of the Regulation in connection with the writing by the Company of OTC Options pursuant to the ruling;

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

AND UPON the Company having represented to the Commission that:

1. The Company is a mutual fund corporation, incorporated under the laws of Ontario. Quadravest Inc is the "manager" of the Company (within the meaning of that term in National Instrument 81-102 Mutual Funds ("NI 81-102")).

2. The Company is a "mutual fund" within the meaning of that term in subsection 1(1) of the Act.

3. In connection with an offering of Equity Dividend Shares ("Equity Dividend Shares") of the Company and Capital Yield Shares ("Capital Yield Shares") of the Company, the Company filed a (final) Prospectus (the "Prospectus") dated September 29, 2000 with the Commission and with the securities regulatory authority in each of the other provinces of Canada under SEDAR Project No. 288919. A receipt for the Prospectus was issued under *Part XV* of the Act by the Director on September 29, 2000.

4. Quadravest Capital Management Inc. ("Quadravest") acts as the "portfolio adviser" of the Company (within the meaning of that term in NI 81-102).

5. Quadravest is registered under the Act as an adviser in the categories of "investment counsel" and "portfolio manager" and as a dealer in the category of "mutual fund dealer".

6. The Company's investment objectives are:

   (i) to provide holders of Equity Dividend Shares with: (a) fixed, cumulative quarterly cash dividends, in the amount per Equity Dividend Share specified the Prospectus, and (b) an amount per Equity Dividend Share equal to the subscription price of $25.00 (the "Original Investment Amount") paid for each Equity Dividend Share, on or about February 1, 2011 (the "Termination Date"): and

   (ii) to provide holders of Capital Yield Shares with: (a) quarterly cash dividends equal to the amount, if any, by which the net realized capital gains, dividends and option premiums (other than option premiums in respect of options outstanding at year-end) earned on the Managed Portfolio (as defined below) in any year, net of expenses, taxes and loss carry-forwards, exceed the amount of the dividends paid on the Equity Dividend Shares, and (b) an amount per Capital Yield Share equal to the Original Investment Amount plus a pro rata share of the balance, if any, of the Managed Portfolio after paying the holders of Equity

Dividend Shares their Original Investment Amount, on or about the Termination Date;

7. The net proceeds of the offering of the Shares have been invested in a diversified portfolio (the "Managed Portfolio") of securities consisting principally of common shares issued by corporations whose shares are included in The Toronto Stock Exchange Financial Services Index, the Standard & Poor's Financials Index or the Standard & Poor's MidCap Financials Index. The Managed Portfolio is actively managed by Quadravest.

8. The Company will, from time to time, write covered call options in respect of all or part of the securities in the Managed Portfolio. Such call options may be either exchange traded options or OTC Options.

9. The writing of covered call options by the Company will be managed by Quadravest in a manner consistent with the investment objectives of the Company. The individual securities in the Managed Portfolio which are subject to call options and the terms of such call options will vary from time to time based on Quadravest's assessment of the markets. The writing of OTC options by the Company will not be used as a means for the Company to raise new capital.

10. OTC Options will be written by the Company only in respect of securities that are in the Managed Portfolio and the investment restrictions of the Company prohibit the sale of securities that are subject to an outstanding option.

11. The purchasers of OTC Options written by the Company will generally be major Canadian financial institutions and all purchasers of OTC Options will be persons or entities described in Appendix "A" to Ontario Securities Commission Rule 91-504 Over the Counter Derivatives (the "Rule"), which was published by the Commission on September 8, 2000 and has been delivered to the Minister pursuant to subsection 143.3(1) of the Act.

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

IT IS RULED, pursuant to subsection 74(l) of the Act, that the writing of OTC Options by the Company, as described above, shall not be subject to section 25 or 53 of the Act, provided that:

i) at the time of the writing of the OTC Option, the portfolio adviser advising the Company with respect to such activities is registered as an adviser under the Act and meets the proficiency requirements for advising with respect to options in the principal jurisdiction in Canada in which the portfolio adviser carries on its business; and

ii) this ruling shall terminate upon the effective date of the Rule, or 60 days after the Commission publishes in its Bulletin a notice or statement to the effect that the Minister does not approve the Rule, rejects the Rule, or has returned the Rule to the Commission for further consideration;

AND, IT IS DECIDED, pursuant to section 59 of Schedule 1 to the Regulation, that the Company is exempt from the fees which would otherwise be payable pursuant to section 28 of Schedule 1 to the Regulation in connection with any OTC Options written by the Company in reliance on the above ruling.

October 31st, 2000.

"Morley Carscallen" "Robert W. Davis"

2.3.4 Navtech, Inc. - ss. 74(1)

Headnote

First Trade Relief - U.S. company listed on NASD OTC acquiring all Class B Special Shares of its subsidiary in exchange for shares of U.S. company - Relief granted for first trades executed over NASD OTC or stock exchange outside of Ontario notwithstanding that Ontario residents will hold more than 10% of the shares of the U.S. company upon completion of the transaction - Ontario residents will constitute less than 2% of total number of shareholders upon completion of the transaction.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 53, 74(1).

Rules Cited

72-501 - Prospectus Exemption for First Trade Over a Market Outside Ontario;
61-501 - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions

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

AND

IN THE MATTER OF NAVTECH, INC.

RULING (Section 74(1))

UPON the application of Navtech, Inc. ("Navtech") to the Ontario Securities Commission (the "Commission") for a ruling pursuant to Section 74(1) of the Act that certain first trades in shares of common stock of Navtech shall not be subject to Section 53 of the Act, subject to certain conditions;

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

AND UPON Navtech having represented to the Commission as follows:

1. Navtech is a corporation incorporated under the laws of the State of Delaware and is subject to the reporting requirements of the United States *Securities Exchange Act of 1934*, as amended.

2. Navtech is not a reporting issuer under the Act and does not have any intention of becoming a reporting issuer under the Act.

3. The authorized capital of Navtech consists of 10,000,000 shares of common stock (the "Navtech Common Shares"), $0.001 par value, of which approximately 2,876,980 Navtech Common Shares were issued and outstanding as of August 21, 2000, and 2,000,000 shares of preferred stock, $0.01 par value, none of which are issued and outstanding.

4. The Navtech Common Shares trade on the NASD OTC Electronic Bulletin Board under the symbol "NAVH".

5. As of August 21, 2000, approximately 1,505,125 or 52% of the outstanding Navtech Common Shares were held by 801 shareholders of Navtech resident in the United States and approximately 1,326,766 or 46% of the outstanding Navtech Common Shares were held by 11 shareholders resident in Ontario.

6. Of the approximately 1,326,766 outstanding Navtech Common Shares held by 11 shareholders resident in Ontario, approximately 1,007,766 or 76% are beneficially owned by Dorothy A. English ("Ms. English"), the Managing Director of Navtech Systems Support Inc. ("Navtech-Canada"), directly and indirectly, through Navtech Applied Research Inc. and approximately 200,000 or 15% are beneficially owned by Duncan Macdonald ("Mr. Macdonald"), the Chairman of the Board and Chief Executive Officer of Navtech; the remaining eight shareholders resident in Ontario hold approximately 119,000 Navtech Common Shares or 9%.

7. Navtech-Canada is a corporation governed by the *Business Corporations Act* (Ontario).

8. Navtech-Canada is not a reporting issuer under the Act and does not have any intention of becoming a reporting issuer under the Act.

9. The authorized capital of Navtech-Canada consists of an unlimited number of Class A Special Shares, an unlimited number of Class B Special Shares and an unlimited number of common shares of which 3,600 Class B Special Shares and 4,247,462 common shares are issued and outstanding.

10. All of the issued and outstanding common shares of Navtech-Canada are held by Navtech; the 3,600 issued and outstanding Class B Special Shares are held by twelve shareholders and 3,000 of the 3,600 Class B Special Shares are held by ten shareholders resident in Ontario.

11. Navtech has offered to purchase all but not less than all of the 3,600 outstanding Class B Special Shares (the "Offer") in exchange for 192,000 Navtech Common Shares (the "Exchange Shares").

12. For each Exchange Share issued to a holder of Class B Special Shares pursuant to the Offer, the holder will be issued one non-transferable right (collectively, the "Rights") to purchase up to two additional Navtech Common Shares at a subscription price of U.S. $1.00 per share.

13. Up to 384,000 additional Navtech Common Shares (the "Additional Shares") may be issued to the holders of the Class B Special Shares pursuant to the exercise by such holders of the Rights; the Rights expire at the closing of the Offer.

14. The Offer is a "take-over bid" as defined in Section 89(1) of the Act; the Offer is exempt from the

requirements of Sections 95 to 100 of the Act pursuant to Section 93(1)(d) of the Act; the Offer is also an insider bid, as defined in Section 182 of the Regulation under the Act, but is exempt from the valuation requirements of Part X of the Regulation under the Act and Rule 61-501 - *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* of the Commission pursuant to Section 2.1(1)(b) of Rule 61-501.

15. The issuance by Navtech of the Exchange Shares and the Rights pursuant to the Offer is exempt from the registration and prospectus requirements of the Act pursuant to Sections 35(1)16 and 72(1)(j), respectively.

16. The issuance by Navtech of the Additional Shares pursuant to the exercise of the Rights is exempt from the registration and prospectus requirements of the Act pursuant to Sections 35(1)12 and 72(1)(f)(iii), respectively.

17. Upon the completion of the Offer (assuming all of the Rights are exercised), the number of issued and outstanding Navtech Common Shares would increase from approximately 2,876,980 to 3,452,980; of such 3,452,980 Navtech Common Shares, approximately 141,089 or 4% would be held by two shareholders resident outside of Ontario and the United States, approximately 1,505,125 or 44% would be held by 801 shareholders resident in the United States, and approximately 1,806,766 or 52% would be held by 15 shareholders resident in Ontario; of such 1,806,766 Navtech Common Shares, 549,000 (16%) would be held by ten former holders of Class B Special Shares resident in Ontario (480,000 of which would have been acquired pursuant to the Offer) and approximately 29% will be held in aggregate, directly and indirectly, by Ms. English and Mr. Macdonald.

