The Ontario Securities Commission

# OSC Bulletin

February 2, 2001

Volume 24, Issue 05

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

**The Ontario Securites Commission**
Cadillac Fairview Tower
Suite 800, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-597-0681 or 416-593-8314 or Toll Free 1-877-785-1555

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| Contact Centre: Inquiries, Complaints | Fax: 593-8122 |
| Capital Markets: Branch | Fax: 593-8240 |
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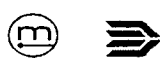

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# Chapter 1

# Notices / News Releases

## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**February 2, 2001**

**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
M5H 3S8

Telephone: 416- 597-0681 Telecopiers: 416-593-8348

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THE COMMISSIONERS

| | | |
|---|---|---|
| David A. Brown, Q.C., Chair | — | DAB |
| Howard Wetston, Q.C. Vice-Chair | — | HW |
| Kerry D. Adams, FCA | — | KDA |
| Stephen N. Adams, Q.C. | — | SNA |
| Derek Brown | — | DB |
| Robert W. Davis, FCA | — | RWD |
| John A. Geller, Q.C. | — | JAG |
| Robert W. Korthals | — | RWK |
| Mary Theresa McLeod | — | MTM |
| R. Stephen Paddon, Q.C | — | RSP |

SCHEDULED OSC HEARINGS

| | |
|---|---|
| Date to be announced | **Mark Bonham and Bonham & Co. Inc.**<br>s. 127<br>Mr. A.Graburn in attendance for staff.<br>Panel: TBA |
| Date to be announced | **Amalgamated Income Limited Partnership and 479660 B.C. Ltd.**<br>s. 127 & 127.1<br>Ms. J. Superina in attendance for staff.<br>Panel: TBA |
| Jan 31/2001 | **Frank Russell Canada Ltd.**<br>s. 111 (2)<br>Mr. Tim Moseley in attendance for staff.<br>Panel: JAGIKDA |
| Jan 23, 25 & 26/2001 | **YBM Magnex International et al.**<br>s. 127<br>Mr. M. Code and Ms. K. Daniels in attendance for staff.<br>Panel: HIW/DB/RWD |
| Feb 5 -16/ 2001 10:00 a.m. | **Noram Capital Management, Inc. and Andrew Willman**<br>s. 127<br>Ms. K. Wootton in attendance for staff.<br>Panel: TBA |

| | | |
|---|---|---|
| Mar 19/2001 | **Wayne Umetsu**<br><br>s. 60 of the Commodity Futures Act<br><br>Ms. K. Wootton in attendance for staff.<br><br>Panel: TBA | |
| Apr 16/2001-<br>Apr 30/2001<br>10:00 a.m. | **Philip Services Corp., Allen Fracassi, Philip Fracassi, Marvin Boughton, Graham Hoey, Colin Soule, Robert Waxman and John Woodcroft**<br><br>s. 127<br><br>Ms. K. Manarin & Ms. K. Wootton in attendance for staff.<br><br>Panel: TBA | |
| May 7/2001-<br>May 18/2001<br>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)**<br><br>s. 127<br>Mr. I. Smith in attendance for staff.<br><br>Panel: HIW / DB / MPC | |

**ADJOURNED SINE DIE**

**Terry G. Dodsley**

**Offshore Marketing Alliance and Warren English**

**First Federal Capital (Canada) Corporation and Monter Morris Friesner**

**Southwest Securities**

**Global Privacy Management Trust and Robert Cranston**

**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.**<br><br>s. 122<br><br>Ms. M. Sopinka in attendance for staff.<br><br>Ottawa |
| Jan 29/2001 - Jun 22/2001 | **John Bernard Felderhof**<br><br>Mssrs. J. Naster and I. Smith for staff.<br><br>Courtroom TBA, Provincial Offences Court<br><br>Old City Hall, Toronto |
| Jan 25/2000 10:00 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**<br><br>s. 122<br><br>Mr. D. Ferris in attendance for staff.<br>Provincial Offences Court<br>Old City Hall, Toronto |
| Jan 29/2001 - Feb 2/2001<br>Apr 30/2001 - May 7/2001<br>9:00 a.m. | **Einar Bellfield**<br><br>s. 122<br><br>Ms. K. Manarin in attendance for staff.<br><br>Courtroom C, Provincial Offences Court<br>Old City Hall, Toronto |

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

## 1.1.2 OSC Staff Notice 43-701 Re. NI 43-101

### OSC STAFF NOTICE 43-701
### REGARDING NATIONAL INSTRUMENT 43-101

National Instrument 43-101 came into force on February 1, 2001.

Section 2.3(3) of National Instrument 43-101: Standards of Disclosure for Mineral Projects, deals with the disclosure of a preliminary assessment that includes an economic evaluation which uses inferred mineral resources. Section 2.3(3) requires that:

"(a) the preliminary assessment is a material change in the affairs of the issuer or a material fact;

(b) the disclosure includes

(i) a proximate statement that the preliminary assessment is preliminary in nature, that it includes inferred mineral resources that are considered too speculative geologically to have the economic considerations applied to them that would enable them to be categorized as mineral reserves, and there is no certainty that the preliminary assessment will be realized, and

(ii) the basis for the preliminary assessment and any qualifications and assumptions made by the qualified person; and

(c) in Ontario, if the issuer is a reporting issuer in Ontario, the issuer shall deliver to the regulator in Ontario the disclosure it proposes to make together with the preliminary assessment and the technical report required pursuant to section 4.2 at least five business days prior to making the disclosure and the regulator in Ontario shall not have advised the issuer that it objects to the disclosure."

To ensure that all material delivered to the Director pursuant to Subsection 2.3 (3)(c) of NI 43-101 is dealt with expeditiously, please forward the relevant information to the attention of the Chief Mining Consultant.

If you require any additional information or clarification, please do not hesitate to contact the undersigned directly.

Kathryn Soden
Director, Corporate Finance
Telephone: 416-593-8149
Facsimile: 416-593-8177
Email: **ksoden@osc.gov.on.ca**

Deborah McCombe
Chief Mining Consultant
Telephone: 416-593-8151
Facsimile: 416-593-8177
Email: **dmccombe@osc.gov.on.ca**

## 1.2 News Releases

### 1.2.1 Junior Natural Resource Issuers

FOR IMMEDIATE RELEASE
January 29, 2001

**OSC CONSIDERING PERMITTING EXPIRY OF POLICY ON JUNIOR NATURAL RESOURCE ISSUERS**

**Toronto** - The Ontario Securities Commission has published for comment a Discussion Paper in connection with the Commission's preliminary determination to permit OSC Policy Statement No. 5.2 to expire on July 1, 2001.

Policy 5.2 regulates the financing and, to some extent, the operations of non-TSE listed junior natural resource reporting issuers in Ontario. It does not regulate technical reporting and disclosure, the focus of National Instrument 43-101 which will be effective February 1, 2001 and which will upgrade the requirements in these areas.

The Commission, in arriving at its preliminary determination, considered the following factors:

- As a result of Canada's exchange restructuring, junior natural resource issuers are now primarily listed on CDNX which has broadly equivalent regulation to that contained in Policy 5.2;
- As an Ontario only policy, Policy 5.2 is inconsistent with the objective of the CSA to establish consistent regulation across its member jurisdictions; and
- The Small Business Task Force recommended that financing requirements and regulatory regimes not be industry specific.

"We are constantly reviewing our regulation to ensure it continues to be relevant to the capital markets of Ontario," stated Kathy Soden, Director of Corporate Finance for the Ontario Securities Commission. "Our review of Policy 5.2 is consistent with this objective. We encourage market participants to comment on the Discussion Paper and look forward to reviewing their submissions."

Written submissions on the Discussion Paper should be addressed to the Secretary of the Commission and be received by March 30, 2001.

Reference:

Rowena McDougall
Senior Communications Officer
416-593-8117

Rick Whiler
Senior Accountant
Corporate Finance Branch
416-593-8127

### 1.2.2 Chapters Regarding Take-over Bid by Trilogy Retail Enterprises

FOR IMMEDIATE RELEASE
January 26, 2001

**OSC TO HOLD HEARING TO CONSIDER COMPLAINTS BY CHAPTERS REGARDING TAKE-OVER BID BY TRILOGY RETAIL ENTERPRISES**

**Toronto** -- The Commission will hold a hearing to consider complaints by Chapters Inc. regarding disclosure in the bid documents used by Trilogy Retail Enterprises LP in its take-over bid for Chapters and regarding certain purchases of Chapters shares made on Trilogy's behalf during the bid. The hearing will be held in the large hearing room on the 17th floor of the Commission's offices (20 Queen Street West, Toronto) on January 31, 2001 commencing at 10:00 a.m.

Reference:

Rowena McDougall
Senior Communications Officer
(416) 593-8117

### 1.2.3 Frank Russell Canada Ltd.

FOR IMMEDIATE RELEASE
January 30, 2001

**OSC TO CONSIDER APPLICATION BY FRANK RUSSELL CANADA LIMITED**

**Toronto** - The Ontario Securities Commission will hold a hearing to consider an application by Frank Russell Canada Limited regarding the applicability of clause 111(2)(a) of the *Securities Act* (Ontario). Specifically, Frank Russell Canada Limited is seeking a determination from the Commission that mutual funds managed by it are entitled to continue to hold shares of Royal Bank of Canada and Toronto-Dominion Bank, even though the manager of those funds has a distribution contract with subsidiaries of those banks.

The hearing will be held in the small hearing room at the OSC (20 Queen Street West, Toronto, 17th floor), on January 31, 2001 at 10:00 a.m.

Frank Russell Canada Limited's application is available to the public from the OSC mail room, 20 Queen Street West, 19th Floor.

Reference:

Rowena McDougall
Senior Communications Officer
(416) 593-8117

### 1.2.4 OSC Declines To Grant Orders Requested by Chapters - Trilogy 's Take-over Bid

FOR IMMEDIATE RELEASE
January 31, 2001

**OSC DECLINES TO GRANT ORDERS REQUESTED BY CHAPTERS IN RESPECT OF TRILOGY ENTERPRISES' TAKE-OVER BID**

**Toronto** - The Ontario Securities Commission held a hearing today to consider two applications by Chapters regarding the take-over bid by Trilogy Retail Enterprises LP for common shares of Chapters. The first application concerned a complaint by Chapters regarding disclosure in Trilogy's take-over bid documents. Chapters withdrew this application at the hearing and consequently, no order was made by the Commission in respect of this complaint.

The second application concerned a complaint by Chapters regarding certain purchases of Chapters shares made on Trilogy's behalf during the bid. Chapters had requested that the Commission order Trilogy to amend its offer so that it was an offer for all of the Chapters common shares or, alternatively, that the take-over bid be cease-traded. At the conclusion of the hearing, the Commission dismissed Chapters' application and declined to grant the relief it had requested.

Reasons for the Commission's decision will be issued in due course.

Reference:

Rowena McDougall
Senior Communications Officer
(416) 593-8117

# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Municipal Bankers Corporation - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Issuer has only four securityholders - 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 ALBERTA, SASKATCHEWAN, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA AND NEWFOUNDLAND**

**AND**

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

**AND**

**IN THE MATTER OF MUNICIPAL BANKERS CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Ontario, Quebec, New Brunswick, Nova Scotia and Newfoundland (collectively, the "Jurisdictions") has received an application of Municipal Bankers Corporation (the "Filer") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the Filer be deemed to have ceased to be a reporting issuer or equivalent thereof under the Legislation.

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

**AND UPON** the Filer having represented to the Decision Makers that:

1. The Filer subsists under the provisions of the *Business Corporations Act* (Ontario) (the "OBCA"), is a reporting issuer in each of the Jurisdictions and is not in default of any of the requirements of the Legislation.

2. The Filer's principal executive offices are located at 40 Holly Street, Suite 202, Toronto, Ontario, M4S 3C3.

3. The authorized capital of the Filer consists of an unlimited number of common shares (the "MBC Common Shares"), an unlimited number of class A non-voting shares (the "MBC Class A Non-Voting Shares"), 5,000,000 first preference shares, issuable in series ("MBC First Preference Shares"), 3,000,000 second preference shares, issuable in series and an unlimited number of new preference shares. As of the date hereof, 3,010,977 MBC Common Shares, 438,888.6 MBC Class A Non-Voting Shares, 4,733,784 new preference shares, no MBC First Preference Shares and no second preference shares are issued and outstanding.

4. As a result of a plan of arrangement under the OBCA, all of the issued and outstanding securities of the Filer are owned by four securityholders, namely Mountbirch Limited, Municipal Bankers Corporation (1931) Limited, Nancy G. Rotstein and Maxwell L. Rotstein.

5. On November 1, 2000, the MBC Common Shares, MBC Class A Non-Voting Shares and MBC First Preference Shares, Series A were delisted from The Toronto Stock Exchange and no securities of the Filer are listed or quoted on any exchange or market.

6. The Filer has no other securities, including debt securities, outstanding.

7. The Filer does not intend to seek public financing by way of an offering of its securities.

**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 Filer is deemed to have ceased to be a reporting issuer or the equivalent thereof under the Legislation.

January 18, 2001.

Iva Vranic
Manager, Corporate Finance

### 2.1.2 The Multi Asset Multi Style Multi Manager Pools - MRRS Decision

**Headnote**

Relief from conflicts provisions to permit fund-on-fund structure.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S5, as amended, ss. 111 and 117.

**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 THE MULTI ASSET MULTI STYLE MULTI MANAGER POOLS:**

**GLOBAL EQUITY RSP POOL**
**US EQUITY POOL**
**OVERSEAS EQUITY POOL**
**EMERGING MARKETS EQUITY POOL**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application (the "Application") from Frank Russell Canada Limited ("FRC"), and the Multi Asset Multi Style Multi Manager Pools - Global Equity RSP Pool (the "Top Fund") and US Equity Pool, Overseas Equity Pool and Emerging Markets Equity Pool (the "Underlying Funds") for an decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the following provisions of the Legislation (the "Applicable Requirements") shall not apply in respect of certain investments to be made by the Top Fund in the Underlying Funds:

a. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder; and

b. the requirements contained in the Legislation requiring a management company to file a report or in British Columbia, a mutual fund manager, relating to a purchase or sale of securities between the mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies.

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

**AND WHEREAS** it has been represented by FRC to the Decision Makers that:

a. FRC is a corporation established under the laws of Ontario. FRC is the manager and promoter of the Top Fund and the Underlying Funds.

b. The Top Fund and the Underlying Funds are open-ended investment trusts established under the laws of the Province of Ontario. The Top Fund and the Underlying Funds are reporting issuers (or equivalent) under the Legislation and are not in default of any requirement of the Legislation or the rules and regulations made thereunder (the "Regulations"). Retail class and institutional class units of the Top Fund and the existing Underlying Funds are qualified for distribution pursuant to a simplified prospectus and annual information form dated February 3, 2000.

c. To achieve its investment objective, the Top Fund will invest in the Underlying Funds an aggregate amount that shall not exceed 22.5% (the "Permitted Aggregate Investment") of the assets of the Top Fund, subject to a variation to account for market fluctuations as described in paragraph d.

d. To achieve its investment objective, the Top Fund invests a fixed percentage of the net assets of the Top Fund in securities of each Underlying Fund (the "Fixed Percentages"), subject to a variation of 2.5% above or below the Fixed Percentages (the "Permitted Ranges") to account for market fluctuations.

e. The prospectus for the Top Fund will disclose the investment objectives, investment strategies, risks and restrictions of the Top Fund and the Underlying Funds, the Fixed Percentages, the Permitted Ranges and the Permitted Aggregate Investment.

f. Except to the extent evidenced by this Decision and specific approvals granted by the Decision Makers pursuant to National Instrument 81-102 Mutual Funds ("NI 81-102"), the investments by the Top Fund in the Underlying Funds have been structured to comply with the investment restrictions of the Legislation and NI 81-102.

g. In the absence of this Decision, pursuant to the Legislation, the Top Fund is prohibited from knowingly making or 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. As a result, in the absence of this Decision the Top Fund would be required to divest itself of any investments referred to in clause c. hereof.

h. In the absence of this Decision, the Legislation requires FRC to file a report on every purchase or sale of securities of the Underlying Funds by the Top Fund.

**AND WHEREAS** under the System, this MRRS Decision Document evidences the Decision of each Decision Maker;

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Applicable Requirements shall not apply so as to prevent the Top Fund from making and holding an investment in securities of the Underlying Funds.

**PROVIDED THAT IN RESPECT OF** any investment by the Top Fund in securities of the Underlying Funds:

1. the Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with matters in section 2.5 of National Instrument 81-102.