18. The first trade of Navtech Common Shares by former holders of Class B Special Shares resident in Ontario will be a distribution under the Act pursuant to subsection 72(5) of the Act but would qualify for the exemption from the prospectus requirements of the Act contained in Commission Rule 72-501 - *Prospectus Exemption for a First Trade Over a Market Outside of Ontario*, except that:

    (a) the number of Navtech Common Shares held by Ontario residents immediately after the completion of the Offer (assuming all of the Rights are exercised) will be more than 10% of the total number of outstanding Navtech Common Shares; and

    (b) the first trade may be executed through the NASD OTC Electronic Bulletin Board.

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

IT IS HEREBY RULED pursuant to Section 74(1) of the Act that the first trade of Navtech Common Shares by former holders of Class B Special Shares resident in Ontario shall not be subject to Section 53 of the Act provided that:

(i) upon completion of the Offer, former holders of Class B Special Shares do not hold more than 16% of the outstanding Navtech Common Shares; and

(ii) the first trade of Navtech Common Shares by former holders of Class B Special Shares resident in Ontario is executed through the NASD OTC Electronic Bulletin Board, the NASDAQ Stock Market or the facilities of a stock exchange outside of Ontario.

October 3rd, 2000.

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

2.3.5 Numerical Technologies, Inc. et al. - ss. 74(1)

Headnote

Prospectus and registration relief in connection with an acquisition of a private issuer using an exchangeable share structure. First trade relief for underlying securities if trade is executed through the facilities of a stock exchange located outside of Canada.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., sections 25, 53, 74(1)

Rules Cited

Rule 45-501 - Prospectus Exempt Distributions
Rule 72-501 - Prospectus Exemption For First Trade Over A Market Outside of Ontario

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

AND

IN THE MATTER OF NUMERICAL TECHNOLOGIES, INC., NUMERICAL ACQUISITION LIMITED, NUMERICAL NOVA SCOTIA COMPANY AND CADABRA DESIGN AUTOMATION INC.

RULING
(Subsection 74(1))

UPON the application of Numerical Technologies, Inc. ("Numerical"), on its own behalf and on behalf of Numerical Acquisition Limited ("Amalgamation Sub"), Numerical Nova Scotia Company ("Numerical ULC") and Cadabra Design Automation Inc. ("Cadabra") to the Ontario Securities Commission (the "Commission") for a ruling, pursuant to subsection 74(1) of the Act, that certain trades in securities made in connection with an acquisition (the "Transaction") of Cadabra by Numerical pursuant to an agreement (the "Acquisition Agreement") entered into as of September 5, 2000, between Numerical, Numerical ULC, Amalgamation Sub, 3047725 Nova Scotia Limited ("ML Holdco"), Faysal Sohail, Martin Lefebvre and Cadabra, shall not be subject to section 25 or 53 of the Act;

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

AND UPON Numerical and Cadabra having represented to the Commission as follows:

1. Numerical was incorporated under the laws of the state of California on October 11, 1995 and was reincorporated under the laws of the state of Delaware on April 4, 2000.

2. Shares of Numerical common stock (the "Numerical Shares") are listed on The NASDAQ Stock Market ("NASDAQ"). Numerical will file with NASDAQ the required form of application for the listing of all additional Numerical Shares issuable in connection with the Transaction, including pursuant to the exchange of all issuable Exchangeable Shares (as defined below), and will pay to NASDAQ all required fees in connection therewith. Numerical is currently subject to the informational requirements of the *United States Securities Exchange Act of 1934*, as amended (the "Exchange Act"). Numerical is not a "reporting issuer" under the Act or under the securities legislation of any province of Canada.

3. Numerical is a leading commercial provider of proprietary technologies and software products that enable the design and manufacture of faster, smaller and more power efficient semiconductor devices with subwavelength feature sizes of 0.18 micron and below.

4. Numerical's principal executive offices are located at 70 W. Plumeria Drive, San Jose, California, U.S.A.

5. As of June 30, 2000, the authorized capital stock of Numerical consisted of 100,000,000 Numerical Shares with a par value of U.S. $0.0001 per share, of which 30,109,000 Numerical Shares were issued and outstanding. As part of the Transaction, Numerical will issue to each holder of Exchangeable Shares a fractional interest in a special voting share (the "Special Voting Share") in accordance with the Voting and Exchange Agreement (described below).

6. Cadabra was continued under the laws of the Province of Nova Scotia on April 1, 1999.

7. Cadabra is a "private company" as defined in the Act, and is not a "reporting issuer" under the Act or under the securities legislation of any other province.

8. Cadabra is a leading provider of automated cell creation technology used to create the building blocks for standard cell, semi-custom, and custom integrated circuits.

9. Cadabra's principal executive offices are located at 3031 Tisch Way, Suite 200, San Jose, California, U.S.A. Cadabra previously had its principal place of business in Ottawa, Ontario, but recently moved its principal operations to California; Cadabra continues to maintain an office in Ottawa.

10. As at the date hereof, the outstanding capital of Cadabra consists of 10,628,383 common shares ("Cadabra Common Shares"), 1,600,000 Class A preferred shares ("Cadabra Class A Shares") and 2,905,625 Class B preferred shares ("Cadabra Class B Shares" and, together with the Cadabra Common Shares and the Cadabra Class A Shares, the "Cadabra Shares"). Of the 60 holders of Cadabra Shares, 30 are resident in the Province of Ontario.

11. Numerical ULC is a Nova Scotia unlimited liability company and a wholly-owned subsidiary of Numerical

and was formed on August 30, 2000 for the purpose of participating in the Transaction.

12. The authorized capital of Numerical ULC consists of 1,000,000 common shares, one of which is issued and held by Numerical.

13. Numerical ULC will hold all of the shares of Amalgamation Sub and, following the Amalgamation (as described and defined below), will hold all of the common shares of the company resulting from that amalgamation ("Amalco"). Numerical ULC will also hold certain call rights under the terms of the non-voting exchangeable shares of Amalco (the "Exchangeable Shares").

14. Amalgamation Sub is a corporation incorporated under the laws of the Province of Nova Scotia on August 30, 2000 for the purposes of participating in the Transaction and is a wholly-owned subsidiary of Numerical ULC .

15. The authorized capital of Amalgamation Sub consists of 1,000,000 common shares, one of which is issued and held by Numerical ULC.

16. ML Holdco was continued under the laws of the Province of Nova Scotia on August 30, 2000.

17. ML Holdco's only material asset is 5,600,000 common shares of Cadabra.

18. Pursuant to the Amalgamation (as described and defined below), Cadabra, ML Holdco and Amalgamation Sub will amalgamate to form Amalco.

19. Amalco will be the surviving company after the amalgamation of Cadabra, ML Holdco and Amalgamation Sub. The authorized capital of Amalco will consist of 500,000,000 common shares (the "Amalco Common Shares"), all of which will be held indirectly by Numerical through Numerical ULC; 500,000,000 Class A non-voting preference shares (the "Class A Shares") and 500,000,000 Exchangeable Shares.

20. Pursuant to the amalgamation (the "Amalgamation") of Cadabra, ML Holdco and Amalgamation Sub (the company formed being "Amalco"):

    (i) Numerical ULC, being the sole shareholder of Amalgamation Sub, will receive Amalco Common Shares;

    (ii) the shareholders of Cadabra and ML Holdco will receive Class A Shares; and

    (iii) the common shares of Cadabra which are held by ML Holdco will be cancelled.

21. At the time of the Amalgamation, each outstanding option to purchase Cadabra Shares ("Cadabra Options") shall be converted into an option (the "Numerical Options") to purchase from Amalco Numerical Shares. Prior to the time of the Amalgamation, Amalgamation Sub shall purchase from Numerical and Numerical shall sell to Amalgamation Sub, newly issued Numerical Shares to enable Amalco to satisfy all exercises of outstanding options to purchase Cadabra Shares after the time of the Amalgamation.

22. A special general meeting (the "Meeting") of the holders of the Cadabra Shares was held on September 29, 2000 for the purpose of, among other things, approving the Amalgamation.

23. In connection with the Meeting, Cadabra mailed to each shareholder (i) a notice of special general meeting, (ii) a form of proxy, (iii) the text of the resolution approving the Amalgamation and (iv) an information circular containing a detailed description of the Transaction, including the Amalgamation, characteristics of the Exchangeable Shares and information respecting Numerical (collectively, the "Shareholder Materials").

24. The Amalgamation was unanimously approved by the holders of all of the outstanding Cadabra Shares.

25. Approval of the Amalgamation by the shareholders of ML Holdco was obtained by way of a written resolution executed by each of the shareholders of ML Holdco. In connection with such written resolution, the shareholders of ML Holdco were provided with materials substantially similar to the Shareholder Materials.

26. The approval of Numerical ULC as the sole shareholder of Amalgamation Sub was also obtained by written resolution.

27. In connection with the Acquisition, an escrow agreement (the "Escrow Agreement") will be entered into pursuant to which 25% of the Class A Shares (which shares, together with the Exchangeable Shares into which they are exchanged pursuant to the Reorganization, being herein referred to as the "Escrowed Shares") held by each former shareholder of Cadabra and ML Holdco will be placed into escrow with an escrow agent (the "Escrow Agent") as security for inaccuracies or breaches of certain representations, warranties and covenants made in connection with the Acquisition ("Escrow Claims").

28. Pursuant to an amendment of the memorandum and articles of association of Amalco (the "Reorganization"), all Class A Shares issued to the former shareholders Cadabra and ML Holdco will be exchanged for Exchangeable Shares.

29. The Exchangeable Shares, together with the Voting and Exchange Agreement and Support Agreement described below, 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 a Numerical Share. The Exchangeable Shares will be exchangeable by a holder thereof for Numerical Shares on a one-for-one basis at any time at the option of the holder and will be required to be exchanged upon the occurrence of certain events; as more fully described below. Subject to applicable

law, dividends will be payable on the Exchangeable Shares contemporaneously and in the equivalent amount per share as dividends on the Numerical Shares. The number of Exchangeable Shares exchangeable for the Numerical Shares is subject to adjustment or modification in the event of a stock split or other change to the capital structure of Numerical so as to maintain at all times the initial one-to-one relationship between the Exchangeable Shares and Numerical Shares.

30. The Exchangeable Shares will rank prior to the Amalco Common Shares with respect to the payment of dividends and the distribution of property or assets in the event of the liquidation, dissolution or winding-up of Amalco, whether voluntary or involuntary, or any other distribution of property or assets of Amalco among its shareholders for the purpose of winding-up its affairs. The rights, privileges, restrictions and conditions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions") will provide that each Exchangeable Share will entitle the holder to dividends from Amalco payable at the same time as, and equivalent to, each dividend paid by Numerical on a Numerical Share.

31. The Exchangeable Shares will be non-voting (except as required by the Exchangeable Share Provisions or by applicable law) and will be retractable at the option of the holder at any time. Subject to the overriding retraction call right of Numerical ULC referred to below in this paragraph, upon retraction the holder will be entitled to receive from Amalco for each Exchangeable Share retracted an amount equal to the current market price of a Numerical Share to be satisfied by the delivery of one Numerical Share, 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 (that aggregate amount, the"Retraction Price"). Upon being notified by Amalco of a proposed retraction of Exchangeable Shares, Numerical ULC will have an overriding retraction call right (the "Retraction Call Right") to purchase from the holder all of the Exchangeable Shares that are the subject of the retraction notice for a price per share equal to the Retraction Price.

32. Subject to applicable law and the overriding redemption call right of Numerical ULC referred to below in this paragraph, Amalco will redeem all but not less than all of the then outstanding Exchangeable Shares five years after the initial closing date of the Transaction (the "Redemption Date"). In certain circumstances the Board of Directors of Amalco may accelerate the Redemption Date. Upon that redemption, a holder will be entitled to receive from Amalco for each Exchangeable Share redeemed an amount equal to the current market price of a Numerical Share to be satisfied by the delivery of one Numerical Share, together with, on the designated payment date therefor, all declared and unpaid dividends on each redeemed Exchangeable Share held by the holder on any dividend record date prior to the Redemption Date (that aggregate amount, the "Redemption Price"). Upon being notified by Amalco of a proposed redemption of Exchangeable Shares, Numerical ULC will have an overriding redemption call right (the "Redemption Call Right") to purchase on the Redemption Date all but not less than all of the then outstanding Exchangeable Shares (other than Exchangeable Shares held by affiliates of Numerical) for a price per share equal to the Redemption Price. Upon the exercise of the overriding redemption call right by Numerical ULC, holders will be obligated to sell their Exchangeable Shares to Numerical ULC.

If Numerical ULC exercises its overriding redemption call right, Amalco's right and obligation to redeem the Exchangeable Shares on the Redemption Date will terminate.

33. Subject to the overriding liquidation call right of Numerical ULC referred to below in this paragraph, in the event of the liquidation, dissolution or winding-up of Amalco, holders of Exchangeable Shares will be entitled to receive an amount equal to the current market price of a Numerical Share to be satisfied by the delivery of one Numerical Share, together with, on the designated payment date therefor, all declared and unpaid dividends on each redeemed Exchangeable Share held by the holder on any dividend record date prior to the Redemption Date (that aggregate amount, the "Liquidation Amount"). Upon a proposed liquidation, dissolution or winding-up of Amalco, Numerical ULC will have an overriding liquidation call right (the "Liquidation Call Right") to purchase from all but not less than all of the holders of Exchangeable Shares (other than Exchangeable Shares held by affiliates of Numerical) on the effective date of such liquidation, dissolution or winding-up (the "Liquidation Date") all but not less than all of the Exchangeable Shares held by each such holder for a price per share equal to the Liquidation Amount.

34. Upon the exchange of an Exchangeable Share for a Numerical Share, the holder of the Exchangeable Share will no longer be entitled to exercise any voting rights in respect of the Special Voting Share.

35. The Special Voting Share will be authorized for issuance pursuant to the Acquisition Agreement and will be issued under the Voting and Exchange Agreement. Except as otherwise required by applicable law or the Numerical certificate of incorporation, holders of the Special Voting Share will be entitled, in the aggregate, to the number of votes, exercisable at any meeting of the holder of Numerical Shares, equal to the number of Exchangeable Shares outstanding from time to time not owned by Numerical and its affiliates. The holders of the Numerical Shares and the holders of the Special Voting Share will vote together as a single class on all matters, except as may be required by applicable law or the Numerical certificate of incorporation. Holders of Exchangeable Shares will exercise the voting rights attached to the Special Voting Share through the mechanism of the Voting and Exchange Agreement (described below). The holders of the Special Voting Share will not be entitled to receive dividends from Numerical and, in the event of any

liquidation, dissolution or winding-up of Numerical, will receive an amount equal to the par value thereof.

When the Special Voting Share has no votes attached to it because there are no Exchangeable Shares outstanding not owned by Numerical and its affiliates, the Special Voting Share will be cancelled.

36. Fractional interests in the Special Voting Share will be issued to the holders of the Exchangeable Shares outstanding from time to time (other than Numerical and its affiliates) pursuant to a Voting and Exchange Agreement to be entered into by Numerical, Amalco and the Exchangeable Shareholders contemporaneously with the closing of the Transaction. Upon the exchange of all of a holder's Exchangeable Shares for Numerical Shares, all rights of the holder of Exchangeable Shares to exercise votes attached to the Special Voting Share will cease.

37. Under the Voting and Exchange Agreement, Numerical will grant to Exchangeable Shareholders a right (the "Exchange Right"), exercisable upon the insolvency of Amalco, to require Numerical to purchase from each holder of Exchangeable Shares all or any part of the Exchangeable Shares held by that holder. The purchase price for each Exchangeable Share purchased by Numerical under the Exchange Right will be an amount equal to the current market price of a Numerical Share, to be satisfied by the delivery to the holder of one Numerical Share, together with an additional amount equivalent to the full amount of all declared and unpaid dividends on that Exchangeable Share held by the holder on any dividend record date prior to the closing of the purchase and sale.

38. Under the Voting and Exchange Agreement, upon the liquidation, dissolution or winding-up of Numerical, Numerical will be required to purchase each outstanding Exchangeable Share, and each holder will be required to sell the Exchangeable Shares held by that holder (those purchase and sale obligations are hereafter referred to as the "Automatic Exchange Right"), for a purchase price per share equal to the current market price of a Numerical Share, to be satisfied by the delivery to the holder thereof of one Numerical Share, together with an additional amount 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.

39. Contemporaneously with the closing of the Transaction Numerical, Amalco and Numerical ULC will enter into a Support Agreement which will provide: (a) that Numerical will not declare or pay any dividends on the Numerical Shares unless Amalco is able to declare and pay, and simultaneously declares and pays, as the case may be, an equivalent dividend on the Exchangeable Shares; and (b) that Numerical will ensure that Amalco and Numerical ULC will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the exchangeable Shares under the Exchangeable Share Provisions and the related redemption, retraction and liquidation call rights described above.

40. The Support Agreement and the Exchangeable Share Provisions will provide that, without the prior approval of Amalco and the holders of the Exchangeable Shares, Numerical will not issue or distribute additional Numerical Shares, securities exchangeable for or convertible into or carrying rights to acquire Numerical Shares, rights, options or warrants to subscribe therefor, evidences of indebtedness or other assets, to all or substantially all holders of Numerical Shares, nor will Numerical change the Numerical Shares, unless the same or an economically equivalent distribution on or change to the Exchangeable Shares (or in the rights of the holders thereof) is made simultaneously.

41. Under the terms of the various documents and share provisions, Numerical ULC shall be entitled to assign its rights and obligations to an affiliate of Numerical (for all purposes or for the purposes of specified circumstances as contemplated therein) as being the corporation which is to exercise the rights and be subject to the privileges of Numerical ULC as contemplated therein.

42. The steps under the Transaction and the attributes of the Exchangeable Shares contained in the Exchangeable Share provisions, the Support Agreement, the Voting and Exchange Agreement involve or may involve a number of trades of securities, including trades related to the issuance of the Class A Shares, Exchangeable Shares and Numerical Shares pursuant to the Transaction or upon the issuance of Numerical Shares in exchange for Exchangeable Shares. There may be no registration and prospectus exemptions available under the Act for certain of the trades and possible trades in securities (collectively, the "Trades") to which the Transaction gives rise.

43. Assuming the exchange of all Exchangeable Shares for Numerical Shares, immediately after the completion of the Transaction, all persons or companies who are resident in Ontario will not in aggregate hold of record or own beneficially more than 10% of the issued and outstanding Numerical Shares or represent more than 10% of the number of holders of Numerical Shares.

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

IT IS RULED pursuant to subsection 74(1) of the Act that, to the extent there are no exemptions available from the registration and prospectus requirements of the Act in respect of any of the Trades, such Trades are not subject to sections 25 or 53 of the Act, provided that:

(i) the first trade in Exchangeable Shares other than the exchange thereof for Numerical Shares shall be a distribution; and

(ii) the first trade in any Numerical Shares issued upon the exchange of Exchangeable Shares or issued upon the exercise of Numerical Options shall be a distribution unless such trade is

executed through the facilities of a stock exchange outside of Ontario or through NASDAQ and such trade is made in accordance with the rules of the stock exchange upon which the trade is made or the rules of NASDAQ in accordance with all laws applicable to that stock exchange or applicable to NASDAQ.

October 24th, 2000.

"Stephen N. Adams" "Theresa McLeod"

2.3.6 Pro-AMS U.S. Trust - ss. 74(1) and ss. 59(1), Schedule 1, Regulation

Headnote

Subsection 74(1) - Exemption from sections 25 and 53 of the Act in connection with the writing of certain over-the-counter covered call options and cash-covered put options by the issuer, subject to certain conditions.

Section 59, Schedule 1 - Issuer exempt from section 28 of Schedule 1 to the Regulation in connection with the writing of certain over-the-counter covered call options and cash-covered put options.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 1(1), 25, 53 and 74(1).

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 28 and 59(1) of Schedule 1.

National Instrument Cited

National Instrument 81-102 Mutual Funds (2000), 23 OSCB 59 (Supp.).