2. the Decision shall only apply if, at the time the Top Fund makes or holds an investment in its Underlying Funds, the following conditions are satisfied:

   a) the securities of both the Top Fund and the Underlying Funds are being offered for sale in the jurisdiction of the Decision Maker pursuant to a simplified prospectus and annual information form which have been filed with and accepted by the Decision Maker;

   b) the investment by the Top Fund in the Underlying Funds is compatible with the fundamental investment objectives of the Top Fund;

   c) the simplified prospectus discloses the intent of the Top Fund to invest in securities of the Underlying Funds, the names of the Underlying Funds, the Fixed Percentages and the Permitted Ranges within which such Fixed Percentages may vary, and the Permitted Aggregate Investment;

   d) the Underlying Funds are not mutual funds whose investment objective includes investing directly or indirectly in other mutual funds;

   e) the Top Fund invests its assets (exclusive of cash and cash equivalents) in the Underlying Funds in accordance with the Permitted Aggregate Investment and the Fixed Percentages disclosed in the simplified prospectus;

   f) the Top Fund 's holding of securities in the Underlying Funds does not deviate from the Permitted Ranges;

   g) any deviation from the Fixed Percentages is caused by market fluctuations only;

   h) if an investment by the Top Fund in any of the Underlying Funds has deviated from the Permitted Ranges as a result of market fluctuations, the Top Fund's investment portfolio was re-balanced to comply with the Fixed Percentages on the next day on which the net asset value was calculated following the deviation;

   i) if the Fixed Percentages and the Underlying Funds which are disclosed in the prospectus have been changed, either the simplified prospectus has been amended or a new simplified prospectus filed to reflect the change, and the securityholders of the Top Fund have been given at least 60 days' notice of the change;

   j) there are compatible dates for the calculation of the net asset value of the Top Fund and the Underlying Funds for the purpose of the issue and redemption of the securities of such mutual funds;

   k) no sales charges are payable by the Top Fund in relation to its purchases of securities of the Underlying Funds;

   l) no redemption fees or other charges are charged by an Underlying Fund in respect of the redemption by the Top Fund of securities of the Underlying Fund owned by the Top Fund;

   m) no fees or charges of any sort are paid by the Top Fund and the Underlying Funds, by their respective managers or principal distributors, or by any affiliate or associate of any of the foregoing entities, to anyone in respect of the Top Fund's purchase, holding or redemption of the securities of the Underlying Funds;

   n) the arrangements between or in respect of the Top Fund and the Underlying Funds are such as to avoid the duplication of management fees;

   o) any notice provided to securityholders of an Underlying Fund as required by applicable laws or the constating documents of that Underlying Fund, has been delivered by the Top Fund to its securityholders along with all voting rights attached to the securities of the Underlying Fund which are directly owned by the Top Fund;

p) all of the disclosure and notice material prepared in connection with a meeting of securityholders of the Underlying Funds and received by the Top Fund has been provided to its securityholders, the securityholders have been permitted to direct a representative of the Top Fund to vote its holdings in the Underlying Fund in accordance with their direction, and the representative of the Top Fund has not voted its holdings in the Underlying Funds except to the extent the securityholders of the Top Fund have directed;

q) in addition to receiving the annual and, upon request, the semi-annual financial statements, of the Top Fund, securityholders of the Top Fund have received the annual and, upon request, the semi-annual financial statements of the Underlying Funds in either a combined report, containing financial statements of the Top Fund and the Underlying Funds, or in a separate report containing the financial statements of the Underlying Funds; and

r) to the extent that the Top Fund and the Underlying Funds do not use a combined simplified prospectus and annual information form containing disclosure about the Top Fund and the Underlying Funds, copies of the simplified prospectus and annual information form of the Underlying Funds have been provided upon request to securityholders of the Top Fund and this right is disclosed in the prospectus of the Top Fund.

December 22, 2000.

"Howard I. Wetston" "J.A. Geller"

## 2.1.3 Crownjoule Exploration Ltd. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - decision deeming a corporation to have ceased to be a reporting issuer after the acquisition of all of its outstanding securities pursuant to a take-over bid.

**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, SASKATCHEWAN AND ONTARIO**

**AND**

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

**AND**

**IN THE MATTER OF**
**CROWNJOULE EXPLORATION LTD.**

**MRRS DECISION DOCUMENT**

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Alberta, Saskatchewan and Ontario (the "Jurisdictions") has received an application from CrownJoule Exploration Ltd. ( the "Corporation") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the Corporation be deemed to have ceased to be a reporting issuer 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** the Corporation has represented to the Decision Makers that:

   3.1 the Corporation was incorporated on October 4, 1996 pursuant to the *Business Corporations Act* (Alberta);

   3.2 the head office of the Corporation is located in Calgary, Alberta;

   3.3 the authorized capital of the Corporation consists of an unlimited number of common shares (the "Common Shares") and an unlimited number of preferred shares issuable in series, of which 14,320,078 Common Shares and no preferred shares are issued and outstanding;

3.4 the Corporation is a reporting issuer in each of the Jurisdictions;

3.5 other than the failure to file interim financial statements for the quarters ended July 31, 2000 and October 31, 2000 which were due on September 29, 2000 and December 30, 2000 respectively, the Corporation is not in default of any of the requirements of the Legislation;

3.6 pursuant to a take-over bid dated April 4, 2000, followed by a subsequent compulsory acquisition pursuant to the *Business Corporations Act* (Alberta), on July 5, 2000 Belair Energy Corporation ("Belair") acquired all of the Common Shares of the Corporation;

3.7 the Corporation has no securities, including debt securities, currently issued and outstanding, other than the Common Shares held by Belair;

3.8 the Common Shares of the Corporation were delisted from The Toronto Stock Exchange effective August 10, 2000, and as a result, there are no securities of the Corporation listed or quoted on any exchange or market in Canada or elsewhere; and

3.9 the Corporation 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 pursuant to the Legislation is that the Corporation is deemed to have ceased to be a reporting issuer effective as of the date hereof.

**DATED** at Calgary, Alberta this 19th day of January, 2001.

Patricia Johnston
Director, Legal Services & Policy Development

## 2.1.4 CIBC World Markets Inc. et al. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Issuers are each a "related issuer" in respect of the Filer - Filer exempt from the requirement in the Legislation that an independent underwriter underwrite a portion of the distribution equal to the largest portion being underwritten by a non-independent underwriter.

**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.

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

**AND**

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

**AND**

**IN THE MATTER OF CIBC WORLD MARKETS INC.,**

**AND**

**WEBHELP INC. AND WEBHELP CANADA INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Ontario, Quebec and Newfoundland (the "Jurisdictions") has received an application from CIBC World Markets Inc. (the "Filer") 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, where the issuer is a related issuer (or the equivalent) of the registrant unless a portion of the distribution at least equal to that portion underwritten by non-independent underwriters is underwritten by an independent underwriter, shall not apply to the Filer in respect of a proposed distribution (the "Offering") of common shares (the "Common Shares") of Webhelp Inc. ("Webhelp") and exchangeable shares (the "Exchangeable Shares") of Webhelp Canada Inc. ("Webhelp Canada"), pursuant to a prospectus (the "Prospectus");

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

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

1. Webhelp was incorporated under the laws of the State of Delaware on May 27, 1999, under the name Blue Sky Ventures, Inc. On December 2, 1999, the name of Webhelp was changed to Webhelp.com Inc. On October 20, 2000, the name of Webhelp was changed to Webhelp Inc. Webhelp is currently not a reporting issuer under the Act.

2. Webhelp Canada was incorporated under the laws of the Province of Ontario on November 19, 1999. Webhelp Canada is a wholly owned subsidiary of Webhelp and is currently not a reporting issuer under the Act.

3. The head office of the Filer is located in Toronto, Ontario.

4. On March 22, 2000, Webhelp filed a registration statement on Form F-1 (the "Registration Statement") with the United States Securities and Exchange Commission, and on March 28, 2000, Webhelp filed a preliminary prospectus qualifying the Common Shares with the securities regulatory authority in each of the provinces of Canada. The preliminary prospectus was withdrawn on June 17, 2000. The Registration Statement was amended on August 31, 2000. An updated preliminary prospectus qualifying the Common Shares was filed with the securities regulatory authority in each of the provinces of Canada on September 22, 2000. At the time of the initial filings, Webhelp had contemplated an initial public offering of common shares in Canada and the United States. It is now contemplated that there will be an offering in Canada of both Common Shares by Webhelp and Exchangeable Shares by Webhelp Canada (collectively, the "Offered Shares"). The Common Shares may also be offered in the United States on a private placement basis.

5. Webhelp and Webhelp Canada filed a preliminary prospectus ("the Preliminary Prospectus") qualifying the distribution of the Offered Shares with the securities regulatory authority in each of the provinces of Canada on October 24, 2000, and will file the Prospectus as soon as possible thereafter.

6. There is currently no public market for the Offered Shares. An application has been made to list the Offered Shares for trading on the Toronto Stock Exchange.

7. The Filer along with RBC Dominion Securities Inc. ("RBC DS") and Yorkton Securities Inc. ("Yorkton") (collectively, the "Underwriters") are proposing to act as underwriters in connection with the offering.

8. The approximate proportionate share of the Offering underwritten by each of the Underwriters is expected to be as follows:

| Underwriter Name | Proportionate Share of the Offering |
|---|---|
| The Filer | 50% |
| RBC DS | 35% |
| Yorkton | 15% |

9. An affiliate of the Filer (the "Affiliate"), CIBC World Markets Corp., acquired an aggregate of 3,671,329 shares of Webhelp Series B preferred stock in December 1999, at a purchase price of $8.17 per share, for an aggregate purchase price of approximately $30,000,000. On October 24, 2000, the Affiliate acquired an additional 611,888 shares of Series B preferred stock. The Series B preferred stock is voting and there are 4,283,217 shares issued and outstanding, of which the Affiliate owns 100%. Each share of Series B preferred stock is convertible into 1.241 shares of Common Stock and the shares of Series B preferred stock held by the Affiliate will automatically be converted into an aggregate of 5,316,642 shares of Common Stock upon completion of the Offering.

10. On October 24, 2000, the Affiliate was issued a warrant to purchase shares of Common Stock. The warrant entitles the Affiliate to purchase Common Stock at the initial public offering price for a period of five years after completion of the Offering. The Affiliate will be entitled to purchase additional shares of Common Stock only to the extent that the value of Webhelp before giving effect to the Offering is below $155.5 million.

11. Accordingly, Webhelp and Webhelp Canada may each be considered to be a "related issuer" of the Filer within the meaning of the Legislation.

12. Neither Webhelp nor Webhelp Canada is a "related issuer" nor a "connected issuer", as each term is defined in the Legislation in respect of RBC DS and Yorkton. RBC DS and Yorkton (the "Independent Underwriters") are both independent underwriters as defined in draft Multi-Jurisdictional Instrument 33-105 *Underwriting Conflicts* (the "Proposed Instrument").

13. Because Webhelp and Webhelp Canada may be considered related issuers of the Filer, the underwriting syndicate may not comply with the proportional requirements of the Legislation.

14. The nature and details of the relationship between Webhelp, Webhelp Canada, the Filer, the Affiliate and the Independent Underwriters will be described in each of the Preliminary Prospectus and the Prospectus, and the Prospectus will contain the information required by Appendix C to the Proposed Instrument.

15. The decision to issue the Offered Securities, including the determination of the terms of the distribution, were made through negotiations among Webhelp, Webhelp

Canada and the Underwriters without the involvement of the Affiliate.

16. The Filer is registered under the Act in the categories of "broker" and "investment dealer".

17. The Filer will not benefit in any manner from the Offering other than the payment of its fees in connection therewith.

18. RBC DS will underwrite at least 20 percent of the dollar value of the Offering and the Independent Underwriters will participate in the due diligence relating to the Offering and in the structuring and pricing of the Offering. The Prospectus will identify the Independent Underwriters and will disclose the role of the Independent Underwriters in the structuring and pricing of the Offering and in the due diligence activities performed by the Underwriters.

19. The certificate in each of the Preliminary Prospectus and the Prospectus will be signed by the Underwriters, including each of the Independent Underwriters.

**AND WHEREAS** pursuant to the System this MRRS 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 Maker with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers, under the Legislation, is that the Independent Underwriter Requirement shall not apply to the Filer in connection with the Offering provided:

(i) RBC DS and Yorkton participate in the offering as stated in paragraph 18 above;

(ii) the Prospectus contains the disclosure stated in paragraph 18 above; and

(iii) the relationship between the Webhelp, Webhelp Canada and the Filer is disclosed in the Prospectus.

December 13, 2000.

"John A. Geller" "Robert W. Davis"

## 2.1.5 Scotia Capital Inc. - MRRS Decision

**Headnote**

MRRS - Mutual Reliance Review System for Exemptive Relief Applications - Issuer is a "connected issuer" but not a "related issuer" of 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 Instrument, and is not a "related issuer" of the registrant underwriters as defined in the Instrument.

**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., 219(1), 224(1)(b), 233.

**Rules Cited**

Proposed Multi-jurisdictional Instrument 33-105 - Underwriting Conflicts (1998) 21 OSCB 781.

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

**AND**

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

**AND**

**IN THE MATTER OF**
**SCOTIA CAPITAL INC., TD SECURITIES INC.,**
**CIBC WORLD MARKETS INC. AND**
**RBC DOMINION SECURITIES INC.**

**MRSS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "**Decision Maker**") in each of British Columbia, Alberta, Ontario, Québec and Newfoundland (the "**Jurisdictions**") has received an application from Scotia Capital Inc., TD Securities Inc., CIBC World Markets Inc. and RBC Dominion Securities Inc. (collectively, the "**Applicants**") for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the requirement contained in the Legislation which restricts a registrant from participating in a distribution of securities of a connected issuer shall not apply to the Applicants in connection with the proposed offering (the "**Offering**") of subscription receipts (the "**Subscription Receipts**") by Superior Propane Income Fund

(the "**Issuer**") to be made by means of a short form prospectus (the "**Prospectus**");

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

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

1. The Applicants are registrants under the Legislation, whose head offices are located in the Province of Ontario.

2. The Issuer is a trust governed by the laws of the Province of Alberta.

3. The Issuer was established as a limited purpose trust and its activities are restricted to owning, acquiring, holding and transferring the securities of Superior Propane Inc. ("**Superior**"), a national retailer of propane gas and services, and other ancillary purposes. Superior is a wholly-owned Subsidiary of the Issuer.

4. The Issuer is a reporting issuer under the securities legislation of each of the provinces of Canada. The Issuer's outstanding trust units are listed on The Toronto Stock Exchange.

5. The Issuer has a market capitalization in excess of $700 million.

6. The Issuer intends to enter into an underwriting agreement with a syndicate of underwriters including the Applicants and BMO Nesbitt Burns Inc., Merrill Lynch Canada Inc. and National Bank Financial Inc. (collectively the "**Underwriters**") whereby the Issuer will agree to issue and sell, and the Underwriters will agree to purchase, as principals, the Subscription Receipts.

7. The Issuer will file a preliminary short form prospectus (the "**Preliminary Prospectus**") and the Prospectus with the securities regulatory authorities in each of the provinces of Canada in order to qualify the Subscription Receipts for distribution in those provinces.

8. Superior currently has credit facilities (collectively, the "**Credit Facilities**") with Canadian chartered banks (the "**Banks**") of which the Applicants are subsidiaries. As at the date hereof, the following amounts are outstanding under the Credit Facilities:

| | |
|---|---|
| Bank of Nova Scotia | $60 million |
| Toronto Dominion Bank | $105 million |
| Canadian Imperial Bank of Commerce | $57.5 million |

In addition, Superior has available to it a credit facility of up to $25 million with Royal Bank of Canada. As at the date hereof, the Issuer has a nil outstanding balance under this credit facility.

9. The proceeds of the Offering, before deducting the Underwriters' fees and expenses of the Offering, are currently expected to be approximately Cdn. $97 million. The proceeds will be used by the Issuer to subscribe for a subordinated promissory note to be issued by Superior. Superior will use these funds in part to repay a portion of the Credit Facilities.

10. Accordingly, the Issuer may be considered a "connected issuer" (or equivalent) (within the meaning of the Legislation and Proposed Multi-Jurisdictional Instrument 33-105 -- Underwriting Conflicts ("Proposed Instrument 33-105")) of the Applicants. The Issuer is not a "related issuer" (or equivalent) (within the meaning of the Legislation or Proposed Instrument 33-105) of the Applicants.

11. The proportionate percentage share of the Offering to be underwritten by each of the Applicants is as follows:

| | |
|---|---|
| Scotia Capital Inc. | 30% |
| TD Securities Inc. | 25% |
| CIBC World Markets Inc. | 9% |
| RBC Dominion Securities Inc. | 9% |

12. The Underwriters, in connection with the Offering, do not comply with the proportional requirements of the Legislation.

13. The nature and details of the relationship between the Issuer, the Applicants and the Banks will be described in the Preliminary Prospectus and the Prospectus as prescribed by Proposed Instrument 33-105, including, without limitation, the information specified in Appendix "C" of Proposed Instrument 33-105. The Preliminary Prospectus and the Prospectus will further contain a certificate signed by each Underwriter in accordance with Item 21.2 of Form 44-101F3 to National Instrument 44-101.

14. The Applicants will receive no benefit relating to the Offering other than the payment of their fees in connection therewith.

15. The decision to issue the Subscription Receipts, including the determination of the terms of the distribution, was made through negotiations between the Issuer and the Underwriters without involvement of the Banks.

16. The Applicants advise that the Issuer is in good financial condition and that it is not a "specified party" as defined in Proposed Instrument 33-105.

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

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

**IT IS THE DECISION** of the Decision Makers under the Legislation that the requirement contained in the Legislation which restricts a registrant from participating in a distribution of securities of a connected issuer shall not apply to the Applicants in connection with the Offering by the Issuer to be made by means of the Prospectus provided that:

1. The Prospectus contains the information required by Appendix C to Proposed Instrument 33-105; and

2. At the time of the Offering:

   (a) the Issuer is not a specified party (as defined in Proposed Instrument 33-105); and

   (b) the Issuer is not a related issuer (as defined in the Legislation and in Proposed Instrument 33-105) of any of the Underwriters.

January 24, 2001.

"Howard I. Wetston" "Theresa McLeod"

## 2.1.6 Ketch Oil & Gas Ltd. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - corporation deemed to have ceased to be a reporting issuer after all of its outstanding securities were acquired 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, SASKATCHEWAN,**
**ONTARIO AND QUEBEC**

**AND**

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

**AND**

**IN THE MATTER OF**
**KETCH OIL & GAS LTD.**

**MRRS DECISION DOCUMENT**

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Ontario and Quebec (the "Jurisdictions") has received an application from Ketch Oil & Gas Ltd. ("Ketch") for a decision under the securities legislation of the Jurisdictions (the "Legislation") declaring that Ketch is deemed to have ceased 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** Ketch has represented to the Decision Makers that:

   3.1 Ketch (formerly, Highland Energy Inc.) is a corporation amalgamated under the *Business Corporations Act* (Alberta) on December 31, 1997 and is a reporting issuer, or the equivalent, under the Legislation;

   3.2 Ketch's principal office is located in the Calgary, Alberta;

   3.3 Ketch is not in default of any of its obligations as a reporting issuer, or the equivalent, under the Legislation, other than a failure to file second and third quarter interim financial statements;

3.4 the authorized capital of Ketch consists of an unlimited number of common shares (the "Common Shares") of which 33,660,151 were issued and outstanding as of April 4, 2000, and an unlimited number of Class C preferred shares none of which are issued and outstanding;

3.5 pursuant to a take-over bid and a subsequent compulsory acquisition, Ketch Energy Ltd. (formerly, Interaction Resources Ltd.) acquired all of the outstanding Common Shares by June 20, 2000;

3.6 Ketch's Common Shares were delisted from the CDNX following the close of trading on August 3, 2000, and Ketch has no securities listed or quoted on any exchange or market in Canada.

3.7 Ketch has no securities, including debt securities, outstanding other than the Common Shares, and 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 Ketch is deemed to have ceased to be a reporting issuer, or the equivalent thereof under the Legislation effective as of the date of this Decision.

January 22, 2001.

Patricia M. Johnston
Director, Legal Services & Policy Development

## 2.1.7 Trimac Corporation - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - corporation is deemed to have ceased to be a reporting issuer after a wholly owned subsidiary of another issuer acquired all of the corporation's outstanding securities. The corporation and the subsidiary were subsequently merged.

**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, 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 TRIMAC CORPORATION**

**MRRS DECISION DOCUMENT**

1. **WHEREAS** the local securities authority or regulator (the "Decision Makers") in each of the Provinces of Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from Trimac Corporation ("Trimac") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that Trimac be deemed to have ceased to be a reporting issuer or the equivalent 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** Trimac has represented to the Decision Makers that:

3.1 Trimac was continued after an amalgamation under the *Business Corporations Act* (Alberta) of Trimac Corporation and 890521 Alberta Ltd. ("Newco") effective November 23, 2000;

3.2 Trimac is a reporting issuer, or the equivalent, in each Jurisdiction and is not in default of any of the requirements of the Legislation other than a failure to file third quarter interim financial statements;

3.3 Trimac's head office is located in Calgary, Alberta.

3.4 Trimac's authorized capital consists of an unlimited number of common shares (the "Common Shares"), 12,184,690 of which are issued and outstanding;

3.5 Pursuant to a plan of arrangement, Trimac Holdings Ltd.("Holdco") acquired all of the issued and outstanding securities of Trimac Corporation. Those securities were then transferred to Newco in exchange for shares of Newco. Newco and Trimac Corporation were then amalgamated to form Trimac. As a result Trimac is now, indirectly, wholly owned by Holdco;

3.6 Trimac has no securities, including debt securities, issued and outstanding other than the Common Shares held by Holdco;

3.7 Trimac does not have any securities listed or traded on any exchange or market in Canada; and

3.8 Trimac does not intend to seek public financing by way of an issue of securities.

4. **AND WHEREAS** pursuant to the MRRS, this Decision Document evidences the decision of each of the Decision Makers;

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 Trimac is deemed to have ceased to be a reporting issuer.

**DATED** at Calgary, Alberta this 12th day of January, 2001.

Patricia M. Johnston
Director, Legal Services & Policy Development

## 2.1.8 De Beers Canada Mining Inc. - MRRS Decision

**Headnote**

Mutual Reliance System for Exemptive Relief Applications – Issuer deemed to have ceased to be a reporting issuer following an offer to acquire and subsequent compulsory acquisition leaving only one security holder.

**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, ONTARIO
AND QUÉBEC**

**AND**

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

**AND**

**IN THE MATTER OF
DE BEERS CANADA MINING INC.
(FORMERLY, WINSPEAR DIAMONDS INC.)**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of British Columbia, Alberta, Ontario and Québec (the "Jurisdictions") has received an application from De Beers Canada Mining Inc. (formerly, Winspear Diamonds Inc.) (the "Filer") for a decision under the securities legislation of the Jurisdictions (the Legislation") that the Filer be deemed to have ceased to be a reporting issuer (or the equivalent thereof) under the Legislation;

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Executive Director of the British Columbia Securities Commission is the principal regulator for this Application;

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

1. the Filer is a company existing under the British Columbia, *Company Act* (the "BCCA"), and is a reporting issuer or the equivalent thereof in each of the Jurisdictions;

2. the Filer's head office is located in Vancouver, British Columbia;

3. the authorized capital of the Filer consists of 500,000,000 common shares of which 61,092,044 are issued and outstanding;

4. on July 6, 2000, De Beers Canada Holdings Ltd., now renamed De Beers Canada Corporation ("De Beers") made, and subsequently extended, an offer (the "Offer") to purchase all of the issued and outstanding shares of Winspear Diamonds Inc. ("the Winspear Shares"); after the expiry of the Offer on September 8, 2000, approximately 96.2% of the issued and outstanding Winspear Shares had been tendered to the Offer. Effective November 14, 2000, De Beers acquired all of the remaining issued and outstanding Winspear Shares pursuant to the compulsory acquisition provisions of the BCCA. As a result of the foregoing, De Beers became the sole securityholder of the Filer;

5. the Filer has no other securities, including debt securities, outstanding;

6. the Filer is not in default of any of its obligations as a reporting issuer under the Legislation with the exception of its obligation to file 2nd and 3rd quarter 2000 interim financial statements in Alberta and 3rd quarter 2000 interim financial statements in BC; the Offer was made before the 2nd quarter obligations to file the financial statements arose, and all of the Winspear Shares were acquired before the 3rd quarter obligations to file the financial statements arose;

7. the Winspear Shares were de-listed from the Toronto Stock Exchange on September 8, 2000 and no securities of the Filer are listed or quoted on any exchange or market; and

8. the Filer does not intend to seek public financing by way of an offering of its securities;

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

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

**THE DECISION** of the Decision Makers under the Legislation is that the Filer is deemed to have ceased to be a reporting issuer, or the equivalent thereof under the Legislation.

December 15, 2000.

"Brenda Leong"

## 2.1.9 CT Private Canadian Money Market Fund et al. - MRRS Decision

**Headnote**

MRRS Exemptive Relief Application-Extension of lapse date.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 62(5).

**Rules Cited**

National Instrument 81-101 Mutual Fund Prospectus Disclosure
National Instrument 81-102 Mutual Funds

**Policies Cited**

National Policy 43-201 Mutual Reliance Review System for Prospectus and Annual Information Forms.

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

**AND**

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

**AND**

**IN THE MATTER OF**

**CT PRIVATE CANADIAN MONEY MARKET FUND**
**CT PRIVATE CANADIAN CORPORATE BOND FUND**
**(formerly CT Private Canadian Short Term Bonds Fund)**
**CT PRIVATE CANADIAN BONDS/RETURN FUND**
**CT PRIVATE CANADIAN BONDS/INCOME FUND**
**CT PRIVATE CANADIAN DIVIDEND FUND**
**CT PRIVATE U.S. BONDS/RETURN FUND**
**CT PRIVATE U.S. BONDS/INCOME FUND**
**CT PRIVATE INTERNATIONAL BONDS FUND**
**CT PRIVATE CANADIAN EQUITY/GROWTH FUND**
**CT PRIVATE CANADIAN EQUITY/INCOME FUND**
**CT PRIVATE U.S. EQUITY/GROWTH FUND**
**CT PRIVATE U.S. EQUITY/INCOME FUND**
**CT PRIVATE NORTH AMERICAN EQUITY/GROWTH FUND**
**CT PRIVATE NORTH AMERICAN EQUITY/INCOME FUND**
**CT PRIVATE SMALL/MID-CAP EQUITY FUND**
**CT PRIVATE INTERNATIONAL EQUITY FUND**
**CT RSP INTERNATIONAL BONDS FUND**
**CT RSP U.S. EQUITY FUND**
**CT RSP INTERNATIONAL EQUITY FUND**

**(individually a "Fund" and collectively, the "Funds")**

## 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 and Newfoundland (the "Jurisdictions") has received an application from TD Asset Management Inc. ("TDAM") in its capacity as manager, principal distributor and promoter 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 securities under the simplified prospectus and annual information form (collectively, the "Disclosure Documents") of the Funds be extended to those time limits that would be applicable if the lapse date of the Disclosure Documents were March 15, 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 Funds have represented to the Decision Makers that:

1. TDAM is a wholly-owned subsidiary of The Toronto-Dominion Bank ("TD Bank").

2. The Funds consist of 19 open-end mutual fund trusts established under the laws of Ontario by declarations of trust.

3. The Funds are qualified for distribution in the Jurisdictions by means of the Disclosure Documents (being a simplified prospectus and annual information form) 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 Funds under the Disclosure Documents is January 28, 2001 (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 December 28, 2000 in the absence of the exemptive relief granted hereby.

6. Each Fund 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 Funds 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"). TD Bank has been engaged in the process of integrating its operations and those of CT Financial Services Inc. (the "Merger Integration") since the date of the Merger.

2. As part of the Merger Integration, TDAM and CT Investment Management Group Inc. ("CTIMG"), an affiliate of CT Financial Services Inc., have been engaged, since April, 2000, in the process of integrating and restructuring their respective mutual fund complexes (the "Fund Integration").

3. Although TD Bank and TDAM have devoted considerable resources towards the completion of the Merger Integration and the Fund Integration, both processes are taking longer to complete than was originally anticipated and the Merger Integration has affected the Fund Integration. Most recently, TD Trust Company transferred its TD Private Investment Management division ("TD PIM") to TDAM and TDAM is now seeking to incorporate into the Disclosure Documents certain pooled funds (the "Pools") that were originally distributed by TD Trust on an exempt basis.

4. The lapse date extensions will provide TDAM with the additional time which it requires to qualify the Pools for distribution pursuant to the Disclosure Documents while 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 Fund be extended to the time limits that would be applicable if the Lapse Date for the distribution of securities of each Fund under the Disclosure Documents were March 15, 2001.

January 26, 2001.

Paul A. Dempsey
Assistant Manager/Senior Legal Counsel
Investment Funds, Capital Markets

### 2.1.10 TD Tse 300 Index Fund & Capped Index Fund - MRRS Decision

**Headnote**

Relief granted from certain provisions of securities legislation for initial and continuous distribution of units of exchange-traded funds - relief from requirement that prospectus include an underwriter's certificate - relief from prohibition on investments in certain issuers which are substantial security holders of the funds' management company.

**Statutes Cited**

Securities Act (Ontario), R.S.O. 1990 c.S.5, as am. s. 59, ss. 111(2), s. 147 and s. 113.

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

**AND**

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

**AND**

**IN THE MATTER OF**
**TD TSE 300 INDEX FUND AND**
**TD TSE 300 CAPPED INDEX FUND**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland, Yukon, Northwest Territories and Nunavut (the "Jurisdictions") has received an application from TD Asset Management Inc. ("TDAM") on behalf of TD TSE 300 Index Fund and TD TSE 300 Capped Index Fund (together, the "Funds") for a decision pursuant to the securities legislation (the "Legislation") of the Jurisdictions that:

1. the requirement to include a certificate of the Underwriters, as defined in paragraph 9 below, not apply in respect of the prospectus of the Funds; and

2. the prohibition on investments in certain issuers which are substantial security holders of TDAM or the Funds not apply to the Funds.

The Legislation referred to in paragraphs 1 and 2 above will be referred to in this Decision Document as the "Applicable Legislation";

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

**AND WHEREAS** TDAM made the following representations to the Decision Makers:

1. Each Fund is a trust established under the laws of Ontario, which will issue units of beneficial interest ("Units").

2. The investment objective of the TD TSE 300 Index Fund is to provide long-term growth of capital by replicating, to the extent possible, the performance of the TSE 300 Composite Index. The investment objective of the TD TSE 300 Capped Index Fund is to provide long-term growth of capital by replicating, to the extent possible, the performance of the TSE 300 Capped Index. Each Fund intends to hold the shares of the companies (collectively, the "Constituent Companies") that are included in the index that it is tracking (the "Target Index") in substantially the same proportions as they are represented in its Target Index.

3. TDAM is the trustee of the Funds and as such is responsible for the day-to-day administration of each Fund. TDAM is registered under the respective Legislation of all of the Jurisdictions as a portfolio manager and investment counsel and as a mutual fund dealer (or the equivalent categories of registration).

4. Each Fund has filed a preliminary prospectus (the "Prospectus") in each Jurisdiction and, upon the issuance of a receipt for the final prospectus, will be a reporting issuer under the Legislation of each Jurisdiction where such term is applicable.

5. The shares of The Toronto-Dominion Bank ("TD Bank") are included in the Target Index of each Fund. TD Bank is a substantial security holder of TDAM which is the management company of the Funds and of TD Securities Inc. and TD Waterhouse Investor Services (Canada) Inc. which may be distribution companies of the Funds.

6. Units of each Fund will be listed and posted for trading on the Toronto Stock Exchange (the "Exchange") and will confer on the holder a proportionate share of the economic benefits similar to those that such holder could obtain through individual investments in the securities of the Constituent Companies (collectively, the "Index Shares") of the Fund's Target Index.

7. It is intended that the dollar value of the Index Shares underlying the Units of each Fund (the "Core Asset Share Value per Unit") and the trading price of such Units on the Exchange will equal, as closely as possible, a specified fraction of the level of each Fund's Target Index as will be disclosed in the (final) prospectus of the Funds. From time to time, however, there may be a deviation in tracking such that the Core Asset Share Value per Unit will be greater or less than such specified fraction.

8. The net asset value (the "Net Asset Value") of each Fund will be calculated daily. The Net Asset Value per Unit of each Fund will be calculated and published daily.

9. Units of each Fund may be purchased directly from the Fund by registered brokers or dealers who have entered into an underwriting agreement with such Fund (the "Underwriters"). An Underwriter may subscribe for Units of each Fund on any subscription day. The majority of the consideration payable by Underwriters for Units of each Fund will consist of Index Shares, in prescribed quantities, and cash. The Underwriters will not receive any fees or commissions in connection with the issuance of Units of each Fund. In addition, TDAM, as trustee of the Funds may, at its discretion, charge an administrative fee on the issuance of Units to Underwriters to offset the expenses incurred by the Funds in issuing Units.

10. No Fund will issue Units until the Fund has received, in aggregate, at least $500,000 in subscriptions from Underwriters.

11. Each Fund may also issue Units periodically to one or more registered brokers or dealers ("Designated Brokers") upon an adjustment of its Target Index, a take-over bid or similar extraordinary situation. Each Fund may also issue Units to its unitholders ("Unitholders") upon the automatic reinvestment of special dividends or capital gains distributions made on the Index Shares held by the Fund.

12. Except as described in paragraphs 9 and 11, the Units of each Fund may not be purchased directly from the Funds. It is anticipated that, for the most part, investors will purchase Units of each Fund through the facilities of the Exchange.

13. It is expected that Unitholders of each Fund who wish to dispose of their Units will do so by selling them on the Exchange. However, holders of a prescribed number of Units, or integral multiples thereof, may redeem such Units for baskets of the Index Shares plus cash. Unitholders of each Fund who redeem a prescribed number of Units, or integral multiple thereof, may be charged an administrative fee in order to offset the expenses incurred by the Funds in effecting such exchange.

14. All Unitholders will also have the right to redeem Units solely for cash at a discount to the market price of the Units. The Funds intend that the redemption price will be equal to 95% of the closing trading price of the Units on the effective day of the redemption. The Funds do not expect that Unitholders will generally exercise this redemption right.