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

AND

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

AND

IN THE MATTER OF PRO-AMS U.S. TRUST

RULING AND EXEMPTION (Subsection 74(1) of the Act and Subsection 59(1) of Schedule 1 to the Regulation)

UPON the application of Mulvihill Fund Services Inc. ("Mulvihill"), as manager of Pro-AMS U.S. Trust (the "Trust"), to the Ontario Securities Commission (the "Commission") for a ruling:

(i) pursuant to subsection 74(1) of the Act that the writing of certain over-the-counter covered call options and cash covered put options (collectively, the "OTC Options") by the Trust is not subject to sections 25 and 53 of the Act; and

(ii) pursuant to subsection 59(1) of Schedule 1 to the Regulation for an exemption from the fees required to be paid under section 28 of Schedule 1 to the

Regulation in connection with the writing of certain OTC Options by the Trust;

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

AND UPON Mulvihill having represented to the Commission as follows:

1. The Trust is an investment trust that will be established under the laws of the Province of Ontario pursuant to a trust agreement entered into between Mulvihill, as manager, and The Royal Trust Company, as trustee.

2. The authorized capital of the Trust will consist of an unlimited number of transferable, redeemable trust units (the "Units").

3. By virtue of the redemption features attaching to the Units, the Trust is considered a "mutual fund" within the meaning of the Act and other applicable legislation.

4. The Trust is not a reporting issuer under the Act but has filed a preliminary prospectus dated August 23, 2000 and will file a (final) prospectus (the "Prospectus") with the Commission and with the securities regulatory authority in each of the other Provinces of Canada with respect to proposed offering of Units.

5. Mulvihill Capital Management Inc. ("MCM") will act as investment manager of the Trust.

6. MCM is registered under the Act in the categories of investment counsel and portfolio manager, mutual fund dealer and limited market dealer.

7. The Trust's investment objectives are: (i) to return at least the original issue price of the Units ($25.00 per Unit) to Unitholders upon termination of the Trust on January 4, 2011; (ii) to provide Unitholders with a stable stream of monthly distributions targeted to be at least $0.1875 per Unit (2.25 per annum or 9.0% on the original issue price); and (iii) to preserve the value of the Trust's managed portfolio, which will provide Unitholders with capital appreciation above the original issue price.

8. To provide the Trust with the means to return the original issue price of the Units on or about the termination date of the Trust, the Trust will enter into a forward purchase and sale agreement with Royal Bank of Canada ("RBC") pursuant to which RBC will agree to pay the Trust an amount equal to $25.00 for each Unit outstanding on the termination date in exchange for the Trust agreeing to deliver the equity securities which the Trust will acquire with a portion of the proceeds of the offering; the balance of the net proceeds of the offering will be invested in a diversified portfolio consisting principally of equity securities of companies with a market capitalization in excess of $5.0 billion selected from the S&P 500 Index.

9. The Trust will, from time to time, write covered call options in respect of all or part of the securities in its Portfolio; the investment criteria of the Trust prohibits the sale of equity securities subject to an outstanding call option, and therefore the call options will be covered at all times.

10. The Trust may, from time to time, hold a portion of its assets in "cash equivalents" (as that term is defined in the Prospectus); the Trust may utilize such cash equivalents to provide cover in respect of the writing of cash covered put options; such cash covered put options will only be written in respect of securities in which the Trust is permitted to invest.

11. The purchasers of OTC Options written by the Trust will generally be major Canadian financial institutions and all purchasers of OTC Options will be persons or entities described in Appendix A to this ruling.

12. The writing of OTC Options by the Trust will not be used as a means for the Trust to raise new capital.

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

IT IS RULED, pursuant to subsection 74(1) of the Act, that the writing of OTC Options by the Trust, as contemplated by paragraphs 9 and 10 of this ruling, shall not be subject to sections 25 and 53 of the Act provided that:

(a) the portfolio adviser advising the Trust with respect to such activities is registered as an adviser under the Act and meets the proficiency requirements for advising with respect to options in the principal jurisdiction in Canada in which the portfolio adviser carries on its business;

(b) each purchaser of an OTC Option written by the Trust is a person or entity described in Appendix A to this ruling; and

(c) a receipt for the Prospectus has been issued by the Director under the Act;

AND PURSUANT to section 59 of Schedule 1 to the Regulation the Trust is hereby exempted from the fees which would otherwise be payable pursuant to Section 28 of Schedule 1 to the Regulation in connection with any OTC Options written by the Trust in reliance on the above ruling.

September 22nd, 2000.

"J. A. Geller" "Robert W. Davis"

APPENDIX A

QUALIFIED PARTIES

Interpretation

(1) The terms "subsidiary" and "holding body corporate" used in paragraphs (w), (x) and (y) of subsection (2) of this Appendix have the same meaning as they have in the *Business Corporations Act* (Ontario).

(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 or II 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 Basle Accord if the bank has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of $100 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* (Ontario) 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 Basle 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 $100 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 if the insurance company has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of $100 million or its equivalent in another currency.

(h) An insurance company subject to the regulatory regime of a country that is a member of the Basle Accord if the insurance company has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of $100 million or its equivalent in another currency.

Sophisticated Entities

(i) A person or company that

(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 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 Basle 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 assets, as shown on its last audited balance sheet, in excess of $100 million or its equivalent in another currency.

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 $100 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 if the management company of the fund is registered under the Act or securities legislation elsewhere in Canada as an adviser, other than a securities adviser.

(r) A non-redeemable investment fund if the person responsible for providing investment advice to the fund is registered under the Act or securities legislation elsewhere in Canada as an adviser, other than a securities adviser.

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 $100 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), (n), (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.

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) or (u) of paragraph (2) 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.

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 Reasons

3.1.1 Joseph Curia

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

AND

IN THE MATTER OF THE APPLICATION FOR REGISTRATION
OF JOSEPH CURIA

Motion Heard:	**September 27, 2000**
Director:	**Randee B. Pavalow**
Joseph Curia:	**In Person**
Staff of the	**Kathryn Daniels, Counsel** **Ontario Securities Commission**

DECISION AND REASONS FOR DECISION

The Decision of the Director was to refuse the request by Joseph Curia for reinstatement of his registration as a salesperson. This decision was issued by the Director on September 27, 2000, with notice that reasons for the decision would follow at a later date. These are the reasons for the decision.

BACKGROUND

The applicant was previously employed as a salesperson at A.C. MacPherson and Company, Inc. ("MacPherson") from 1994 to 1999. MacPherson was an investment dealer whose registration was terminated by the Commission by an Order on April 6, 2000, pursuant to section 127 of the *Securities Act*. The applicant's registration as a salesperson was suspended on January 5, 2000, as a result of his resignation form MacPherson. The suspension remains in effect until, firstly, notice of employment is received from another registered dealer and, secondly, reinstatement of the registration is approved by the Director in accordance with section 25(2) of the Act.

The Notice of Employment dated January 17, 2000, was received from Royal Bank Action Direct Inc. ("Action Direct"), an investment dealer under the Act, by the Director and, accordingly the first condition of the above was satisfied. However, staff of the Registration Branch of the Commission opposed the reinstatement of the applicant's registration and accordingly a hearing was convened before the Director on September 27, 2000, pursuant to subsection 26(3) of the Act, which provides that:

> The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard.

The other provision which is relevant to this hearing is subsection 26(1) of the Act, which provides as follows:

> Unless it appears to the Director that the applicant is not suitable for registration, renewal of registration, or reinstatement of registration or that the proposed registration, renewal of registration, reinstatement of registration or amendment to registration is objectionable, the Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant.

At the hearing, Mr. Curia represented himself without counsel. Kathryn Daniels was counsel for staff of the Commission. A binder entitled *Documents to be Used on Cross-Examination* was provided to the Director at the hearing.

EVIDENCE

The only testimony presented at the hearing was that of Mr. Curia. He testified that he had been employed at MacPherson from 1994 until 1999. He began working in the position of opening accounts and introducing new customers to the firm. Mr. Curia testified that he had completed the Canadian Securities Course and CPH course, as well as the IDA training required under IDA rules. He understood that the stocks that

the firm was selling to customers were high-risk speculative stocks that were being sold from a principal position. He introduced Exhibit 1, which was a statement that was used as guidance for the dealers when they spoke to the customers. Mr. Curia also stated that he believed he followed the Code of Professional Handbook and that he often refused trades because they were unsuitable for the particular customer. He testified that he himself did not use any high-pressure tactics and that he disclosed all relevant information to the customer. He stated he tried to get documentation to support his testimony from MacPherson, but access was denied to him.

On cross-examination, Mr. Curia testified that he always agreed to sell the securities recommended by MacPherson. Mr. Curia stated he knew MacPherson generally only sold one stock at any given time. He acknowledged that he and the others at the firm generally sold shares with markups that were double the price at which MacPherson had acquired them. He also admitted that he always sold what MacPherson was promoting.

Mr. Curia testified that his initial position at MacPherson was that of an account opener. In such a role, Mr. Curia was to transfer the accounts he opened to senior salespersons. The senior salespersons would then try to increase the size of the investments in the accounts. Mr. Curia split the commissions for all sales from the accounts he opened with the senior salesperson (72% each).

At one point Mr. Curia became a senior salesperson for a couple of months. His employment in this position, however, was not sustained. In a very short period of time he went back to being an account opener. He testified that his reason for returning to the original position was that he felt uncomfortable selling high-risk securities to customers who had lost money. In addition, his personality was more comfortable in the position of account opener. Nonetheless, he was completely familiar with what a senior salesperson did.

Mr. Curia also testified that, in his belief, other members of the firm were fulfilling their obligations to act fairly, honestly, and in good faith. He also acknowledged that, on most occasions, the value of the stock sold to customers would go down after MacPherson would stop advising customers to purchase the stock.

SUMMARY OF APPLICANT'S SUBMISSIONS

The Applicant submitted that, as a protective measure, there exists no basis for denying his application for registration. He is currently employed as an IR at Action Direct and submits that in this capacity, his previous conduct is not indicative of any potential threat he may pose to the capital market. As an IR he is not required to provide investment advice or deal directly with clients. Given this fact, Mr. Curia points to the role of the Commission as a protector. He submits that it is not the mandate of the Commission to impose penalties, but to protect the market from potential wrongdoers of which, due to his present position, he can not be.

SUMMARY OF STAFF'S SUBMISSION

Staff has correctly pointed out that the decision is governed by section 25 of the Act which states that "No person or company shall, trade in a security ... unless the person or company is registered...", and section 26.1 of the Act, which places the onus on Staff to demonstrate that the application for a reinstatement of registration is objectionable.

Counsel for Staff identified what it termed the "primary principle which governs all registrants in the market." This principle is codified in Rule 31-505 as the duty of a registered dealer or advisor to act fairly, honestly and in good faith with clients. It is the performance of this duty, or the breach thereof, that is at issue today.

It is Staff's view that "A firm that acts as an agent for its clients must conduct itself according to a very high standard a firm that acts as a principal in selling to its own clients, in our opinion, requires the investment dealer or the firm to consider functioning with a greater degree of care in acting as a principal with respect to the best interest of the client." With this statement, Staff clearly indicates the threshold Mr. Curia must adhere to. It is Staff's submission that this threshold was never attained.

DIRECTOR'S FINDINGS

In the settlement agreement entered into by the Commission and MacPherson (the "Settlement Agreement"), dated the 28th of March, 2000, MacPherson admitted that virtually all of its business consisted of its acquiring stock for its own account and selling that same stock to its clients at excessive mark-ups. In addition, the undisputed facts demonstrate that during 1996 to 1997, virtually all of MacPherson's business consisted of acquiring stock for its own account and selling that same stock to its clients.

As a result of its sales from a principal position, Mr. Curia's employer, MacPherson, conducted its business under a fundamental conflict of interest. It has already been established by this Commission, in *Price Warner Securities (Re)* (2000), 23 OSCB 5653, and *Gordon-Daly Grenadier Securities (Re)* (2000), 23 OSCB 5541, that principal sales by a dealer at excessive mark-ups result in a breach of the duty a registrant owes to its client.

During Mr. Curia's five years at MacPherson, he had been employed as an account opener and senior account executive at the company. As such, he not only knew how the business was being conducted, but was aware that the practise of high mark-ups was a characteristic of the business model used by his employer. Ontario Securities Commission Rule 31-505 provides that a dealer owes a statutory duty to customers to act fairly and in good faith. That duty requires a salesperson to be informed of the sales practices of the firm that he or she works for, even if and perhaps especially if the individual transfers responsibility for the customer's account to other people. Mr. Curia's evidence, and the evidence in the Settlement Agreement, demonstrate a practise of high mark-ups often up to 100% of the price acquired by the firm. Involvement in such activity is contrary to the duty a registrant owes to its client.

Mr. Curia testified that although he had transferred clients to a senior trader, he still regarded those clients as his own. This continued relationship is supported by his continuing to derive income as a direct result of the consequent trading activity of the clients for which he opened accounts. As such, the duty he owed to these individuals was neither severed nor transferred.

At all times, Mr. Curia owed a duty of fairness, honesty and good faith to his clients. It is inexcusable that, although Mr. Curia may have felt he was being honest with his clients, he was not acting fairly or in good faith by participating in the exercise of excessive mark-ups as practised by MacPherson. As a result, his application for registration is denied.

As a final note, Mr. Curia requested some guidance as to when would be an appropriate time for him to reapply for registration with the Commission. For guidance on this issue, I have referred to *Re Jaynes* (2000), 23 OSCB 1543 [hereinafter "*Jaynes*"], and believe, as was done in that case, that it would be helpful to provide some guidance to the applicant as to what actions he needs to take in preparation for reapplication to the Commission. It must be stated, as was in *Jaynes*, that it would be entirely inappropriate for Mr. Curia to "reapply tomorrow" if he so chose to do so. It would, however, be entirely appropriate for Mr. Curia to again take the "Conduct and Practices Course" and assimilate the principles it espouses in order that his conduct fully reflect these principles in the future. In addition, if Mr. Curia were able to secure employment with a reputable registrant that fosters a strong and pervasive culture of compliance with fundamental obligations to clients, this would be an important factor to consider in any future application made by Mr. Curia.

Finally, Mr. Curia has made reference to the nine (9) months he has spent without registration. Although this may be a significant period of time in his eyes, I think it would be appropriate for there to be some further period of reflection and opportunity to address some of the other matters identified above which continue to be of concern. In the interim, Mr. Curia can begin to foster the abilities necessary to demonstrate that he will be able to live up to his obligations as a registrant in the future.

Although I can not prevent Mr. Curia from re-applying for registration tomorrow, it is my view that such a period of reflection and reeducation would be beneficial in light of all of the circumstances including the seriousness of the misconduct in question.

September 27th, 2000.

"Randee B. Pavalow"

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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
Astound Incorporated	Oct 13/2000	---	Oct 25/2000	---

4.1.2 Rescinding Cease Trade Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Rescinding Order
Gearunlimited.com Inc.	Oct 17/2000	---	---	Oct 26/2000

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Chapter 5

Rules and Policies

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Chapter 6

Request for Comments

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

Exempt Financings

The Ontario Securities Commission reminds Issuers of exempt financings that they are responsible for the completeness, accuracy and timely filing of Forms 20 and 21 pursuant to section 72 of the Securities Act and section 14 of the Regulation to the Act. The information provided is not verified by staff of the Commission and is published as received except for confidential reports filed under paragraph E of the Ontario Securities Commission Policy Statement No. 6.1.

Reports of Trades Submitted on Form 45-501f1

Trans. Date		Security	Price ($)	Amount
27Sep00		Acuity Pooled Balanced Fund - Trust Units	156,840	10,361
20Sep00		Acuity Pooled Canadian Equity Fund - Trust Units	406,667	26,281
05Oct00 & 06Oct00		Acuity Pooled Canadian Equity Fund - Trust Units	455,000	20,438
28Sep00		Acuity Pooled Global Balanced Fund - Trust Units	150,000	8,189
25Sep00 & 02Oct00		Acuity Pooled Global Equity Fund - Trust Units	300,000	14,206
04Oct00		Acuity Pooled Global Equity Fund - Trust Units	150,000	7,237
28Sep00		Acuity Pooled High Income Fund - Trust Units	155,560	11,740
16Oct00		Agnico-Eagle Mines Limited - Common Stock	1,000,000	100,000
28Sep00		At Road, Inc. - Common Shares	US$31,500	3,500
15Apr00		Baker QSC Coinvestors, L.P. - Capital Contribution	14,094,721	
02Oct00		Bank of Ireland Asset Management Limited - Units	557,249	38,705
02Sep00		Bank of Ireland Asset Management Limited - Units	2,100,000	146,846
12Oct00	#	BayStreetDirect.com Inc. - Special Warrants	1,470,000	294,000
05Oct00		BCG Ventures (U.S.), L.P. - Limited Partnership Interest	US$171,000	171,000
11Oct00		CC&L Money Market Fund - Units	633,000	633,000
16Oct00		DALSA Corporation - Special Warrants	8,000,000	1,000,000
20Sep00		Digital Matter Corporation - Special Warrants	832,501	475,715
30May00		e-Net (Latina) Inc. - Special Warrants	3,560,000	1,780,000
05Oct00		Grosvenor Services 2000 Limited Partnership - Limited Partnership Units	16,163,553	105
05Oct00		GS Delibrated Intent Limited Partnership - Class A Units	16,659,900	16
13Oct00		Heritage Concepts International Inc. - Units	150,000	416,667
12Oct00		Home Ticket Network Corporation - Special Warrants	650,300	3,096,667
20Sep00		Lifepoints Balanced Growth Fund - Units	56,566	511
27Sep00		Lifepoints Balanced Growth Fund - Units	65,343	595
29Sep00		Lifepoints Balanced Growth Fund - Units	71,274	645
22Sep00		Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Fixed Income Fund - Units	27,130	236
30Aug00		Lifepoints Balanced Income Fund - Units	1,000,000	9,424
15Sep00		Lifepoints Balanced Income Fund, Russell Global Equity Fund - Units	3,730	35
28Sep00		Lifepoints Balanced Income Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Long Term Growth Fund - Units	6,887	61

Trans. Date	Security	Price ($)	Amount
18Sep00	Lifepoints Balanced Income Fund - Units	17,530	166
03Oct00	Lifepoints Balanced Income Fund - Units	39,635	375
03Oct00	Lifepoints Balanced Income Fund, Russell Canadian Fixed Income Fund - Units	11,233	101
25Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	72,226	619
18Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund - Units	45,142	363
03Oct00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units	27,425	212
18Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	14,874	129
19Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units	28,066	220
02Oct00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Global Equity Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units	76,623	642
03Oct00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units	62,954	559
29Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units	17,654	128
27Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Russell Canadian Fixed Fund - Units	25,976	225
04Oct00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	42,493	360
19Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	152,386	1,278
25Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	4,709	44
18Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units	222,622	1,786
25Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	14,500	124
28Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Global Equity Fund, Russell Overseas Equity Fund - Units	322,107	2,782
05Oct00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Russell Canadian Fixed Income Fund - Units	34,644	296
04Oct00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units	106,083	939
19Sep00	Lifepoints Balanced Long Term Growth Fund - Units	39,174	319
02Oct00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units	55,648	419
06Oct00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Global Equity Fund - Units	118,912	1,003
22Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Global Equity Fund - Units	83,755	786
05Oct00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	3,275	28
19Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Overseas Equity Fund - Units	87,064	743

Trans. Date	Security	Price ($)	Amount
28Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units	31,285	230
26Sep00	Lifepoints Balanced Long Term Growth Fund - Units	806	6
15Sep00	Lifepoints Balanced Long Term Growth Fund, Russell Canadian Equity Fund, Russell Global Equity Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units	4,289	25
29Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Fixed Income Fund, Russell Canadian Equity Fund, Russell Global Equity Fund - Units	226,059	1,797
21Sep00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Income Fund - Units	1,817	15
05Oct00	Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	78,724	709
05Oct00	Lifepoints Long Term Growth Fund, Russell Canadian Equity Fund, Russell Global Equity Fund - Units	400	2
06Oct00	Minot Capital I, L.P. and Minot Capital II, L.P.	US$350,000	350,000
16Oct00	Minpro International Ltd. - Convertible Debentures Series B	$600,000	$600,000
29Oct00	Morgan Stanley Dean Witter Investment Management Inc.	2,100,000	176,585
13Oct00	Ozz Utiliy Management Ltd. - Common Shares	679,000	1,358,000
17Oct00	Rostrust Investments Inc. - 6.83% First Mortgage Bond due July 01/10	$46,700,000	$46,700,000
20Sep00	Russell Canadian Equity Fund, Russell US Equity Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	69,419	572
04Oct00	Russell Canadian Equity Fund, Russell US Equity Fund, Russell Overseas Equity Fund - Units	13,969	76
06Oct00	Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell US Equity Fund, Lifepoints Balanced Income Fund - Units	147,909	760
04Oct00	Russell Canadian Equity Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Income Fund - Units	132,819	775
21Sep00	Russell Canadian Equity Fund, Russell US Equity Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund - Units	49,288	394
03Oct00	Russell Canadian Equity Fund - Units	1,802	7
02Oct00	Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell US Equity Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	563,365	4,876
20Sep00	Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Unit	43	.3
27Oct00	Russell Canadian Equity Fund, Russell US Equity Fund, Russell Overseas Equity Fund, Lifepoints Long Term Growth Fund, Lifepoints Balanced Growth Fund - Units	25,472	196
19Sep00	Russell Canadian Equity Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Income Fund - Units	83,382	438
27Sep00	Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Lifepoints Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Overseas Equity Fund, Russell U.S. Equity Fund, Russell Global Equity Fund - Units	30,519	270
22Sep00	Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell US Equity Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	561,121	4,742
06Oct00	Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund - Units	1,133,171	7,500
19Sep00	Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Lifepoints Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Overseas Equity Fund, Russell U.S. Equity Fund, Russell Global Equity Fund - Units	31,859	281
18Sep00	Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell US Equity Fund - Units	73,976	331
03Oct00	Russell Canadian Equity Fund, Russell US Equity Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	1,184,818	10,561