15. Unitholders of each Fund holding at least the prescribed number of Units will be entitled to vote a proportion of the Index Shares held by the Fund equal to that Unitholder's proportionate holding of outstanding Units. Unitholders holding less than a prescribed number of Units will have no right to vote Index Shares held by a Fund.

16. Subject to the expense ceiling agreed to by TDAM and described below, each Fund will be responsible for the following costs and expenses: brokerage expenses and commissions; the trustee fee payable to TDAM; registrar and transfer agency fees; securities movement charges payable to the Fund's custodian; legal and audit fees; the preparation, printing, filing and distribution of prospectuses, financial statements, annual reports and annual filing fees payable to securities regulatory authorities relating to the issuance of Units. In respect of annual filing fees payable to securities regulatory authorities, the Fund will charge a transaction fee on the issuance of Units payable pro rata by the Underwriters and Designated Brokers who subscribe for Units which will effectively reimburse the Fund for such fees. TDAM has agreed, however, that the aggregate of the costs and expenses charged to the Fund in any year, net of the reimbursement of filing fees referred to above and excluding brokerage expenses and commissions, will not exceed the following percentages per year of the average daily aggregate of Core Asset Share Value, Core Asset Cash and Accrued Distributions (as such terms are defined in the Prospectus):

| | | |
|---|---|---|
| TD TSE 300 Index Fund | - | 0.25% |
| TD TSE 300 Capped Index Fund | - | 0.25% |

TDAM has agreed to be responsible for the costs and expenses of the Fund in excess of the above specified percentages.

17. Unitholders of each Fund will have the right to vote at a meeting of the Fund's Unitholders before the fundamental investment objectives of such Fund are changed or before the voting right described in paragraph 15 is changed and prior to any increase in the amount of fees payable by the Fund.

18. Each Fund proposes to lend the Index Shares which it holds itself or through an agent to brokers, dealers and other financial institutions desiring to borrow securities. The securities lending will enable each Fund to earn income to partially offset the costs and expenses of such Fund. This will enable the Funds to reduce the effect of such costs and expenses, thereby enhancing each Fund's ability to provide investment results which correspond to the price performance of its Target Index.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Applicable Legislation shall not apply so as to:

(i) require an underwriter's certificate in the prospectus of the Funds; and

(ii) prohibit the Funds from making or holding an investment in securities of TD Bank, provided that such investment is made or held:

a. in accordance with each Fund's stated investment objective that requires it to invest in securities of TD Bank in order to track its Target Index, and

b. in substantially the same proportion as the securities of TD Bank are weighted or reflected in each Fund's Target Index.

January 19, 2001.

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

## 2.1.11 TD Tse 300 Index Fund & Capped Index Fund - MRRS Decision

**Headnote**

Relief granted from certain provisions of securities legislation for initial and continuous distribution of units of exchange-traded funds - relief from prospectus and registration requirements to permit distributions by the funds to designated brokers in specified circumstances - relief from registration requirements to permit members of a futures exchange, or their partners, officers or employees, to trade in units of the funds, subject to certain conditions.

**Statutes Cited**

Securities Act (Ontario), R.S.O. 1990 c.S.5. as am. ss. 74(1), s. 25 and s. 53.

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**

**BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NOVA SCOTIA, NEWFOUNDLAND, YUKON, NORTHWEST TERRITORIES AND NUNAVUT**

**AND**

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

**AND**

**IN THE MATTER OF**
**TD TSE 300 INDEX FUND AND TD TSE 300 CAPPED INDEX FUND**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland, Yukon, Northwest Territories and Nunavut (the "Jurisdictions") has received an application from TD Asset Management Inc. ("TDAM") on behalf of TD TSE 300 Index Fund and TD TSE 300 Capped Index Fund (together, the "Funds") for a decision pursuant to the securities legislation (the "Legislation") of the Jurisdictions that the prospectus and/or registration requirements contained in the Legislation do not apply to:

(a) trades in Units of the Funds to the Designated Brokers, as defined in paragraph 10 below, in the circumstances described in the same paragraph, and

(b) trades in Units of the Funds by members of a futures exchange or the members' partners, officers and employees trading on behalf of such members;

**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** TDAM made the following representations to the Decision Makers:

1. Each Fund is a trust established under the laws of Ontario, and TDAM is the trustee of each Fund.

2. As trustee, TDAM is responsible for the day-to-day administration of each Fund. TDAM is registered in all of the Jurisdictions as a portfolio manager and investment counsel and also as a mutual fund dealer (or the equivalent categories of registration) under their respective Legislation.

3. The investment objective of the TD TSE 300 Index Fund is to provide long-term growth of capital by replicating, to the extent possible, the performance of the TSE 300 Composite Index. The investment objective of the TD TSE 300 Capped Index Fund is to provide long-term growth of capital by replicating, to the extent possible, the performance of the TSE 300 Capped Index. Each Fund intends to hold the shares of the companies (collectively, the "Constituent Companies") that are included in the index that it is tracking (the "Target Index"), in substantially the same proportions as they are represented in its Target Index.

4. Each Fund will issue units of beneficial interest ("Units"). For this purpose, each Fund has filed a preliminary prospectus (the "Prospectus") in each Jurisdiction. Upon the issuance of a receipt for the (final) prospectus, each Fund will be a reporting issuer under the Legislation of each Jurisdiction where such term is applicable.

5. The Units of each Fund will be listed and posted for trading on the Toronto Stock Exchange (the "Exchange"). Each Unit will confer on the holder a proportionate share of the economic benefits similar to those that such holder could obtain through individual investments in the securities of the Constituent Companies (collectively, the "Index Shares") of the Fund's Target Index.

6. It is intended that the dollar value of the Index Shares underlying the Units of each Fund (the "Core Asset Share Value per Unit") and the trading price of such Units on the Exchange will equal, as closely as possible, a specified fraction of the level of each Fund's Target Index as will be disclosed in the (final) prospectus of the Funds. From time to time, however, there may be a deviation in tracking such that the Core Asset Share Value per Unit will be greater or less than such specified fraction

7. The net asset value (the "Net Asset Value") of each Fund will be calculated daily. The Net Asset Value per Unit of each Fund will be calculated and published daily.

8. The Units of each Fund may be purchased directly from the Fund by registered brokers or dealers who have entered into an underwriting agreement with such Fund (the "Underwriters"). An Underwriter may subscribe for Units of each Fund on any subscription day. The majority of the consideration payable by Underwriters for Units of each Fund will consist of Index Shares, in prescribed quantities, and cash. The Underwriters will not receive any fees or commissions in connection with the issuance of Units of each Fund. In addition, TDAM, as trustee of the Funds may, at its discretion, charge an administrative fee on the issuance of Units to Underwriters to offset the expenses incurred by the Funds in issuing Units.

9. No Fund will issue Units until the Fund has received, in aggregate, at least $500,000 in subscriptions from the Underwriters.

10. Each Fund may also issue Units periodically to one or more registered brokers or dealers ("Designated Brokers") upon an adjustment of its Target Index, a take-over bid or a similar extraordinary situation. Each Fund may also issue Units to its unitholders ("Unitholders") upon the automatic reinvestment of special dividends or capital gains distributions made on the Index Shares held by the Fund.

11. Except as described in paragraphs 8 and 10, the Units of each Fund may not be purchased directly from the Funds. It is anticipated that, for the most part, investors will purchase Units of each Fund through the facilities of the Exchange.

12. It is expected that Unitholders of each Fund who wish to dispose of their Units will do so by selling them on the Exchange. However, holders of a prescribed number of Units, or integral multiples thereof, may redeem such Units for baskets of the Index Shares plus cash. Unitholders of each Fund who redeem a prescribed number of Units, or integral multiple thereof, may be charged an administrative fee in order to offset the expenses incurred by the Fund in effecting such exchange.

13. All Unitholders will also have the right to redeem Units solely for cash at a discount to the market price of the Units. The Funds intend that the redemption price will be equal to 95% of the closing trading price of the Units on the effective day of the redemption. The Funds do not expect that Unitholders will generally exercise this redemption right.

14. Unitholders of each Fund holding at least the prescribed number of Units will be entitled to vote a proportion of the Index Shares held by the Fund equal to that Unitholder's proportionate holding of outstanding Units. Unitholders holding less than a prescribed number of Units will have no right to vote Index Shares held by a Fund.

15. Subject to the expense ceiling agreed to by TDAM and described below, each Fund will be responsible for the following costs and expenses: brokerage expenses and commissions; the trustee fee payable to TDAM;

registrar and transfer agency fees; securities movement charges payable to the Fund's custodian; legal and audit fees; the preparation, printing, filing and distribution of prospectuses, financial statements, annual reports and annual filing fees payable to securities regulatory authorities relating to the issuance of Units. In respect of annual filing fees payable to securities regulatory authorities, the Fund will charge a transaction fee on the issuance of Units payable pro rata by the Underwriters and Designated Brokers who subscribe for Units which will effectively reimburse the Fund for such fees. TDAM has agreed, however, that the aggregate of the costs and expenses charged to the Fund in any year, net of the reimbursement of filing fees referred to above and excluding brokerage expenses and commissions, will not exceed the following percentages per year of the average daily aggregate of Core Asset Share Value, Core Asset Cash and Accrued Distributions (as such terms are defined in the Prospectus):

| | | |
|---|---|---|
| TD TSE 300 Index Fund | — | 0.25% |
| TD TSE 300 Capped Index Fund | — | 0.25% |

TDAM has agreed to be responsible for the costs and expenses of the Fund in excess of the above specified percentages.

16. Unitholders of each Fund will have the right to vote at a meeting of the Fund's Unitholders before the fundamental investment objectives of such Fund are changed and before the voting right described in paragraph 14 is changed, and prior to any increase in the amount of fees payable by the Fund.

17. Each Fund proposes to lend the Index Shares which it holds itself or through an agent to brokers, dealers and other financial institutions desiring to borrow securities. The securities lending will enable each Fund to earn income to partially offset the costs and expenses of such Fund. This will enable the Funds to reduce the effect of such costs and expenses, thereby enhancing each Fund's ability to provide investment results which correspond to the price performance of its Target Index.

18. Members of a futures exchange (or their partners, officers and employees), who are registered only under the commodity futures legislation or requirements (if any) of the Jurisdiction where such members carry on the business of trading in futures contracts may wish to trade the Units of each Fund in order to hedge their derivatives holdings based on the Fund's Target Index.

**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

(a) the prospectus and registration requirements of the Legislation do not apply to trades in Units of the Funds to Designated Brokers in the circumstances described in paragraph 10 above;

(b) the registration requirement of the Legislation does not apply to trades in Units of the Funds by members of a futures exchange, or the members' partners, officers or employees trading on behalf of such members, provided that

(i) the members or their partners, officers or employees are registered for trading purposes under the commodity futures legislation or requirements (if any) of the Jurisdiction where such members carry on the business of trading in futures contracts,

(ii) the trades in Units of the Funds are made only for such members' own account, and

(iii) neither the members nor their partners, officers or employees will trade in Units of the Funds on behalf of their clients.

January 17th, 2001.

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

## 2.1.12 National City Bank - MRRS Decision

**Headnote**

MRRS - Underwriter and advisor registration relief for Schedule III Bank - prospectus and registration relief for trades where Schedule III Bank purchasing as principal and first trade relief for Schedule III Bank - prospectus and registration relief for trades of bonds, debentures and other evidences of indebtedness of or guaranteed by Schedule III Bank provided trades involve only specified purchasers - fee relief for trades made in reliance on Decision.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25(1)(a)&(c), 34(a), 35(1)(3)(i), 35(2)1(c), 53(i), 72(1)(a)(i), 73(1)(a) and 147.

**Regulations Cited**

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 151, 206, 218, Schedule I s.28.

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

**AND**

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

**AND**

**IN THE MATTER OF**
**NATIONAL CITY BANK**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland, the Northwest Territories, Nunavut and the Yukon Territory (the "Jurisdictions") has received an application from National City Bank (the "Bank") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that, upon being recognized as an "authorized foreign bank" (as defined in the *Bank Act* (Canada) (the "Bank Act")), the Bank be exempt from various registration, prospectus and filing requirements of the Legislation in connection with the authorized foreign bank activities of the Bank.

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

**AND WHEREAS** it has been represented by the Bank to the Decision Makers that:

1. The Bank is a United States incorporated bank and is a "foreign bank", as such term is defined in section 2 of the Bank Act.

2. The Bank currently conducts commercial lending activities in Canada through National City Canada, Inc. ("NCC"), its wholly-owned Canadian subsidiary. NCC is a private corporation incorporated under the Ontario Business Corporations Act and is not a financial institution regulated by the Bank Act.

3. Until recently, a foreign bank was not allowed under the Bank Act to establish a branch in Canada and could only carry on commercial lending activities by establishing a foreign bank subsidiary in Canada or, with the consent of the Minister of Finance, by establishing a private corporation. The Bank and NCC received an order of the Minister of Finance to establish NCC.

4. In 1999, the Bank Act was amended to add Part XII.1, which creates the concept of an "authorized foreign bank". Under the Bank Act, an "authorized foreign bank" is a foreign bank that has applied to the Minister of Finance (the "Minister") for an order under section 524(1) of the Bank Act (an "AFB Order") permitting such foreign bank to become an authorized foreign bank. An authorized foreign bank is permitted to establish a branch in Canada to, among other things, carry on commercial lending activities.

5. The Bank received an AFB Order on December 8, 2000. The Bank expects to commence commercial lending activities by setting up a Canadian branch upon receipt of this MRRS decision document. The Bank expects that it will likely wind up NCC once the new branch is in place. Once established, the Bank's branch operations will be limited to commercial lending activities. The Bank will not operate a retail lending business nor be a deposit taking institution in Canada.

6. For purposes of this Decision "Authorized Purchasers" shall mean:

   (a) Her Majesty in right of Canada or in right of a province or territory, an agent of Her Majesty in either of those rights and includes a municipal or public body empowered to perform a function of government in Canada, or an entity controlled by Her Majesty in either of those rights;

   (b) the government of a foreign country or any political subdivision thereof, an agency of the government of a foreign country or any political subdivision thereof, or an entity that is controlled by the government of a foreign country or any political subdivision thereof;

   (c) an international agency of which Canada is a member, including an international agency that is a member of the World Bank Group, the Inter American Development Bank, the Asian

Development Bank, the Caribbean Development Bank and the European Bank for Reconstruction and Development and any other international regional bank;

(d) a financial institution (i.e.: (a) a bank or an authorized foreign bank under the Bank Act; (b) a body corporate to which the *Trust and Loan Companies Act* (Canada) applies; (c) an association to which the *Cooperative Credit Association Act* (Canada) applies; (d) an insurance company or a fraternal benefit society to which the *Insurance Companies Act* (Canada) applies; (e) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province or territory in Canada; (f) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province or territory in Canada; (g) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province or territory in Canada and that is primarily engaged in dealing in securities, including portfolio management and investment counseling, and is registered to act in such capacity under the applicable Legislation; and (h) a foreign institution that is (i) engaged in the banking, trust, loan or insurance business, the business of a cooperative credit society or the business of dealing in securities or is otherwise engaged primarily in the business of providing financial services, and (ii) is incorporated or formed otherwise than by or under an Act of Parliament or of the legislature of a province or territory in Canada);

(e) a pension fund sponsored by an employer for the benefit of its employees or employees of an affiliate that is registered and has total plan assets under administration of greater than $100 million;

(f) a mutual fund corporation that is regulated under an Act of the legislature of a province or territory in Canada or under the laws of any other jurisdiction and has total assets under administration of greater than $10 million;

(g) an entity (other than an individual) that has, for the fiscal year immediately preceding the trade, gross revenues on its own books and records of greater than $5 million; or

(h) any other person if the trade is, in the aggregate, greater than $150,000.

7. The relief requested will be necessary to facilitate the daily operations of the branch to be established by the Bank pursuant to its AFB Order.

**AND WHEREAS** pursuant to the System this MRRS Decision Document evidences the decision of the 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, in connection with the authorized foreign banking activities to be carried on by the Bank in the Jurisdictions:

1. The Bank is exempt from the requirement under the Legislation, where applicable, to be registered as an underwriter with respect to the same types of securities that an entity listed on Schedule I or II to the Bank Act may act as an underwriter in respect of without being required to be registered under the Legislation as an underwriter.

2. The Bank is exempt from the requirement under the Legislation to be registered as an adviser where the performance of the service as an adviser is solely incidental to its primary banking business.

3. A trade of a security to the Bank where the Bank purchases the security as principal shall be exempt from the registration and prospectus requirements of the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation") provided that:

   (i) the forms that would have been filed and the fees that would have been paid under the Applicable Legislation if the trade had been made, on an exempt basis, to an entity listed on Schedule I or II to the Bank Act purchasing as principal (referred to in this Decision as a "Schedule I or II Bank Exempt Trade") are filed and paid in respect of the trade to the Bank, and

   (ii) the first trade in a security acquired by the Bank pursuant to this Decision is deemed a distribution (or primary distribution to the public) under the Applicable Legislation unless:

      (a) the issuer of the security is a reporting issuer, or the equivalent, under the Applicable Legislation and, if the Bank is in a special relationship (where such term is defined in the Applicable Legislation) with such issuer, the Bank has reasonable grounds to believe that such issuer is not in default of any requirements of the Applicable Legislation;

      (b) (i) the securities are listed and posted for trading on a stock exchange, that is recognized by the Decision Maker of the applicable Jurisdiction for purposes of the resale of a security acquired in a Schedule I or II Bank Exempt Trade, and comply with the requirements set out in paragraph (a) or (b) of Appendix A to this Decision and

have been held at least six months from the date of the initial exempt trade to the Bank or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is the later, or

(ii) the securities are bonds, debentures or other evidences of indebtedness issued or guaranteed by an issuer or are preferred shares of an issuer and comply with the requirements set out in paragraph (a) or (c), of Appendix A to this Decision, and have been held at least six months from the date of the initial exempt trade to the Bank or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is the later, or

(iii) the securities are listed and posted for trading on a stock exchange, that is recognized by the Decision Maker of the applicable Jurisdiction for purposes of the resale of a security acquired in a Schedule I or II Bank Exempt Trade, or are bonds, debentures or other evidences of indebtedness issued or guaranteed by the reporting issuer, or the equivalent, under the Applicable Jurisdiction whose securities are so listed, and have been held at least one year from the date of the initial exempt trade to the Bank or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is later, or

(iv) the securities have been held at least eighteen months from the date of the initial exempt trade to the Bank or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is later; and

(c) the Bank files a report within 10 days of the trade prepared and executed in accordance with the requirements of the Applicable Legislation that would apply to a Schedule I or II Bank Exempt Trade,

provided that no unusual effort is made to prepare the market or to create a demand for such securities and no extraordinary commission or consideration is paid in respect of such trade and provided the Bank does not hold sufficient number of securities to materially affect the control of the issuer of such securities but any holding by the Bank of more than 20 per cent of the outstanding voting securities of the issuer of such securities shall, in the absence of evidence to the contrary, be deemed to affect materially the control of such issuer.

4. Provided the Bank only trades the types of securities referred to in this paragraph 4 with Authorized Purchasers, trades of bonds, debentures or other evidences of indebtedness of or guaranteed by the Bank shall be exempt from the registration and prospectus requirements of the Legislation.

**THE FURTHER DECISION** of the Decision Maker in Ontario is that in connection with the authorized foreign banking activities to be carried on by the Bank in Ontario:

A. Subsection 25(1)(a) of the *Securities Act* (Ontario) R.S.O. 1990 c. S.5 (as amended) (the "Act") does not apply to a trade by the Bank:

(i) of a type described in subsection 35(1) of the Act or section 151 of the Regulations made under the Act; or

(ii) in securities described in subsection 35(2) of the Act.

B. Except as provided for in paragraph 3 of this Decision, section 28 of Schedule I to the Regulations made under the Act shall not apply to trades made by the Bank in reliance on this Decision.

January 5th, 2001.

"J. A. Geller" "H. I. Wetston"

APPENDIX A

(a) are preferred shares of a corporation if,

(i) the corporation has paid a dividend in each of the five years immediately preceding the date of the initial exempt trade at least equal to the specified annual rate upon all of its preferred shares, or

(ii) the common shares of the corporation are, at the date of the initial exempt trade, in compliance with paragraph (b) of this Appendix A;

(b) are fully paid common shares of a corporation that during a period of five years that ended less than one year before the date of the initial exempt trade has either,

(i) paid a dividend in each such year upon its common shares, or

(ii) had earnings in each such year available for the payment of a dividend upon its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the corporation had earnings available for the payment of dividends as the case may be;

(c) are bonds debentures or other evidences of indebtedness issued or guaranteed by,

(i) a corporation if, at the date of the initial exempt trade, the preferred shares or the common shares of the corporation which comply with paragraph (a) or (b) of this Appendix A, or

(ii) a corporation if its earnings in a period of five years ended less than one year before the date of the initial exempt trade have been equal in sum total to at least ten times and in each of any four of the five years have been equal to at least 1-1/2 times the annual interest requirements at the date of the initial exempt trade on all indebtedness of or guaranteed by it, other than indebtedness classified as a current liability in its balance sheet, and, if the corporation at the date of the initial exempt trades owns directly or indirectly more than 50% of the common shares of another corporation, the earnings of the corporations during the said period of five years may be consolidated with due allowance for minority interests, if any, and in that event the interest requirements of the corporation shall be consolidated and such consolidated earnings and consolidated interest requirements shall be taken as the earnings and interest requirements of the corporation, and, for the purpose of this subclause, "earnings" mean earnings available to meet interest charges on indebtedness other than indebtedness classified as a current liability.

## 2.1.13 Eicon Technology Corporation - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Following a successful take-over bid, remaining securities of the issuer are in process of being acquired under corporate compulsory acquisition procedures - issuer filed audited consolidated financial statements, an annual report and MD&A, and will file, interim financial statements on SEDAR - issuer relieved from obligation to deliver these documents to security holders - relief granted from obligation to prepare and file AIF.

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am., ss.78, 79 and 80(b)(iii).

**Applicable Ontario Policies**

Policy Statement No. 5.10 - Annual Information Form and Management's Discussion and Analysis of Financial Condition and Results of Operations.

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

**AND**

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

**AND**

**IN THE MATTER OF THE APPLICATION OF**
**EICON TECHNOLOGY CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Québec, British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, Price Edward Island and Newfoundland (the "Jurisdictions") has received an application from the Eicon Technology Corporation ("Eicon" or the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to send to the registered holders of Filer's securities, its financial statements for the first quarter ended September 30, 2000, its audited annual consolidated financial statements for Filer's fiscal year ended June 30, 2000, as well as, its Annual Report, where applicable, and to prepare and to file with the securities regulatory authorities its Annual Information Form, where applicable, for such financial year, shall not apply to the Filer. For ease of reference, the financial statements for the first quarter ended September 30, 2000, the audited consolidated financial statements for the year ended June 30, 2000, and the

Annual Report containing Management's Discussion and Analysis are herein collectively referred to as the "Documents";

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the *Commission des valeurs mobilières du Québec* is the principal regulator for this application;

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

1. The Filer is a corporation constituted under the *Canada Business Corporations Act* on October 12, 1984 and has its head office in Montreal and several subsidiaries located mainly in Europe and North America. Eicon develops, markets and supports hardware and software products for connecting network-servers and desktop and notebook PCs to corporate networks, host computers and the Internet;

2. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of any of the requirements under the Legislation;

3. The Filer's fiscal year end is June 30;

4. The common shares of the Filer are listed and posted for trading on the Toronto Stock Exchange;

5. On September 28, 2000, i-data international a-s ("i-data") announced that it had entered into negotiations with the two major shareholders of Eicon relating to i-data's intention to make an Offer through a subsidiary to purchase all of the outstanding Common Shares of the Filer (the "Common Shares"), including the Common Shares issuable on the exercise of options to purchase Common Shares. The Offer price was to be Cdn$5.00 cash per Common Share;

6. The cash Offer at Cdn$5.00 per Common Share was made in accordance with Part IV of the Act and was mailed to the Eicon shareholders on October 26, 2000;

7. On November 8, 2000, i-data announced that the Offer was successful, with 32,739,760 Common Shares having been tendered, taken up and paid by the Offeror representing approximately 96,4% of the Common Shares.

8. The Offer was made to purchase all of the Common Shares and, accordingly, i-data intends to acquire all of the remaining Common Shares which were not tendered to the Offer pursuant to the compulsory acquisition provisions of the *Canada Business Corporations Act*. A notice of compulsory acquisition has been sent on November 14, 2000 by i-data to the remaining shareholders to take possession of their shares. It is expected that Eicon will become a 100% wholly-owned subsidiary of i-data.

9. i-data will be deemed to have acquired all the remaining Common Shares on December 14, 2000 (being the thirtieth day after mailing the notice of compulsory acquisition).

10. Eicon has filed its audited consolidated financial statements for its fiscal period ended June 30, 2000 and the auditors' report thereon as well as its Annual Report which contains Management's Discussion and Analysis through the SEDAR system and shall file its financial statements for the first quarter ended September 30, 2000, on or before November 29, 2000.

11. Absent the issuance of this decision, the Filer would be required to send to the remaining shareholders the Documents and to prepare and file the Annual Information Form for such financial year;

12. Assuming the completion of the compulsory acquisition, the issuance of this decision will allow the Filer to apply for order deeming it to have ceased to be a reporting issuer in each of the Jurisdictions.

**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 Eicon shall be exempted from its obligation to forward the Documents to the registered holders of its securities and from its obligation to prepare and file, where applicable, its Annual Information Form with the securities regulatory authorities provided that the Documents have been filed in electronic form through the SEDAR system on or before the applicable statutory filing delay.

**DATED** at Montréal, Québec this 28th day of November, 2000.

Jean-François Bernier
Directeur des marchés des capitaux

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

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

**ET**

**CORPORATION TECHNOLOGIES EICON**

**DOCUMENT DE DÉCISION DU REC**

**CONSIDÉRANT QUE** l'autorité locale en valeurs mobilières ou l'agent responsable (le « décideur ») respectif du Québec, de la Colombie-Britannique, de l'Alberta, de la Saskatchewan, de l'Ontario, de la Nouvelle-Écosse, de l'Île-du-Prince-Édouard et de Terre-Neuve (les « territoires ») a reçu une demande de Corporation Technologies Eicon (« Eicon » ou le « déposant ») pour une décision en vertu de la législation en valeurs mobilières des territoires (la « législation »), selon laquelle les exigences contenues dans la législation d'envoyer aux porteurs inscrits de ses titres ses états financiers pour le premier trimestre terminé le 30 septembre 2000, ses états financiers consolidés annuels vérifiés pour son exercice financier terminé le 30 juin 2000, ainsi que son rapport annuel, s'il y a lieu, de préparer et de déposer auprès des autorités en valeurs mobilières sa notice annuelle, s'il y a lieu, pour cet exercice financier, ne s'appliquent pas au déposant. Pour une meilleure compréhension, les états financiers du premier trimestre terminé le 30 septembre 2000, les états financiers consolidés vérifiés pour l'exercice terminé le 30 juin 2000, et le rapport annuel contenant l'analyse par la direction sont dans les présentes collectivement désignés les « Documents »;

**CONSIDÉRANT QUE** selon le régime d'examen concerté des demandes de dispense (le « régime »), la Commission des valeurs mobilières du Québec est l'autorité principale pour cette demande;

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

1. Le déposant est une société constituée en vertu de la *Loi canadienne sur les sociétés par actions* le 12 octobre 1984 et a son siège social à Montréal et plusieurs filiales situées principalement en Europe et en Amérique du Nord. Eicon développe, commercialise et assure le soutien technique de matériel informatique et de logiciels de connexion de serveurs de réseau et d'ordinateurs personnels à des réseaux d'entreprises et à Internet;

2. Le déposant est un émetteur assujetti dans chacun des territoires et n'est pas en défaut de ses obligations en vertu de la législation;

3. L'exercice financier du déposant se termine le 30 juin;

4. Les actions ordinaires du déposant sont inscrites à la cote de la Bourse de Toronto;

5. Le 28 septembre 2000, i-data international a-s (« i-data ») a annoncé qu'elle avait entamé des négociations avec deux actionnaires importants de Eicon relativement à son intention de faire une offre par le biais d'une filiale pour acheter la totalité des actions ordinaires en circulation du déposant, y compris les actions ordinaires pouvant être émises lors de la levée d'options d'achat d'actions ordinaires. Le prix d'offre devait être de 5 $ CA au comptant par action ordinaire;

6. L'offre de 5 $ CA au comptant l'action ordinaire a été faite conformément à la partie IV de la Loi et a été postée aux actionnaires de Eicon le 26 octobre 2000;

7. Le 8 novembre 2000, i-data a annoncé que l'offre avait réussi et que 32 739 760 actions ordinaires avaient été déposées, prises en livraison et payées par l'initiateur, ce qui représente environ 96,4 % des actions ordinaires;

8. L'offre a été faite pour acheter la totalité des actions ordinaires et, par conséquent, i-data a l'intention d'acheter le reste des actions ordinaires qui n'ont pas été déposées en réponse à l'offre aux termes des clauses d'acquisition forcée de la *Loi canadienne sur les sociétés par actions*. Un avis d'acquisition forcée a été envoyé le 14 novembre 2000 par i-data au reste des actionnaires pour leur annoncer qu'elle souhaitait prendre possession de leurs actions. Eicon deviendra donc une filiale en propriété exclusive de i-data;

9. i-data sera réputée avoir acquis les actions ordinaires restantes le 14 décembre 2000 (soit le trentième jour suivant l'envoi postal de l'avis d'acquisition forcée);

10. Eicon a déposé ses états financiers consolidés vérifiés pour son exercice terminé le 30 juin 2000 et le rapport des vérificateurs y afférent ainsi que son rapport annuel contenant l'analyse par la direction par le biais du système SÉDAR et déposera ses états financiers pour le premier trimestre terminé le 30 septembre 2000, le ou avant le 29 novembre 2000;

11. Sans cette décision, le déposant devrait envoyer à ses actionnaires restants les Documents ainsi que préparer et déposer la notice annuelle pour cet exercice financier;

12. En présumant l'accomplissement de l'acquisition forcée, la décision permettrait au déposant de faire une demande afin de mettre fin à son statut d'émetteur assujetti dans chacun des territoires;

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

**ET CONSIDÉRANT QUE** chacun des décideurs est d'avis que les critères prévus dans la législation qui lui accordent le pouvoir discrétionnaire ont été respectés;

**LA DÉCISION** des décideurs en vertu de la législation est que Eicon soit dispensée de son obligation de transmettre les Documents aux porteurs inscrits de ses titres restants, de préparer et de déposer, s'il y a lieu, sa notice annuelle auprès des autorités en valeurs mobilières, à la condition que les Documents soient déposés sous forme électronique par le biais du système SÉDAR avant le délai statutaire applicable.

**Fait** à Montréal (Québec), le 28 novembre 2000.

Jean-François Bernier
Directeur des marchés des capitaux

## 2.1.14 Abbey Woods Developments Ltd. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - corporation deemed to have ceased to be a reporting issuer following acquisition of all of its outstanding common shares by another corporation under a takeover bid and subsequent compulsory acquisition.

**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 AND ONTARIO**

**AND**

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

**AND**

**IN THE MATTER OF**
**ABBEY WOODS DEVELOPMENTS LTD.**

**MRRS DECISION DOCUMENT**

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta and Ontario (the "Jurisdictions") has received an application from Abbey Woods Developments Ltd. (the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Filer be deemed to have ceased to be a reporting issuer 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** the Filer has represented to the Decision Makers that:

   3.1 the Filer was formed under the laws of British Columbia, is a reporting issuer in each of the Jurisdictions and is not in default of any of the requirements of the Legislation, save and except for the filing of third quarter interim financial statements for the period ended September 30, 2000 with the Alberta and Ontario Securities Commissions;

   3.2 the Filer's head office is located in Vancouver, British Columbia;

   3.3 the authorized capital of the Company consists of 100,000,000 common shares without par

value ("Common Shares"), of which, as at the date hereof, 20,405,912 Common Shares are issued;

3.4 on June 28, 2000, AWD Acquisition Ltd. ("AWD") made an offer to purchase all of the issued and outstanding Common Shares of the Filer (the "Take-over Bid") and on July 28, 2000, acquired in excess of 97% of such Common Shares. Effective October 16, 2000, AWD acquired all of the remaining issued and outstanding Common Shares pursuant to the compulsory acquisition provisions of the *Company Act* (British Columbia) (the "Compulsory Acquisition"). As a result of the foregoing, AWD owns 100% of the issued and outstanding securities of the Filer;

3.5 upon the completion of the Take-over Bid, the Common Shares of the Filer were de-listed from The Toronto Stock Exchange and no securities of the Filer are currently listed or quoted on any exchange or market;

3.6 as a result of the Take-over Bid and Compulsory Acquisition, the Filer has only one security holder;

3.7 the Filer has no other securities, including debt securities, outstanding, save and except for $37,089,076 in debt outstanding to HSBC Canada and $2,800,000 in debt outstanding to AWD, both as of November 30, 2000; and

3.8 the Filer does not intend to seek public financing by way of an offering of its securities;

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

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

6. **THE DECISION** of the Decision Makers under the Legislation is that the Filer is deemed to have ceased to be a reporting issuer under the Legislation.

January 22, 2001.