Trans. Date	Security	Price ($)	Amount
21Sep00	Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund - Units	15,000	101
28Sep00	Russell Canadian Equity Fund - Units	1,173	4
27Sep00	Russell Canadian Equity Fund - Units	826	3
28Sep00	Russell Canadian Fixed Income Fund - Unit	102	.87
25Sep00	Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	336,941	3,004
22Sep00	Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund - Units	1,728	14
15Sep00	Russell Canadian Fixed Income Fund, Lifepoints Long Term Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Global Equity Fund - Units	2,223	18
28Sep00	Russell Canadian Fixed Income Fund, Lifepoints Long Term Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Global Equity Fund - Units	2,223	18
26Sep00	Russell Canadian Fixed Income Fund, Russell US Equity Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units	157,454	1,319
06Oct00	Russell Global Equity Fund - Units	4,602	45
15Sep00	Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Income Fund - Units	45,017	359
05Oct00	Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units	88,000	652
28Sep00	Russell US Equity Fund, Lifepoints Balanced Growth Fund - Units	5,108	39
29Sep00	Russell US Equity Fund - Units	43,861	278
02Oct00	Sanford C. Bernstein International Equity (Cap-weighted, Unhedged) Fund - Units	546,978	20,326
02Oct00	Sanford C. Bernstein International Equity (Cap-weighted, Unhedged) Fund - Units	36,668	1,362
02Oct00	Sanford C. Bernstein International Equity (Cap-weighted, Unhedged) Fund - Units	290,000	10,776
02Oct00	Sanford C. Bernstein International Equity (Cap-weighted, Unhedged) Fund - Units	170,000	6,317
12Oct00	Sanford C. Bernstein International Equity (Cap-weighted, Unhedged) Fund - Units	30,000	1,114
05Oct00	Sanford C. Bernstein U.S. Diversified Value Equity Fund - Units	2,981	100
02Oct00	Sanford C. Bernstein U.S. Diversified Value Equity Fund - Units	10,000	333
02Oct00	Sanford C. Bernstein U.S. Diversified Value Equity Fund - Units	3,004	100
06Oct00	Sentinel Hill Alliance Atlantis Equicap Millenium Limited Partnership - Limited Partnership Units	4,890,107	287
06Oct00	Stillwater Creek Limited Partnership - Class A and Class B Limited Partnership Units	9,243,360	15, 44 Resp.
07Sep00	Supratek Pharma Inc. - Special Warrants	500,000	5,157,220
12Oct00	Value Holdings, Inc. - Convertible Debentures	$1,518,800	$1,518,800
03Oct00	Zarix, Inc. - Series C Preferred Stock and Warrants	$US4,999,999, US$1,250,001	1,111,111, 277,778 Resp.
31Aug00	Zconnexx Corporation - Unit	150,000	1

Resale of Securities - (Form 45-501f2)

Date of Resale	Date of Orig. Purchase	Seller	Security	Price ($)	Amount
31Aug00	16Feb98	Jilco Realty Group Ltd.	Residential Equities Real Estate Investment Trust - Units	1,028,700	90,000

Notice of Intention to Distribute Securities Pursuant to Subsection 7 of Section 72 - (Form 23)

Seller	Security	Amount
Viceroy Resource Corporation	Channell Resources Ltd. - Common Shares	7,077,850
Mourin, Stanley	Western Troy Capital Resources Inc. - Common Shares	60,000
Hawkins, Stanley G.	Tandem Resources Ltd. - Common Shares	2,000,000
Paros Enterprises Limited	Acktion Corporation - Common Shares	2,000,000
Faye, Michael R.	Spectra Inc. - Common Shares	154,500
Malion, Andrew J.	Spectra Inc. - Common Shares	139,500

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Chapter 9

Legislation

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IN THIS ISSUE

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
AGF RSP MultiManager Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 25th, 2000
Mutual Reliance Review System Receipt dated October 26th, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
AGF Funds Inc.
Project #306905

Issuer Name:
AIM Canadian Leaders Fund
AIM Global Fund Inc. - AIM Global Sector Managers Class
AIM RSP Global Sector Managers Fund
AIM RSP Global Financial Services Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 30th, 2000
Mutual Reliance Review System Receipt dated October 31st, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
AIM Funds Management Inc.
Promoter(s):
AIM Funds Management Inc.
Project #308017

Issuer Name:
Altamira RSP Global Diversified Fund
Altamira RSP Global 20 Fund
Altamira RSP Health Sciences Fund
Altamira RSP Biotechnology Fund
Altamira RSP Global Telecommunications Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 31st, 2000
Mutual Reliance Review System Receipt dated November 1st, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Altamira Financial Services Ltd.
Promoter(s):
Altamira Investment Services Inc.
Project #308514

Issuer Name:
Amerindo Crossover Technology Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 24th, 2000
Mutual Reliance Review System Receipt dated October 26th, 2000
Offering Price and Description:
$75,000,000 - 7,500,000 Limited Partnership Units
Underwriter(s), Agent(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Capital Inc.
Dundee Securities Corporation
Goepel McDermid Inc.
HSBC Securities (Canada) Inc.
Yorkton Securities Inc.
Middlefield Securities Limited
Trilon Securities Corporation
Promoter(s):
Middlefield Management Inc.
Middlefield Group Limited
Project #306813

Issuer Name:
Agrium Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated October 30th, 2000
Mutual Reliance Review System Receipt dated October 30th, 2000
Offering Price and Description:
US$25,130,087 - 2,627,983 Common Shares and $50,000,000 6% Convertible Junior Subordinated Debentures due September 30, 2030
Underwriter(s), Agent(s) or Distributor(s):
Newcrest Capital Inc.
Promoter(s):
N/A
Project #307979

Issuer Name:
Bolivar Goldfields Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 25th, 2000
Mutual Reliance Review System Receipt dated October 26th, 2000
Offering Price and Description:
$22,000,000 - 22,000,000 Common Shares 11,000,000 Common Shares Purchase Warrants issuable upon the exercise of previously issued Special Warrants
Underwriter(s), Agent(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #307160

Issuer Name:
Cannect Networks Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 30th, 2000
Mutual Reliance Review System Receipt dated November 1st, 2000
Offering Price and Description:
$ * - * Class A Shares
Underwriter(s), Agent(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
N/A
Project #308389

Issuer Name:
Certicom Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form PREP Prospectus dated October 26th, 2000
Mutual Reliance Review System Receipt dated October 27th, 2000
Offering Price and Description:
$ * - 5,000,0000 Common Shares
Underwriter(s), Agent(s) or Distributor(s):
J.P. Morgan Securities Inc.
Dain Rauscher Incorporated
WIT Soundview Corporation
Yorkton Securities Inc.
TD Securities Inc.
Promoter(s):
N/A
Project #307622

Issuer Name:
Champion Bear Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated October 27th, 2000
Mutual Reliance Review System Receipt dated October 30th, 2000
Offering Price and Description:
Underwriter(s), Agent(s) or Distributor(s):
Jennings Capital Inc.
Promoter(s):
Richard D. Kantor
Project #307795

Issuer Name:
Clarington Global Income Fund
Clarington Digital Economy Class
Clarington Health Sciences Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 26th, 2000
Mutual Reliance Review System Receipt dated October 27th, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Clarington Fund Inc.
Promoter(s):
Clarington Sector Fund Inc.
Project #307269

Issuer Name:
Clarica Growth Fund
Clarica Asia and Pacific Rim Equity Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 27th, 2000
Mutual Reliance Review System Receipt dated October 30th, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Registered Dealer
Promoter(s):
Clarica Diversico Ltd.
Project #307818

Issuer Name:
Corner Bay Minerals Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 25th, 2000
Mutual Reliance Review System Receipt dated October 27th, 2000
Offering Price and Description:
$ * - * Units
Underwriter(s), Agent(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #307355

Issuer Name:
Critical Telecom Corp.
Principal Regulator - Saskatchewan
Type and Date:
Preliminary Prospectus dated October 30th, 2000
Mutual Reliance Review System Receipt dated October 31st, 2000
Offering Price and Description:
3,887,293 Class A Common Shares issuable upon exercise of 3,533,903 previously Issued Special Warrants
Underwriter(s), Agent(s) or Distributor(s):
Rampart Securities Inc.
IPO Capital Corp.
Promoter(s):
Oliver Cruder
Duane J. Sniezek
Project #308270

Issuer Name:
Dynamic Global Fund Corporation - Dynamic Canadian Value Class

Dynamic Global Fund Corporation - Dynamic Power Canadian Growth Class
Dynamic Global Fund Corporation - Dynamic Focus Plus Canadian Class
Dynamic Global Fund Corporation - Dynamic U.S. Value Class
Dynamic Global Fund Corporation - Dynamic Power U.S. Growth Class
Dynamic Global Fund Corporation - Dynamic Focus Plus U.S. Class
Dynamic Global Fund Corporation - Dynamic European Value Class
Dynamic Global Fund Corporation - Dynamic Power European Growth Class
Dynamic Global Fund Corporation - Dynamic International Value Class
Dynamic Global Fund Corporation - Dynamic Power International Growth Class
Dynamic Global Fund Corporation - Dynamic Far East Value Class
Dynamic Global Fund Corporation - Dynamic Global Precious Metals Class
Dynamic Global Fund Corporation - Dynamic Global Resources Class
Dynamic Global Fund Corporation - Dynamic Global Real Estate Class
Dynamic Global Fund Corporation - Dynamic Global Health Sciences Class
Dynamic Global Fund Corporation - Dynamic Global Technology Class
Dynamic Global Fund Corporation - Dynamic Global Financial Services Class
Dynamic Global Fund Corporation - Dynamic Money Market Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 31st, 2000
Mutual Reliance Review System Receipt dated November 1st, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Dynamic Mutual Funs Ltd.
Promoter(s):
Dynamic Mutual Funds Ltd.
Project #308458