Patricia M. Johnston
Director, Legal Services and Policy Development

## 2.1.15 Ipsco Inc. - MRRS Decision

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

**AND**

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

**AND**

**IN THE MATTER OF IPSCO INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from IPSCO Inc. ("IPSCO") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation for an insider of a reporting issuer to file insider reports (the "Insider Reporting Requirements") shall not apply to insiders of IPSCO (the "Insiders") with respect to their acquisition of common shares of IPSCO (the "Common Shares") pursuant to IPSCO's employee share purchase plan (the "ESP Plan") and IPSCO's dividend reinvestment and share purchase plan (the "DRSP Plan") (collectively, the "Plans"), subject to certain conditions;

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

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

1. IPSCO is a corporation governed by the *Canada Business Corporations Act* with its head office is located in the Province of Saskatchewan;

2. IPSCO 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. The authorized share capital of IPSCO consists of an unlimited number of Common Shares, an unlimited number of first preferred shares and an unlimited number of second preferred shares;

4. On February 25, 2000, 40,703,436 Common Shares were issued and outstanding;

5. The Common Shares are listed on The Toronto Stock Exchange (the "TSE") and the New York Stock Exchange;

6. IPSCO is an issuer of publicly traded equity securities and hence Insiders are subject to insider reporting requirements under the Legislation in respect of such securities;

7. The Plans were created for the purpose of promoting the interests of IPSCO by providing employees of IPSCO with an opportunity to purchase the Common Shares, thus enabling such employees to share in the benefits of IPSCO's continued success and prosperity and aligning their interests more closely with those of the other shareholders of IPSCO;

8. Payment for Common Shares purchased under the ESP Plan is to be made through payroll deductions and employer contributions and payment for Common Shares purchased under the DRSP Plan is to be made through dividend reinvestment and through optional cash payments from the employee;

9. The ESP Plan is administered by the Canada Trust Company, while the DRSP Plan is administered by the Montreal Trust Company of Canada (collectively, the "Trustees");

10. Participation in the Plans by eligible employees ("Participants") is voluntary and no inducement is made by IPSCO in respect of such participation;

11. Under the terms of the ESP Plan, Participants may elect to have an amount of their salary deposited to the ESP Plan by way of monthly payroll deduction by IPSCO;

12. Common Shares to be acquired under the Plans shall be purchased by a registered broker at the direction of the Trustees through the facilities of the TSE for the accounts of Members participating in the Plans at the market price for the Common Shares; and

13. The Common Shares acquired under the Plans are *de minimus* in relation to the number of securities issued and outstanding;

14. Except for making elections with respect to contributions to the Plans, a Participant has no authority to determine the prices or times at which Common Shares are purchased on his or her behalf under the Plan;

15. The ESP Plan and the DRSP Plan, with the exception of the optional cash payment option in the DRSP Plan, are "automatic securities purchase plan" as such term is defined in proposed National Instrument 55-101 - Exemption From Certain Insider Reporting Requirements (2000), 23 OSCB 4212. Once a Participant elects with respect to contributions to the Plans, the timing of acquisition, the number of Common Shares acquired and the price paid for such acquisitions are all determined by the criteria set out in the Plans; and

16. Unless the decision sought is granted, and failing any other exemptive relief, each Participant would be subject to the Insider Reporting Requirements each time Common Shares are acquired on his or her behalf under the Plan;

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Insider Reporting Requirements shall not apply to the acquisition by a Participant of Common Shares pursuant to the Plans, provided that:

1. Each Insider who is a Participant shall file, in the form prescribed for the Insider Reporting Requirements, a report disclosing all acquisitions of Common Shares under the Plan that have not been previously reported by or on behalf of the Participant:

   a. for any Common Shares acquired under the Plans which have been disposed of or transferred, within the time required by the Legislation for reporting the disposition or transfer; and

   b. for any Common Shares acquired under the Plans during a calendar year which have not been disposed of or transferred, within 90 days of the end of the calendar year; and

2. Such exemption is not available:

   a. To a Participant who beneficially owns, directly or indirectly, voting securities of IPSCO, or exercises control or direction over voting securities of IPSCO, or a combination of both, that carry more than 10% of the voting rights attaching to all of the IPSCO's outstanding voting securities; and

   b. For purchases of Common Shares under the DRSP Plan through optional cash payments.

**DATED** at Saskatoon, Saskatchewan, on September 26, 2000.

Marcel de la Gorgendière, Q.C.
Chairperson

### 2.1.16 Backer Petroleum Corp. - MRRS Decision

**Headnote**

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

**Applicable Ontario Provisions**

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

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ONTARIO**

**AND**

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

**AND**

**IN THE MATTER OF BACKER PETROLEUM CORP.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia and Ontario (the "Jurisdictions") has received an application from Backer Petroleum Corp. (the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Filer be deemed to have ceased to be a reporting issuer under the Legislation;

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

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

1. The Filer was incorporated under the *Company Act* (BC) on February 9, 1977 as Backer Resources Ltd., changing its name to Backer Petroleum Corp. on December 30, 1988;

2. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of any of the requirements of the Legislation;

3. The Filer's authorized capital consists of an unlimited number of common shares (the ("Common Shares") and 5,000,000 preferred shares, of which 6,900,044 Common Shares, and no preferred shares, were issued and outstanding as of April 28, 2000;

4. Pursuant to an offer to purchase dated April 28, 2000 (the "Offer"), Allied Oil & Gas Corp. ("Allied" ) offered to purchase all of the issued and outstanding Common Shares. Over 83% of the Common Shares were purchased by Allied pursuant to the Offer. Under compulsory acquisition provisions of the *Business Corporations Act* (Alberta), Allied acquired the balance of the Common Shares and became the Filer's sole securityholder;

5. The Filer has no other securities, including debt securities, outstanding;

6. The Common Shares of the Filer were de-listed from The Toronto Stock Exchange following the close of trading on September 18, 2000, and no securities of the Filer are listed or quoted on any exchange or market; and

7. The Filer does not intend to seek public financing by way of an offering of its securities;

**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 Filer is deemed to have ceased to be a reporting issuer under the Legislation.

November 9th, 2000.

"Derek Patterson"

### 2.1.17 ING Investment Management, Inc. et al. - MRRS Decision

**Headnote**

Investment by mutual funds in a portfolio of specified mutual funds, comprised of mutual funds under common management and of third party managed mutual funds, exempted from the self-dealing prohibition in clause 111(2)(b) and subsection 111(3), and from reporting requirements of clauses 117(1)(a) and 117(1)(d) subject to certain specified conditions.

**Statutes Cited**

Securities Act (Ontario), R.S.O. 1990, c.S.5, as am. Ss.111(2)(b), 111(3), 117(1)(a) & (d).

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

**AND**

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

**AND**

**IN THE MATTER OF**
**ING INVESTMENT MANAGEMENT, INC.**
**AND**
**ENSEMBLE AGGRESSIVE EQUITY PORTFOLIO**
**ENSEMBLE MODERATE EQUITY PORTFOLIO**
**ENSEMBLE CONSERVATIVE EQUITY PORTFOLIO**
**ENSEMBLE AGGRESSIVE EQUITY RSP PORTFOLIO**
**ENSEMBLE MODERATE EQUITY RSP PORTFOLIO**
**ENSEMBLE CONSERVATIVE EQUITY RSP PORTFOLIO**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application (the "Application") from ING Investment Management, Inc. ("ING"), in its own capacity and on behalf of Ensemble Aggressive Equity Portfolio, Ensemble Moderate Equity Portfolio, Ensemble Conservative Equity Portfolio, Ensemble Aggressive Equity RSP Portfolio, Ensemble Moderate Equity RSP Portfolio and Ensemble Conservative Equity RSP Portfolio (collectively, the "Top Funds", individually, the "Top Fund") for a decision (the "Decision") pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the following requirements or prohibitions under the Legislation (the "Applicable Requirements") shall not apply in connection with the investment by the Top Funds directly in a portfolio of securities of selected mutual funds (the "Underlying Funds", as further defined in paragraph 3 below):

(a) the provision prohibiting a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; and

(b) the provision requiring a management company of a mutual fund, or in British Columbia, a mutual fund manager, to file a report relating to a purchase or sale of securities between the mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies.

**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** it has been represented by ING to the Decision Makers that:

1. ING is a corporation established under the laws of the Province of Ontario and will be the trustee, manager, investment advisor and promoter of each of the Top Funds.

2. Each of the Top Funds will be an open-end mutual fund trust governed by the laws of the province of Ontario. The securities of the Top Funds will be qualified for sale in each of the provinces and territories of Canada (the "Prospectus Jurisdictions") under a (final) simplified prospectus and annual information form that will be filed shortly in each of the Prospectus Jurisdictions under SEDAR project number 310375 (the Prospectus").

3. The Top Funds will each invest specified percentages (the "Fixed Percentages") of their assets (exclusive of cash and cash equivalents), as per the 2nd column of the table below, in a portfolio of securities of specified Underlying Funds, as listed in the 3rd column of the table below:

| Top Fund | Fixed Percentage of Net Assets | Underlying Funds |
|---|---|---|
| Ensemble Aggressive Equity Portfolio | 10% | Trimark Enterprise Small Cap Fund |
| | 10% | Trimark U.S. Companies Fund (Select Units) |
| | 10% | ING US Equity Fund (Investor Class Units) |
| | 5% | AIM European Growth Fund (Series A Units) |
| | 10% | Fidelity European Growth Fund (Series A Units) |
| | 10% | Fidelity Far East Fund (Series A Units) |
| | 5% | ING Japan Equity Fund (Investor Class Units) |
| | 5% | Fidelity Emerging Markets Portfolio Fund (Series A Units) |
| | 10% | Trimark Discovery Fund (Select Units) |
| | 10% | ING Global Technology Fund (Investor Class Units) |
| | 10% | ING Global Communications Fund (Investor Class Units) |
| | 5% | Fidelity Focus Health Care Fund (Series A Units) |
| Ensemble Moderate Equity Portfolio | 5% | ING Canadian Small Cap Equity Fund (Investor Class Units) |
| | 10% | Fidelity True North Fund (Series A Units) |
| | 10% | Trimark U.S. Companies Fund (Select Units) |
| | 10% | Fidelity American Opportunities Fund (Series A Units) |
| | 5% | AIM European Growth Fund (Series A Units) |
| | 10% | ING Europe Equity Fund (Investor Class Units) |
| | 5% | ING Austral-Asia Equity Fund (Investor Class Units) |
| | 5% | Fidelity Japanese Growth Fund (Series A Units) |
| | 5% | ING Emerging Markets Equity Fund (Investor Class Units) |
| | 15% | Trimark Fund (SC Units) |
| | 5% | Trimark Discovery Fund (Select Units) |
| | 15% | Fidelity Focus Consumer Industries Fund (Series A Units) |
| Ensemble Conservative Equity Portfolio | 5% | Trimark Enterprise Small Cap Fund |
| | 10% | ING Canadian Equity Fund (Investor Class Units) |
| | 5% | AIM Canadian First Class (Series A Shares) |
| | 5% | Fidelity Disciplined Equity Fund (Series A Units) |
| | 15% | Trimark U.S. Companies Fund (Select Units) |
| | 10% | ING US Equity Fund (Investor Class Units) |
| | 5% | Fidelity Growth America Fund (Series A Units) |
| | 5% | AIM European Growth Fund (Series A Units) |
| | 10% | ING Europe Equity Fund (Investor Class Units) |
| | 5% | Fidelity Far East Fund (Series A Units) |
| | 15% | Fidelity International Portfolio Fund (Series A Units) |
| | 10% | ING Canadian Resources Fund (Investor Class Units) |
| Ensemble Aggressive Equity RSP Portfolio | 10% | ING Canadian Communications Fund (Investor Class Units) |
| | 5% | AIM Canada Growth Class (Series A Shares) |
| | 10% | ING Canadian Equity Fund (Investor Class Units) |
| | 15% | AIM Canadian First Class (Series A Shares) |
| | 10% | Trimark Enterprise Small Cap Fund |
| | 10% | Fidelity True North Fund (Series A Units) |
| | 15% | Fidelity Canadian Aggressive Fund (Series A Units) |
| | 5% | ING Global Technology Fund (Investor Class Units) |
| | 5% | Fidelity Far East Fund (Series A Units) |
| | 5% | Trimark Discovery Fund (Select Units) |
| | 5% | ING Europe Equity Fund (Investor Class Units) |
| | 5% | Fidelity Emerging Markets Portfolio Fund (Series A Units) |
| Ensemble Moderate Equity RSP Portfolio | 15% | AIM Canadian First Class (Series A Shares) |
| | 10% | Trimark Enterprise Small Cap Fund |
| | 10% | ING Canadian Financial Services Fund (Investor Class Units) |
| | 5% | ING Canadian Communications Fund (Investor Class Units) |
| | 15% | ING Canadian Equity Fund (Investor Class Units) |
| | 10% | Fidelity True North Fund (Series A Units) |
| | 10% | Fidelity Disciplined Equity Fund (Series A Units) |
| | 5% | Fidelity American Opportunities Fund (Series A Units) |
| | 5% | AIM European Growth Fund (Series A Units) |
| | 5% | ING Austral-Asia Equity Fund (Investor Class Units) |
| | 5% | Fidelity Focus Technology Fund (Series A Units) |
| | 5% | Trimark Fund (SC Units) |

| Top Fund | Fixed Percentage of Net Assets | Underlying Funds |
|---|---|---|
| Ensemble Conservative Equity RSP Portfolio | 25%<br>15%<br>25%<br>10%<br>5%<br>5%<br>5%<br>5%<br>5% | ING Canadian Equity Fund (Investor Class Units)<br>AIM Canadian First Class (Series A Shares)<br>Fidelity Disciplined Equity Fund (Series A Units)<br>AIM Canada Growth Class (Series A Shares)<br>ING US Equity Fund (Investor Class Units)<br>Fidelity Far East Fund (Series A Units)<br>Trimark U.S. Companies Fund (Select Units)<br>Fidelity International Portfolio Fund (Series A Units)<br>ING Europe Equity Fund (Investor Class Units) |

4. The Underlying Funds consist of funds that are managed by ING, as well as by arms-length third party managers, being AIM Funds Management Inc. ("AIM") and Fidelity Investments Canada Limited ("Fidelity", together with ING and AIM, the "Underlying Fund Managers").

5. The Underlying Funds are reporting issuers in each of the Prospectus Jurisdictions and are not in default of any of the requirements of the securities legislation of any of the Prospectus Jurisdictions. The securities of the Underlying Funds are currently qualified for distribution pursuant to simplified prospectuses and annual information forms filed in each of the Prospectus Jurisdictions.

6. The Underlying Funds are not invested in other mutual funds, except to the extent permitted by section 2.5 of National Instrument 81-102 Mutual Funds ("NI 81-102"). The Top Funds will not invest in any mutual fund whose investment objective includes investing in other mutual funds.

7. It is proposed by ING that the Fixed Percentages of assets invested by a Top Fund in the securities of the Underlying Funds may not deviate more than 2.5% above or below the Fixed Percentages (the "Permitted Ranges"). ING will review the investments made by each Top Fund in securities of the Underlying Funds on a daily basis and will adjust them as needed to keep within the Fixed Percentages.

8. In addition, the appropriateness of each Top Fund's selection of Underlying Funds and of the Fixed Percentages will also be reviewed by ING on an ongoing basis to ensure that a particular Underlying Fund or Fixed Percentage continues to be appropriate for a Top Fund's investment objectives. ING may, as the result of that review, decide to change the Fixed Percentages in one or more Underlying Funds, remove an existing Underlying Fund or add a new Underlying Fund. ING will give security holders of the Top Funds 60 days' prior notice of any such change and amend the Prospectus to reflect any such change.

9. The management fee structure for the Top Funds will be such as to avoid the duplication of management fees. The management fee charged by the Underlying Fund Managers will be reduced through the payment of a management fee rebate distribution (calculated and accrued daily and paid monthly or quarterly), by the Underlying Funds to the Top Funds. The result will be that the aggregate of the management fees payable by a Top Fund at the Underlying Fund level and the management fee payable at the Top Fund level, will approximately equal the management fee that is otherwise charged indirectly to the general investing public at the Underlying Fund level, plus a fee equal to an estimated 30 to 55 basis points per annum. This fee will be used to compensate the Manager for Underlying Fund selection, asset allocation and ongoing monitoring, re-balancing and such other related investment management services.

10. Except to the extent evidenced by this Decision and specific approvals granted by the Canadian securities administrators pursuant to NI 81-102, the investments by the Top Funds in securities of the Underlying Funds have been or will be structured to comply with the investment restrictions of the Legislation and NI 81-102.

11. In the absence of this Decision, pursuant to the Legislation, the Top Funds are each prohibited from (a) knowingly making an investment in securities of the Underlying Funds to the extent that the Top Fund, either alone or in combination with other ING managed funds, is a substantial security holder of the Underlying Funds; and (b) knowingly holding an investment referred to in subsection (a) hereof. As a result, in the absence of this Decision, the Top Funds would be required to divest themselves of any investments referred to in subsections (a) and (b) herein.

12. In the absence of this Decision, the Legislation requires ING to file a report on every purchase or sale of securities of the Underlying Funds by the Top Funds.

13. Each investment by the Top Funds in the securities of the Underlying Funds will be in the best interests of the Top Funds and will represent the business judgment of "responsible persons" (as defined in the Legislation), uninfluenced by considerations other than the best interests of the Top Funds and the Underlying Funds.

**AND WHEREAS** under the System, this MRRS 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 has been met;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Applicable Requirements shall not apply so as to prevent the Top Funds from investing in, or redeeming the securities of the Underlying Funds;

**PROVIDED THAT IN RESPECT OF** the investment by the Top Funds directly in securities of the Underlying Funds:

1. the Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with matters in section 2.5 of NI 81-102; and

2. the Decision shall only apply if, at the time a Top Fund makes or holds an investment in its Underlying Funds, the following conditions are satisfied:

   (a) the securities of both the Top Funds and the Underlying Funds are being offered for sale in the jurisdiction of the Decision Maker pursuant to a simplified prospectus and annual information form which have been filed with and accepted by the Decision Maker;

   (b) the investment by a Top Fund in the Underlying Funds is compatible with the investment objective of the Top Fund;

   (c) the Prospectus discloses the intent of the Top Funds to invest in securities of the Underlying Funds, the names of the Underlying Funds, the Fixed Percentages and the Permitted Ranges within which such Fixed Percentages may vary;

   (d) the investment objective of the Top Fund discloses that the Top Fund invests its assets (exclusive of cash and cash equivalents) in securities of the Underlying Funds in accordance with the Fixed Percentages disclosed in the Prospectus;

   (e) the Underlying Funds are not mutual funds whose investment objective includes investing directly or indirectly in other mutual funds;

   (f) the Top Funds' holdings of securities of the Underlying Funds do not deviate from the Permitted Ranges;

   (g) any deviation from the Fixed Percentages is caused by market fluctuations only;

   (h) if an investment by a Top Fund in any of the Underlying Funds has deviated from the Permitted Ranges as a result of market fluctuations, the Top Fund's investment portfolio was re-balanced to comply with the Fixed Percentages on the next day on which the net asset value was calculated following the deviation;

   (i) if the Fixed Percentages and the Underlying Funds which are disclosed in the Prospectus have been changed, either the Prospectus has been amended or a new simplified prospectus filed to reflect the change, and the security holders of the Top Fund have been given at least 60 days' notice of the change;

   (j) there are compatible dates for the calculation of the net asset value of the Top Funds and the Underlying Funds for the purpose of the issue and redemption of the securities of such mutual funds;

   (k) no sales charges are payable by the Top Funds in relation to their purchases of securities of the Underlying Funds;

   (l) no redemption fees or other charges are charged by an Underlying Fund in respect of the redemption by a Top Fund of securities of the Underlying Fund owned by the Top Fund;

   (m) no fees or charges of any sort are paid by a Top Fund and the Underlying Funds, by their respective managers or principal distributors, or by any affiliate or associate of any of the foregoing entities, to anyone in respect of the purchase, holding or redemption by a Top Fund of the securities of the Underlying Funds;

   (n) the arrangements between or in respect of the Top Funds and the Underlying Funds are such as to avoid the duplication of management fees;

   (o) any notice provided to security holders of an Underlying Fund, as required by applicable laws or the constating documents of that Underlying Fund, has been delivered by a Top Fund to its security holders along with all voting rights attached to the securities of the Underlying Fund which are directly owned by the Top Fund;

   (p) all of the disclosure and notice material prepared in connection with a meeting of security holders of an Underlying Fund and received by a Top Fund has been provided to its security holders, the security holders have been permitted to direct a representative of the Top Fund to vote its holdings in the Underlying Fund in accordance with their direction, and the representative of the Top Fund has not voted its holdings in the Underlying Funds except to the extent the security holders of the Top Fund have directed;

   (q) in addition to receiving the annual and, upon request, the semi-annual financial statements, of a Top Fund, security holders of the Top Funds have received (i) appropriate summary disclosure in the financial statements of each Top Fund in respect of that Top Fund's holdings of securities of the Underlying Funds; or (ii) upon request, the annual and semi-annual financial statements of the Underlying Funds in either a

combined report, containing financial statements of the Top Fund and of the Underlying Funds, or in a separate report containing the financial statements of the Underlying Funds; and

(r) to the extent that the Top Funds and the Underlying Funds do not use a combined simplified prospectus and annual information form containing disclosure about the Top Funds and the Underlying Funds, copies of the simplified prospectus and annual information form of the Underlying Funds have been provided upon request to security holders of the Top Funds and this right is disclosed in the Prospectus of the Top Funds.

January 30, 2001.

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

## 2.1.18 Elliott & Page Ltd. et al. - MRRS Decision

**Headnote**

Investment by the RSP Fund in forward contracts issued by related counterparties, or its affiliates, exempted from the requirements of clauses 111(2)(a),111(2)(c),117(1)(a), 117(1)(d) and 118(2)(a), subject to specified conditions.

**Statues Cited**

Securities Act (Ontario), R.S.O. 1990 c.S.5.,as am.,111(2)(a),111(2)(c),111(3),113, 117(1)(a), 117(1)(d), 117(2), 118(2)(a) and 121(2)(a).

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

**AND**

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

**AND**

**IN THE MATTER OF**
**ELLIOTT & PAGE LIMITED**
**ELLIOTT & PAGE RSP AMERICAN GROWTH FUND**
**ELLIOTT & PAGE RSP U.S. MID-CAP FUND**

**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 Elliott & Page Limited ("EPL") on behalf of Elliott & Page RSP American Growth Fund and Elliott & Page RSP U.S. Mid-Cap Fund (individually, an "RSP Fund" and collectively, the "RSP Funds") and Elliott & Page American Growth Fund and Elliott & Page U.S. Mid-Cap Fund (individually, an "Underlying Fund" and collectively, the "Underlying Funds") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that:

1. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company who is a substantial security holder of the mutual fund, its management company or distribution company shall not apply in respect of investments by the RSP Funds in the Second Forward Contract (as defined below) and/or other forward contract transactions (collectively, the "Forward Contracts") with The Manufacturers Life Insurance Company ("Manulife Financial") or its affiliates (Manulife Financial and/or its affiliates being hereinafter referred to as "Manulife"), as counterparty;

2. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making an investment in an issuer in which any person or company who is a substantial security holder of the mutual fund, its management company or distribution company has a significant interest shall not apply in respect of the investments by the RSP Funds in the Forward Contracts;

3. the requirements contained in the Legislation requiring the management company to file a report relating to a purchase or sale of securities between the mutual fund and any related person or company or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies, shall not apply in respect of investments by the RSP Funds in the Forward Contracts; and

4. the restrictions of the Legislation prohibiting a portfolio manager from causing assets of a mutual fund to be invested in assets of any issuer in which a responsible person, as defined in the Legislation, or an associate of a responsible person is a director or officer unless that specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase.

The Legislation outlined above in paragraphs 1 through 4 will be referred to in this Decision Document as the "Applicable Legislation".

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

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

1. Each of the RSP Funds and the Underlying Funds is an open-end mutual fund trust established under the laws of the Province of Ontario.

2. EPL is a corporation established under the laws of the Province of Ontario. EPL is the manager, principal distributor and promoter of each of the RSP Funds and the Underlying Funds. The registered head office of EPL is in the province of Ontario.

3. The RSP Funds and the Underlying Funds are reporting issuers and are not in default of any requirements of the Legislation. The securities of each of the RSP Funds and the Underlying Funds are currently qualified for distribution pursuant to a simplified prospectus and annual information form dated August 16, 2000 (collectively, the "Prospectus").

4. In connection with the creation of the RSP Funds in November 1999, applications were made and relief obtained from the various securities authorities in Canada providing the standard form of exemptive relief required in connection with the creation and public distribution of RSP mutual funds like the RSP Funds. The exemptive relief is evidenced by: (i) a letter dated November 17, 1999 from the Ontario Securities Commission on behalf of each of the Jurisdictions providing the required approval under National Policy Statement No. 39; and (ii) an MRRS Decision Document dated November 17, 1999 (collectively, the "1999 Decision Documents").

5. The RSP Funds originally entered into a forward contract (the "Original Forward Contract") with a certain financial institution (the "Original Counterparty").

6. Manulife, a financial institution which owns 100% of EPL, may in the future be prepared to enter into a forward contract (the "Second Forward Contract") as a second counterparty (the "Second Counterparty").

7. The Prospectus (and each renewal thereof) will disclose the involvement of Manulife in acting as the Second Counterparty or otherwise as a counterparty as well as all applicable charges in connection with a Forward Contract.

8. Except for the transaction costs payable to Manulife in relation to a Forward Contract, none of the RSP Funds, the Underlying Funds, EPL or any affiliate or associate of any of the foregoing will pay any fees or charges of any kind to any other related party in connection with a trade in a Forward Contract.

9. Except to the extent evidenced by decisions and specific approvals granted by the Decision Makers, any investment by the RSP Funds in a Forward Contract have been structured to comply with the investment restrictions of the Legislation and National Instrument 81-102.

10. In the absence of the Decision, the Applicable Legislation prohibits each of the RSP Funds from investing in a Forward Contract.

11. In the absence of the Decision, the Applicable Legislation requires EPL to file a report on every investment made by the RSP Funds in a Forward Contract.

12. Each investment by the RSP Funds in a Forward Contract represents the business judgement of responsible persons, uninfluenced by considerations other than the best interests of the RSP Funds.

**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 are satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Applicable Legislation does not apply so as to prevent the RSP Funds from investing in a Forward Contract.

**PROVIDED THAT IN RESPECT OF** the investments by the RSP Funds in a Forward Contract, the Decision shall only apply in respect of investments in a Forward Contract that are made by the RSP Funds in compliance with the 1999 Decision Documents and the following conditions:

(a) the pricing terms offered by Manulife to the RSP Funds under a Forward Contract are at least as favourable as: (i) the pricing terms entered into by similar mutual funds of similar size as the RSP Funds with non-related counterparties; and (ii) the pricing terms entered into by similar mutual funds of similar size as the RSP Funds committed by Manulife;

(b) prior to the RSP Funds entering into a Forward Contract with Manulife, the independent auditors of the RSP Funds will review the pricing terms described in condition (a) 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 amendment to pricing terms of a Forward Contract, during the term of such contract;

(d) the RSP Funds will enter into a Forward Contract with Manulife only once confirmation of favourable pricing is received from the independent auditors of the RSP Funds; and

(e) the Prospectus (and each renewal thereof) discloses the independent auditors' role and review of the Forward Contracts, as well as the involvement of Manulife and its relationship to the RSP Funds.

January 8, 2001.

"J.A. Geller" "Howard I. Wetston"

## 2.2 Orders

### 2.2.1 Shiningbank Energy Income Fund - s. 147 et al.

**Headnote**

Section 15.1 of Rule 41-501 - relief from certain requirements of Rule 41-501 where preliminary prospectus and prospectus filed in accordance with National Instrument 44-101.

Subsection 5.1(1) of National Instrument 41-101 – relief from requirements of 41-101 where preliminary prospectus and prospectus filed in accordance with National Instrument 44-101

Section 147 – relief from the requirement that a period of ten days elapse between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for (final) prospectus

Paragraph 80(b)(iii) – relief from the requirement to mail annual comparative financial statements concurrently with the filing of such financial statements, subject to conditions

Subsection 59(2) of Schedule I – waiver of fees.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5. as am, ss. 65(1), 78, 79, 80(b)(iii), 147.

**Regulation Cited**

Schedule I to General Regulation, Ont. Reg. 1015 R.R.O 1990, as am., s.59(2).

**Rules Cited**

National Instrument 41-101 Prospectus Disclosure Requirements (2000) 23 OSCB (Supp) 759

Commission Rule 41-501 General Prospectus Requirements (2000) 23 OSCB (Supp) 765

National Instrument 44-101 Short Form Prospectus Distributions (2000) 23 OSCB (Supp) 867

**IN THE MATTER OF THE SECURITIES ACT R.S.O. 1990, C.S.5, AS AMENDED (the "Act"), ONTARIO REGULATION 1015, R.R.O. 1990, AS AMENDED (the "Regulation") NI 44-101 SHORT FORM PROSPECTUS DISCLOSURE (the "Short Form Rule"), NI 41-101 PROSPECTUS DISCLOSURE REQUIREMENTS (the "Disclosure Rule") and COMMISSION RULE 41-501 GENERAL PROSPECTUS REQUIREMENTS (the "General Prospectus Rule")**

**AND**

**IN THE MATTER OF**

**SHININGBANK ENERGY INCOME FUND**

**ORDER AND DECISION**
**(Section 147 and Paragraph 80(b)(iii) of the Act, Section 15.1 of the General Prospectus Rule, Subsection 5.1(1) of the Disclosure Rule and Subsection 59(2) of Schedule I to the Regulation)**

**WHEREAS** Shiningbank Energy Income Fund (the "**Applicant**") filed a preliminary prospectus dated January 17, 2001 (the "**Preliminary Prospectus**") in accordance with the Short Form Rule relating to the qualification of 2,500,000 trust units (the "**Offering**") and received a receipt therefor dated January 18, 2001;

**AND WHEREAS** the Applicant intends to file a (final) prospectus (the "**Prospectus**") in accordance with the Short Form Rule and is desirous of receiving a receipt therefor forthwith;

**AND WHEREAS** the Applicant has applied for certain relief from the provisions of the Act, the Disclosure Rule and the General Prospectus Rule and for relief from the requirement to pay fees in connection with such application;

**AND WHEREAS** pursuant to an assignment dated April 12, 1999, as amended on September 7, 1999, February 15, 2000 and January 23, 2001, the Commission assigned certain of its powers and duties under the Act to each "Director", as that term is defined in subsection 1(1) of the Act;

**AND WHEREAS** on April 12, 1999 the Executive Director issued a determination and designation which designated, *inter alia*, each Manager in the Corporate Finance Branch of the Commission as a "Director" for the purposes of subsection 1(1) of the Act;

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

**IT IS HEREBY DECIDED** pursuant to section 15.1 of the General Prospectus Rule that the General Prospectus Rule, other than section 13.9 thereof, does not apply to the Preliminary Prospectus and the Prospectus;

**AND IT IS FURTHER DECIDED** pursuant to subsection 5.1(1) of the Disclosure Rule that the Disclosure Rule does not apply to the Preliminary Prospectus and the Prospectus;

**AND IT IS HEREBY ORDERED** pursuant to section 147 of the Act that the Offering is exempt from the requirement contained in subsection 65(1) of the Act that a period of ten days elapse between the issuance by the Director of a receipt for the Preliminary Prospectus and the issuance of a receipt for the Prospectus;

**AND IT IS FURTHER ORDERED** pursuant to paragraph 80(b)(iii) of the Act that section 79 of the Act does not apply to the Applicant insofar as it requires the Applicant to send financial statements filed under section 78 of the Act to each holder of its securities concurrently with their filing, if:

(a) the Applicant files those financial statements earlier than 140 days from the end of its last

financial year because it is required to do so, in connection with the Offering, by the Short Form Rule; and

(b) the financial statements are sent within the time period specified in the Act for filing;

**AND IT IS HEREBY DECIDED** pursuant to subsection 59(2) of Schedule I to the Regulation that the Applicant be exempt from the requirement under the Act to pay fees in connection with the making of this application.

January 24, 2001.

"Iva Vranic"

## 2.2.2 A.R.C. Resins International Corp. - s. 83

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

**AND**

**IN THE MATTER OF A.R.C. RESINS INTERNATIONAL CORP.**

**ORDER (Section 83)**

**WHEREAS** the Ontario Securities Commission (the "Commission") has received an application from A.R.C. Resins International Corp. ("ARC") for an order under the Act that ARC be deemed to have ceased to be a reporting issuer;

**AND WHEREAS** simultaneously with its application to the Commission, ARC has filed a Notice of Voluntary Surrender of Reporting Issuer Status with the British Columbia Securities' Commission;

**AND WHEREAS** ARC has represented to the Commission that:

1. Pursuant to an acquisition agreement ("Acquisition Agreement") dated October 30, 2000, Tembec Industries Inc. ("Tembec") agreed to acquire all of the outstanding securities of ARC by way of a plan of arrangement (the "Arrangement") under section 252 of the British Columbia Companies Act. On December 18, 2000, Tembec's rights pursuant to the Acquisition Agreement were assigned to 3iO Corp. ("3iO"), a wholly-owned subsidiary of Tembec.

2. The Arrangement was approved by Interim Order of the Supreme Court of British Columbia (the "BCSC") on November 2, 2000. It was subsequently approved by special majority of the shareholders of ARC at an Extraordinary General Meeting held on December 18, 2000, and then by Final Order of the BCSC on December 20, 2000. The Arrangement became effective on December 28, 2000.

3. The authorized capital of ARC consists of 101,000,000 shares divided into: (i) 100,000,000 common shares without par value, of which 31,187,663 common shares are outstanding, all of which are all held by 3iO; and (ii) 1,000,000 preferred shares of which none are outstanding.

4. Trading of the securities of ARC was suspended by the British Columbia Securities' Commission and by the Commission in 1997. The cease trade orders were revoked by final orders of the British Columbia Securities' Commission and the Commission on December 28, 2000 to permit the completion of the Arrangement.

5. ARC is a reporting issuer not in default of any requirements of the Act.

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

**IT IS ORDERED** pursuant to Section 83 of the Act that ARC is deemed to have ceased to be a reporting issuer in Ontario.

January 25, 2001.

"John Hughes"

## 2.2.3 Pacific Safety Products Inc. - s. 83.1(1)

**Headnote**

Subsection 83.1(1) - issuer deemed to be a reporting issuer in Ontario - issuer has been reporting issuer in British Columbia and in Alberta since February 1995 - issuer listed and posted for trading on the Canadian Venture Exchange - continuous disclosure requirements of British Columbia and Alberta substantially similar to those of Ontario.