Issuer Name:
GGOF Alexandria American Growth Fund
GGOF Alexandria Canadian Growth Fund
GGOF Alexandria Global Growth Fund
GGOF Alexandria RSP Global Growth Fund
GGOF Centurion American Value Ltd.
GGOF Centurion Canadian Value Fund
GGOF Centurion Global Value Fund
GGOF Centurion RSP American Value Fund
GGOF Guardian Canadian Bond Fund
GGOF Guardian Monthly High Income Fund
GGOF Guardian RSP International Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 27th, 2000
Mutual Reliance Review System Receipt dated October 31st, 2000
Offering Price and Description:
Mutual Funds Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Guardian Group of Funds
Promoter(s):
Guardian Group of Funds Ltd.
Project #308041

Issuer Name:
GWLIM Corporate Bond Fund
GWLIM Equity/Bond Fund
GWLIM Canadian Growth Fund
GWLIM Canadian Mid Cap Fund
GWLIM US Mid Cap Fund
GWLIM Emerging Industries Fund
GWLIM Ethics Fund
LLIM Canadian Growth Sectors Fund
LLIM US Equity Fund
LLIM US Growth Sectors Fund
Janus American Equity Fund
Janus Global Equity Fund
MAXXUM Money Market Fund
MAXXUM Income Fund
MAXXUM Canadian Balanced Fund
MAXXUM Dividend Fund
MAXXUM Canadian Equity Growth Fund
MAXXUM Natural Resource Fund
MAXXUM Precious Metals Fund
Conservative Folio Fund
Moderate Folio Fund
Balanced Folio Fund
Advanced Folio Fund
Aggressive Folio Fund
Fixed Income Folio Fund
Canadian Equity Folio Fund
Global Equity Folio Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 26th, 2000
Mutual Reliance Review System Receipt dated October 31st, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Quadrus Investment Services Limited
Promoter(s):
Scudder Maxxum Co.
Project #307279

Issuer Name:
GWLIM Corporate Bond Fund
GWLIM Equity/Bond Fund
GWLIM Canadian Growth Fund
GWLIM Canadian Mid Cap Fund
GWLIM US Mid Cap Fund
GWLIM Emerging Industries Fund
GWLIM Ethics Fund
LLIM Canadian Bond Fund
LLIM Income Plus Fund
LLIM Balanced Strategic Growth Fund
LLIM Canadian Diversified Equity Fund
LLIM Canadian Growth Sectors Fund
LLIM US Equity Fund
LLIM US Growth Sectors Fund
Scudder US Growth and Income Fund
Scudder Canadian Equity Fund
Scudder Greater Europe Fund
Scudder Pacific Fund
Scudder Emerging Markets Fund
Janus American Equity Fund
Janus Global Equity Fund
MAXXUM Money Market Fund
MAXXUM Income Fund
MAXXUM Canadian Balanced Fund
MAXXUM Dividend Fund
MAXXUM Canadian Equity Growth Fund
MAXXUM Natural Resource Fund
MAXXUM Precious Metals Fund
Templeton Canadian Equity Fund
Templeton International Equity Fund
Conservative Folio Fund
Moderate Folio Fund
Balanced Folio Fund
Advanced Folio Fund
Aggressive Folio Fund
Fixed Income Folio Fund
Canadian Equity Folio Fund
Global Equity Folio Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 26th, 2000
Mutual Reliance Review System Receipt dated October 31st, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Quadrus Investment Services Limited
Promoter(s):
MAXXUM Fund Management Inc.
Scudder Maxxum Co.
Project #307524

Issuer Name:
Inventronics Limited
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated October 24th, 2000
Mutual Reliance Review System Receipt dated October 25th, 2000
Offering Price and Description:
$11,5000,001 - 3,650,794 Common Shares issuable upon the exercise of 3.650,794 Special Warrants
Underwriter(s), Agent(s) or Distributor(s):
Taurus Capital Markets Ltd.
Acumen Capital Finance Partners Limited
Promoter(s):
N/A
Project #306890

Issuer Name:
Investors Global Financial Services Fund
Investors Pan Asian Growth Fund
Investors Canadian High Yield Money Market Fund
Principal Regulator - Manitoba
Type and Date:
Preliminary Simplified Prospectus dated October 30th, 2000
Mutual Reliance Review System Receipt dated October 31st, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Investors Group Financial Services Inc.
Promoter(s):
Investors Group Financial Services Inc.
Project #308419

Issuer Name:
Janus American Value Fund
Janus American Discovery Fund
Janus RSP American Value Fund
Janus RSP American Discovery Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 27th, 2000
Mutual Reliance Review System Receipt dated October 30th, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Registered Dealer
Promoter(s):
Scudder Maxxum Co.
Project #307831

Issuer Name:
Jones Heward RSP American Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 30th, 2000
Mutual Reliance Review System Receipt dated November 1st, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
N/A
Promoter(s):
Jones Heward Investment Counsel Inc.
Project #308423

Issuer Name:
Kinetek Pharmaceuticals, Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Prospectus dated October 19th, 2000
Mutual Reliance Review System Receipt dated October 20th, 2000
Offering Price and Description:
$ * - * Common Shares
Underwriter(s), Agent(s) or Distributor(s):
Goepel McDermid Inc.
CIBC World Markets Inc.
Yorkton Securities Inc.
National Bank Financial Inc.
Promoter(s):
N/A
Project #305789

Issuer Name:
Legend Money Market Pool
Legend Bond Pool
Legend Global Income Pool
Legend Canadian Dividend Pool
Legend Canadian Equity Pool
Legend U.S. Equity Pool
Legend U.S. Growth Equity Pool
Legend Global Equity Pool
Legend G7 Equity Pool
Legend European Equity Pool
Principal Regulator - Quebec
Type and Date:
Preliminary Simplified Prospectus dated October 26th, 2000
Mutual Reliance Review System Receipt dated October 26th, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Standard Life Mutual Fund Ltd.
Promoter(s):
N/A
Project #307321

Issuer Name:
Lehman Brothers 10 Uncommon Eurovalues Trust, 2001 Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 31st, 2000
Mutual Reliance Review System Receipt dated October 31st, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
First Defined Portfolio Management Inc.
Promoter(s):
First Defined Portfolio Management Inc.
Project #308295

Issuer Name:
NAR Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 31st, 2000
Mutual Reliance Review System Receipt dated November 1st, 2000
Offering Price and Description:
1,300,000 Common Shares, 650,000 Series A Warrants and 650,000 Series B Warrants issuable upon the exercise or deemed exercise of 1,300,000 Special Units ($1.56 per Special Units)
Underwriter(s), Agent(s) or Distributor(s):
Yorkton Securities Inc.
Promoter(s):
N/A
Project #308617

Issuer Name:
NCE Energy Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated October 18th, 2000
Mutual Reliance Review System Receipt dated October 23rd, 2000
Offering Price and Description:
$25,000,000 - * Trust Units
Underwriter(s), Agent(s) or Distributor(s):
Dundee Securities Corporation
Canaccord Capital Corporation
Promoter(s):
NCE Energy Management Corporation
Project #306172

Issuer Name:
Nework Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 27, 2000
Mutual Reliance Review System Receipt dated October 30th, 2000
Offering Price and Description:
937,500 Common Shares and 937,500 Common Share Purchase Warrants issuable upon exercise of 937,500 Special Warrants
Underwriter(s), Agent(s) or Distributor(s):
Wolverton Securities Ltd.
Promoter(s):
Alan Rootenberg
John M. Wiseman
Project #307729

Issuer Name:
Northwest Specialty Innovations Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 25th, 2000
Mutual Reliance Review System Receipt dated October 26th, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Marathon Mutual Funds Inc.
Promoter(s):
Northwest Mutual Funds Inc.
Project #306982

Issuer Name:
Phillips, Hager & North Global Equity Pension Trust
Principal Regulator - British Columbia
Type and Date:
Preliminary Simplified Prospectus dated October 24th, 2000
Mutual Reliance Review System Receipt dated October 27th, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Phillips Hager & North Investment Management Ltd.
Promoter(s):
Phillips Hager & North Investment Management Ltd.
Project #307542 & 305425

Issuer Name:
Phillips, Hager & North Global Equity Fund
Phillips, Hager & North Overseas Equity Fund
Phillips, Hager & North Overseas Equity Pension Trust
Principal Regulator - British Columbia
Type and Date:
Amended Preliminary Simplified Prospectus dated October 24th, 2000
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Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Phillips Hager & North Investment Management Ltd.
Promoter(s):
Phillips Hager & North Investment Management Ltd.
Project #307542 & 305425

Issuer Name:
RBC Capital Trust
Royal Bank of Canada
Principal Regulator - Quebec
Type and Date:
Preliminary Prospectus dated October 30th, 2000
Mutual Reliance Review System Receipt dated October 31st, 2000
Offering Price and Description:
Trust Capital Securities - Series 2011 (RBC TruCS)
Underwriter(s), Agent(s) or Distributor(s):
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
Merrill Lynch Canada Inc.
Goldman Sachs Canada Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Trilon Securities Corporation
Promoter(s):
N/A
Project #308146 & 308150

Issuer Name:
Royal Global Titans Fund
Royal Global Communications and Media Sector Fund
Royal Global Consumer Trends Sector Fund
Royal Global Financial Services Sector Fund
Royal Global Health Care Sector Fund
Royal Global Infrastructure Sector Fund
Royal Global Resources Sector Fund
Royal Global Technology Sector Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 30th, 2000
Mutual Reliance Review System Receipt dated October 31st, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Royal Mutual Funds, Inc.
Promoter(s):
Royal Mutual Funds, Inc.
Project #308039

Issuer Name:
Sobeys Inc.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated November 1st, 2000
Mutual Reliance Review System Receipt dated November 1st, 2000
Offering Price and Description:
$250,000,002 - 9,174,312 Common Shares
Underwriter(s), Agent(s) or Distributor(s):
Scotial Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Beacon Securities Limited
National Bank Financial Inc.
TD Securities Inc.
Dundee Securities Corporation
Promoter(s):
N\A
Project #308642

Issuer Name:
Spectra Securities Software Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 30th, 2000
Mutual Reliance Review System Receipt dated October 31st, 2000
Offering Price and Description:
5,412,740 Common Shares to be Issued upon the Exercise of 5,412,740 Special Warrants Issued on May 25, 2000
Underwriter(s), Agent(s) or Distributor(s):
Yorkton Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
Promoter(s):
N/A
Project #308262

Issuer Name:
TD TSE 300 Index Fund
TD TSE 300 Capped Index Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 31st, 2000
Mutual Reliance Review System Receipt dated October 31st, 2000
Offering Price and Description:
N/A
Underwriter(s), Agent(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #308347

Issuer Name:
Tempest Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated October 23rd, 2000
Mutual Reliance Review System Receipt dated October 25th, 2000
Offering Price and Description:
$5,000,000 to $8,000,000 - 5,000 to 8,000 Units
Underwriter(s), Agent(s) or Distributor(s):
Griffiths McBurney & Partners
Promoter(s):
A. Scott Dawson
Earl C. Fawcett
Harley L. Winger
Project #306800

Issuer Name:
Working Ventures II Technology Fund Inc.
Type and Date:
Preliminary Prospectus dated October 31st, 2000
Receipted November 1st, 2000
Offering Price and Description:
Net Asset Value per Share
Underwriter(s), Agent(s) or Distributor(s):
N/A
Promoter(s):
Working Ventures Investment Services Inc.
Project #308565

Issuer Name:
iUnits S&P/TSE 60 Index Participation Fund
Principal Regulator - Ontario
Type and Date:
Amended Prospectus dated October 23rd, 2000 to Prospectus dated October 4th, 2000
Mutual Reliance Review System Receipt dated 27th day of October, 2000
Offering Price and Description:
Mutual Fund Units - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Registered Dealer
Promoter(s):
N/A
Project #291872

Issuer Name:
Canadian Financial Services NT Corp.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated October 27th, 2000
Mutual Reliance Review System Receipt dated 27th day of October, 2000
Offering Price and Description:
Underwriter(s), Agent(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
BMO Nesbitt Burns Inc.
Project #295283

Issuer Name:
Hydrogenics Corporation
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated October 25th, 2000
Mutual Reliance Review System Receipt dated 25th day of October, 2000
Offering Price and Description:
Underwriter(s), Agent(s) or Distributor(s):
Salomon Smith Barney Canada Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Promoter(s):
N\A
Project #286530

Issuer Name:
CryoCath Technologies Inc.
Principal Regulator - Quebec
Type and Date:
Final Prospectus dated October 24th, 2000
Mutual Reliance Review System Receipt dated 25th day of October, 2000
Offering Price and Description:
$40,000,000.00 - 5,000,000 Common Shares
Underwriter(s), Agent(s) or Distributor(s):
Yorkton Securities Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Loewen, Ondaatje, McCutcheon Limited
Promoter(s):
N/A
Project #297760

Issuer Name:
Triax CaRTS Technology Trust
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated October 30th, 2000
Mutual Reliance Review System Receipt dated 31st day of October, 2000
Offering Price and Description:
Underwriter(s), Agent(s) or Distributor(s):
TD Securities Inc.
Merrill Lynch Canada Inc.
Promoter(s):
Triax Investment Management Inc.
Triax Capital Holdings Ltd.
Project #300394

Issuer Name:
Wenzel Downhole Tools Ltd.
Principal Regulator - Alberta
Type and Date:
Final Prospectus dated October 27, 2000
Mutual Reliance Review System Receipt dated 27th day of October, 2000
Offering Price and Description:
$7,500,000.00(maximum) - 3,000,000 Common Shares (maximum)
Underwriter(s), Agent(s) or Distributor(s):
Dominick & Dominick Securities Inc.
Promoter(s):
Donald Barber
Project #301578

Issuer Name:
Laurentian Bank of Canada
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated October 25th, 2000
Mutual Reliance Review System Receipt dated 26th day of October, 2000
Offering Price and Description:
$100,000,000.00 - 6.5 % Debentures, Series 9, Due 2011 (subordinated indebtedness)
Underwriter(s), Agent(s) or Distributor(s):
BLC Securities Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securiites Inc.
Scotial Capital Inc.
CIBC World Markets Inc.
HSBC Securities (Canada) Inc.
Merrill Lynch Canada Inc.
TD Securities Inc.
Promoter(s):
N/A
Project #304711

Issuer Name:
Fort Chicago Energy Partners L.P.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 30th, 2000
Mutual Reliance Review System Receipt dated 30th day of October 2000
Offering Price and Description:
$36,890,500.00 - 4,145,000 Class A Limited Partnership Units
Underwriter(s), Agent(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
Merrill Lynch Canada Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
Promoter(s):
N/A
Project #305632

Issuer Name:
Research In Motion Limited
Principal Jurisdiction - Ontario
Type and Date:
Final Short Form PREP Prospectus dated October 26th, 2000
Mutual Reliance Review System Receipt dated 26th day of October, 2000
Offering Price and Description:
$* - 6,000,000 Common Shares
Underwriter(s), Agent(s) or Distributor(s):
Merrill Lynch Canada Inc.
Credit Suisse First Boston Securities Canada Inc.
Goldman Sachs Canada Inc.
CIBC World Markets Inc.
Griffiths McBurney & Partners
Promoter(s):
N/A
Project #305865

Issuer Name:
BMO AIR MILES Money Market Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus and Annual Information Form dated October 25th, 2000
Mutual Reliance Review System Receipt dated 27th day of October, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
BMO Investments Inc.
Promoter(s):
BMO Investments Inc.
Project #296620

Issuer Name:
Merrill Lynch Triple A 50 Fund
Merrill Lynch Triple A 50 RSP Fund
Merrill Lynch Global Growth RSP Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus and Annual Information Form dated October 30th, 2000
Mutual Reliance Review System Receipt dated 31st day of October, 2000
Offering Price and Description:
Mutual Fund Securities - Net Asset Value
Underwriter(s), Agent(s) or Distributor(s):
Atlas Asset Management Inc.
Promoter(s):
Atlas Asset Management Inc.
Project #298749

Issuer Name:
Kalimantan Gold Corporation Limited
Type and Date:
Rights Offering dated October 20th, 2000
Accepted 25th day of October 2000
Offering Price and Description:
Underwriter(s), Agent(s) or Distributor(s):
N/A
Promoter(s):
N\A
Project #283007

Issuer Name:
Webhelp.com Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated September 20th, 2000
Withdrawn 24th day of October, 2000
Offering Price and Description:
Underwriter(s), Agent(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Promoter(s):
N/A
Project #299955

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Chapter 12

Registrations

12.1.1 Securities

Type	Company	Category of Registration	Effective Date
Change of Name	Penson Financial Services Canada Inc. Attention: Alain Falardeau 1 Place Ville-Marie, Suite 1900 Montreal, Quebec H3B 2C3	From: ECE Electronic Clearing Inc. To: Penson Financial Services Canada Inc.	Sept. 28/00
New Registration	Canada-Invest Direct Inc. Attention: Peter Lloyd Jones 130 King Street West Suite 3100 Toronto, ON M5X 1J9	Investment Dealer Equities Options	Oct. 20/00
New Recognition	3037835 Nova Scotia Limited 2365 Prince John Blvd. Mississauga, ON L5K 2J2	Exempt Purchaser	Oct. 25/00
New Recognition	1401798 Ontario Limited 78 The Bridle Path North York, ON M3B 2B1	Exempt Purchaser	Oct. 26/00
New Registration	Caldwell Investment Banking Inc. Attention: Stephen Charles Beckman 305 King Street West, Suite 505 Kitchener, ON N2G 1B9	Limited Market Dealer	Oct. 26/00
New Registration	Princeton Financial Group LLC Attention: Andre J. Bakhos 825 Georges Road North Brunswick, NJ 08902 USA	International Dealer	Oct. 27/00

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1 SRO Notices and Disciplinary Decisions

13.1.1 Andris Gravitis

NOTICE TO PUBLIC RE: DISCIPLINARY HEARING

October 30, 2000

RE: IN THE MATTER OF ANDRIS GRAVITIS

Toronto, Ontario – The Investment Dealers Association of Canada announced today that a hearing date has been set for the presentation, review and consideration of a Settlement Agreement by the Ontario District Council of the Association.

The Settlement Agreement between the Association Member Regulation staff and Mr. Andris Gravitis is in respect of Mr. Gravitis' conduct while he was employed and registered at Foster & Associates Financial Services Inc., a member of the Association. Mr. Gravitis is currently registered with Rampart Securities Inc.

The hearing is scheduled to commence at **10:00 a.m.** on **Wednesday, November 15, 2000,** at the Association's offices located at 1600 – 121 King Street West, Toronto, Ontario. The hearing is open to the public except as may be required for the protection of confidential matters.

If the Settlement Agreement is accepted by the Ontario District Council, the Association will issue a Bulletin setting out the terms of the settlement, including violation(s) committed, a summary of the agreed facts, and the discipline penalty imposed; copies of the Bulletin and Settlement Agreement will be made available.

Contact:

Kathleen O'Brien
Public Affairs Co-ordinator
(416) 943-6921

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Chapter 25

Other Information

25.1.1 Securities

TRANSFER WITHIN ESCROW

COMPANY NAME	DATE	FROM	TO	NO. OF WARRANTS
Toxin Alert Inc.	Oct 26/2000	Mr. W. T. Bodenhamer	G. Montegu Black	75,000
Toxin Alert Inc.	Oct 26/2000	Mr. W. T. Bodenhamer	Dr. George Jackowski	20,000
Toxin Alert Inc.	Oct 26/2000	Mr. W. T. Bodenhamer	Dr. Joseph Pusztai	2,000

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AIM RSP Global Financial Services Fund
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AIM RSP Global Sector Managers Fund
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