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am., s. 83.1(1).

**IN THE MATTER OF THE SECURITIES ACT**
**(R.S.O. 1990, c. S.5, as amended)**

**AND**

**IN THE MATTER OF PACIFIC SAFETY PRODUCTS INC.**

**ORDER**
**(Section 83.1(1))**

**UPON** the application of Pacific Safety Products Inc. (the "Corporation") to the Ontario Securities Commission (the "Commission") for an order pursuant to Section 83.1(1) of the *Securities Act* (Ontario) (the "Act") deeming the Corporation to be a reporting issuer for the purposes of Ontario securities law;

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

**AND UPON** the Corporation having represented to the Commission as follows:

1. The Corporation is a company governed by the *Company Act* (British Columbia). Its head and registered offices are located in Kelowna, British Columbia.

2. The Corporation became a "reporting issuer" under the *Securities Act* (Alberta) and the *Securities Act* (British Columbia) on February 17, 1995 on the issuance of receipts for a Prospectus dated February 14, 1995. The Corporation is not a reporting issuer or its equivalent under the securities legislation of any other jurisdiction in Canada.

3. The Corporation's common shares were listed on The Alberta Stock Exchange (the "ASE") in March, 1995. The Corporation's common shares currently trade on the Canadian Venture Exchange Inc. ("CDNX"), the successor to the ASE, under the trading symbol "PSP".

4. The Corporation is not on the lists of defaulting reporting issuers maintained pursuant to section 113 of the *Securities Act* (Alberta) or section 77 of the *Securities Act* (British Columbia). To the knowledge of management of the Corporation, the Corporation has not been the subject of any enforcement actions by the Alberta or British Columbia Securities Commissions or by CDNX, and the Corporation is not in default of any

requirement of the Act, the *Securities Act* (Alberta) or the *Securities Act* (British Columbia).

5. The continuous disclosure requirements of the *Securities Act* (Alberta) and the *Securities Act* (British Columbia) are substantially the same as the requirements under the Act.

6. The materials filed by the Corporation as a reporting issuer in the Provinces of Alberta and British Columbia since January 1, 1997 are available on the System for Electronic Document Analysis and Retrieval.

7. The authorized capital of the Corporation consists of 30,000,000 common shares of which 12,100,129 common shares are outstanding. An aggregate of 728,000 common shares of the Corporation are also reserved for issuance on the exercise of stock options granted by the Corporation to its directors, officers and employees. Another 300,000 common shares of the Corporation are reserved for issuance pursuant to the Corporation's employee share ownership plan.

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

**IT IS HEREBY ORDERED** pursuant to Section 83.1(1) of the Act that the Corporation be deemed to be a reporting issuer for the purposes of Ontario securities law.

January 26, 2001.

"John A. Geller" "Howard I. Wetston"

## 2.2.4 Trilogy Retail Enterprises L.P. et al. - ss. 127(1)

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

**AND**

**IN THE MATTER OF TRILOGY RETAIL ENTERPRISES L.P., CHAPTERS INC. AND FUTURE SHOP LTD.**

**ORDER**
**(Subsection 127(1))**

**UPON** the application of Trilogy Retail Enterprises L.P. ("Trilogy") to the Ontario Securities Commission (the "Commission") for:

(a) a permanent order pursuant to clause 2 of subsection 127(1) of the Act that trading cease in respect of any securities issued, or to be issued, under or in connection with the shareholder rights plan dated April 17, 2000 (the "Rights Plan") of Chapters Inc. ("Chapters"); and

(b) a permanent order pursuant to clause 3 of subsection 127(1) of the Act that the exemptions from the prospectus and registration requirements contained in sections 35, 72 and 73 of the Act shall not apply to any trade in securities by Chapters pursuant to or in connection with the Rights Plan;

**AND UPON** considering the evidence and submissions of staff of the Commission and counsel for Chapters, Trilogy and Future Shop Ltd. presented at a hearing called for that purpose;

**AND UPON** the Commission being of the opinion that it is in the public interest to make these permanent orders;

**IT IS ORDERED** pursuant to:

1. clause 2 of subsection 127(1) of the Act that trading cease in respect of any securities issued, or to be issued, under or in connection with the Rights Plan; and

2. clause 3 of subsection 127(1) of the Act that the exemptions contained in sections 35, 72 and 73 of the Act shall not apply to any trade in securities by Chapters pursuant to or in connection with the Rights Plan.

January 21, 200.

"R. Stephen Paddon" "Derek Brown"

"Howard I. Wetston"

### 2.2.5 FT Capital Ltd. - s. 144

**Headnote**

Cease-trade order revoked where the issuer has remedied its default in respect of disclosure requirements under the Act.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127(1)2, 127(5), 127(8), 144.

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

**AND**

**IN THE MATTER OF FT CAPITAL LTD.**

**ORDER (Section 144)**

**WHEREAS** the securities of **FT CAPITAL LTD.** (the "Reporting Issuer") currently are subject to a Temporary Order (the "Temporary Order") made by a Director on behalf of the Ontario Securities Commission (the "Commission"), pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, on the 17th day of July, 2000, as extended by a further order (the "Extension Order") of a Director, made on the 28th day of July, 2000, on behalf of the Commission pursuant to subsection 127(8) of the Act, that trading in the securities of the Reporting Issuer cease until the Temporary Order, as extended by the Extension Order, is revoked by a further Order of Revocation;

**AND WHEREAS** the Temporary Order and Extension Order were each made on the basis that the Reporting Issuer was in default of certain filing requirements;

**AND WHEREAS** the undersigned Manager is satisfied that the Reporting Issuer has remedied its default in respect of the filing requirements and is of the opinion that it would not be prejudicial to the public interest to revoke the Temporary Order as extended by the Extension Order;

**NOW THEREFORE, IT IS ORDERED**, pursuant to section 144 of the Act, that the Temporary Order and Extension Order be and they are hereby revoked.

January 25, 2001.

"John Hughes"

### 2.2.6 Minpro International Ltd. - s. 144

**Headnote**

Cease-trade order revoked where the issuer has remedied its default in respect of disclosure requirements under the Act.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127(1)2, 127(5), 127(8), 144.

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

**AND**

**IN THE MATTER OF MINPRO INTERNATIONAL LTD.**

**ORDER (Section 144)**

**WHEREAS** the securities of **MINPRO INTERNATIONAL LTD.** (the "Reporting Issuer") currently are subject to a Temporary Order (the "Temporary Order") made by a Director on behalf of the Ontario Securities Commission (the "Commission"), pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, on the 13th day of September, 2000, as extended by a further order (the "Extension Order") of a Director, made on the 25th day of September, 2000, on behalf of the Commission pursuant to subsection 127(8) of the Act, that trading in the securities of the Reporting Issuer cease until the Temporary Order, as extended by the Extension Order, is revoked by a further Order of Revocation;

**AND WHEREAS** the Temporary Order and Extension Order were each made on the basis that the Reporting Issuer was in default of certain filing requirements;

**AND WHEREAS** the undersigned Manager is satisfied that the Reporting Issuer has remedied its default in respect of the filing requirements and is of the opinion that it would not be prejudicial to the public interest to revoke the Temporary Order as extended by the Extension Order;

**NOW THEREFORE, IT IS ORDERED**, pursuant to section 144 of the Act, that the Temporary Order and Extension Order be and they are hereby revoked.

January 24, 2001.

"John Hughes"

### 2.2.7 National City Bank - s. 80

**Headnote**

Section 80 of the Commodity Futures Act - relief for Schedule III bank from requirement to register as an adviser where the performance of the service as an adviser is incidental to principal banking business.

**Statutes Cited**

Commodity Futures Act, R.S.O. 1990, c.S.20, as am., sections 22(1)(b), 80.

**IN THE MATTER OF THE COMMODITIES FUTURES ACT, R.S.O. 1990, CHAPTER S.20, AS AMENDED (the "Act")**

**AND**

**IN THE MATTER OF NATIONAL CITY BANK**

**ORDER (Section 80)**

**UPON** application (the "Application") by National City Bank (the "Bank") to the Ontario Securities Commission (the "Commission") for an order pursuant to section 80 of the Act exempting the Bank from the requirement to obtain registration as an adviser under clause 22(1)(b) of the Act in connection with the authorized foreign banking activities to be carried on by the Bank in Ontario;

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

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

1. The Bank is a United States incorporated bank and is a "foreign bank", as such term is defined in section 2 of the *Bank Act* (Canada) (the "Bank Act").

2. The Bank currently conducts commercial lending activities in Canada through National City Canada, Inc. ("NCC"), its wholly-owned Canadian subsidiary. NCC is a private corporation incorporated under the Ontario Business Corporations Act and is not a financial institution regulated by the Bank Act.

3. Until recently, a foreign bank was not allowed under the Bank Act to establish a branch in Canada and could only carry on commercial lending activities by establishing a foreign bank subsidiary in Canada or, with the consent of the Minister of Finance, by establishing a private corporation. The Bank and NCC received an order of the Minister of Finance to establish NCC.

4. In 1999, the Bank Act was amended to add Part XII.1, which creates the concept of an "authorized foreign bank". Under the Bank Act, an "authorized foreign bank" is a foreign bank that has applied to the Minister of Finance (the "Minister") for an order under section 524(1) of the Bank Act (an "AFB Order") permitting such foreign bank to become an authorized foreign bank. An authorized foreign bank is permitted to establish a branch in Canada to, among other things, carry on commercial lending activities.

5. The Bank received an AFB Order on December 8, 2000. The Bank expects to commence commercial lending activities by setting up a Canadian branch upon receipt of this MRRS decision document. The Bank expects that it will likely wind up NCC once the new branch is in place. Once established, the Bank's branch operations will be limited to commercial lending activities. The Bank will not operate a retail lending business nor be a deposit taking institution in Canada.

6. Section 31(a) of the Act refers to "a bank listed on Schedule I or II to the Bank Act" in connection with the exemption from the adviser registration requirement however no reference is made in the Act to entities listed on Schedule III to the Bank Act.

7. In order to ensure that the Bank, as an entity listed on Schedule III to the Bank Act, is able to provide banking services to businesses in Ontario it requires similar exemptions under the Act currently available to banking institutions incorporated under the Bank Act to the extent that the current exemptions applicable to such banking institutions are relevant to the banking business being undertaken by the Bank in Ontario.

8. The Bank will be performing certain foreign exchange advisory services in connection with its principal banking business.

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

**IT IS RULED** pursuant to section 80 of the Act that, in connection with the authorized foreign banking activities to be carried on by the Bank in Ontario, the Bank is exempt from the requirement of clause 22(1)(b) of the Act where the performance of the service as an adviser is solely incidental to the Bank's principal banking business in Ontario.

December 19th, 2000.

"J. A. Geller" "H. I. Wetston"

## 2.2.8 Anormed Inc. - s.147

**Headnote**

Section 15.1 of Rule 41-501 - relief from certain requirements of Rule 41-501 where preliminary prospectus and prospectus filed in accordance with National Instrument 44-101.

Subsection 5.1(1) of National Instrument 41-101 – relief from requirements of 41-101 where preliminary prospectus and prospectus filed in accordance with National Instrument 44-101.

Section 147 – relief from the requirement that a period of ten days elapse between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for (final) prospectus.

Paragraph 80(b)(iii) – relief from the requirement to mail annual comparative financial statements concurrently with the filing of such financial statements, subject to conditions.

Subsection 59(2) of Schedule I – waiver of fees.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5. as am, ss. 65(1), 78, 79, 80(b)(iii), 147.

**Regulation Cited**

Schedule I to General Regulation, Ont. Reg. 1015 R.R.O 1990, as am., s.59(2).

**Rules Cited**

National Instrument 41-101 Prospectus Disclosure Requirements (2000) 23 OSCB (Supp) 759.

Commission Rule 41-501 General Prospectus Requirements (2000) 23 OSCB (Supp) 765.

National Instrument 44-101 Short Form Prospectus Distributions (2000) 23 OSCB (Supp) 867.

**IN THE MATTER OF THE SECURITIES ACT R.S.O. 1990, C.S.5, AS AMENDED (the "Act"), ONTARIO REGULATION 1015, R.R.O. 1990, AS AMENDED (the "Regulation") NI 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS (the "Short Form Rule"), NI 41-101 PROSPECTUS DISCLOSURE REQUIREMENTS (the "Disclosure Rule") and COMMISSION RULE 41-501 GENERAL PROSPECTUS REQUIREMENTS (the "General Prospectus Rule")**

**AND**

**IN THE MATTER OF ANORMED INC.**

**ORDER AND DECISION**

**(Section 147 and Paragraph 80(b)(iii) of the Act, Section 15.1 of the General Prospectus Rule, Subsection 5.1(1) of the Disclosure Rule and Subsection 59(2) of Schedule I to the Regulation)**

**WHEREAS** AnorMED Inc. (the "**Applicant**") filed a preliminary prospectus dated January 22, 2001 (the "**Preliminary Prospectus**") in accordance with the Short Form Rule relating to the qualification of 1,500,000 common shares (the "**Offering**") and received a receipt therefor dated January 22, 2001;

**AND WHEREAS** the Applicant intends to file a (final) prospectus (the "**Prospectus**") in accordance with the Short Form Rule and is desirous of receiving a receipt therefor forthwith;

**AND WHEREAS** the Applicant has applied for certain relief from the provisions of the Act, the Disclosure Rule and the General Prospectus Rule and for relief from the requirement to pay fees in connection with such application;

**AND WHEREAS** pursuant to an assignment dated April 12, 1999, as amended on September 7, 1999, February 15, 2000 and January 23, 2001, the Commission assigned certain of its powers and duties under the Act to each "Director", as that term is defined in subsection 1(1) of the Act;

**AND WHEREAS** on April 12, 1999 the Executive Director issued a determination and designation which designated, *inter alia*, each Manager in the Corporate Finance Branch of the Commission as a "Director" for the purposes of subsection 1(1) of the Act;

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

**IT IS HEREBY DECIDED** pursuant to section 15.1 of the General Prospectus Rule that the General Prospectus Rule, other than section 13.9 thereof, does not apply to the Preliminary Prospectus and the Prospectus;

**AND IT IS FURTHER DECIDED** pursuant to subsection 5.1(1) of the Disclosure Rule that the Disclosure Rule does not apply to the Preliminary Prospectus and the Prospectus;

**AND IT IS HEREBY ORDERED** pursuant to section 147 of the Act that the Offering is exempt from the requirement contained in subsection 65(1) of the Act that a period of ten days elapse between the issuance by the Director of a receipt for the Preliminary Prospectus and the issuance of a receipt for the Prospectus;

**AND IT IS FURTHER ORDERED** pursuant to paragraph 80(b)(iii) of the Act that section 79 of the Act does not apply to the Applicant insofar as it requires the Applicant to send financial statements filed under section 78 of the Act to each holder of its securities concurrently with their filing, if:

(a) the Applicant files those financial statements earlier than 140 days from the end of its last financial year because it is required to do so, in connection with the Offering, by the Short Form Rule; and

(b) the financial statements are sent within the time period specified in the Act for filing;

**AND IT IS HEREBY DECIDED** pursuant to subsection 59(2) of Schedule I to the Regulation that the Applicant be exempt from the requirement under the Act to pay fees in connection with the making of this application.

January 29, 2001.

"Iva Vranic"

## 2.2.9 Sifton Properties Ltd. - s. 83

**Headnote**

Section 83 of the Securities Act - Issuer has 17 security holders of which 12 hold a de minimus number of securities - remaining security holders are insiders and associates of the issuer - Issuer deemed to have ceased to be reporting issuer under the Act.

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

**Statutes Cited**

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

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

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

**AND**

**IN THE MATTER OF THE**
**BUSINESS CORPORATIONS ACT, R.S.O. 1990,**
**CHAPTER B.16,**
**AS AMENDED (the "OBCA")**

**AND**

**IN THE MATTER OF**
**SIFTON PROPERTIES LIMITED**

**ORDER**
**(Section 83 of the Act)**
**(Subsection 1(6) of the OBCA)**

**UPON** the application of Sifton Properties Limited (the "Applicant") to the Ontario Securities Commission (the "Commission") for: (i) an order, pursuant to section 83 of the Act, deeming the Applicant to have ceased to be a reporting issuer under the Act, and (ii) an order, pursuant to subsection 1(6) of the OBCA, that the Applicant be deemed to have ceased to be offering its securities to the public;

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

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

1. The Applicant is continued under the OBCA and its head office is located in London, Ontario.

2. The Applicant is a reporting issuer under the Act and is a corporation offering its securities to the public under the OBCA.

3. The Applicant is not in default of any of the requirements of the Act or the rules or regulations made thereunder.

4. The Applicant's authorized capital consists of 2,437,317 common shares and 1,000,000 preference shares issuable in series. The Applicant currently has 856,717 common shares (the "Common Shares") issued and outstanding.

5. Other than the Common Shares, the Applicant has no other securities, including debt securities, outstanding.

6. The Applicant has 17 registered shareholders, including five shareholders (the "Inside Shareholders") which are either senior officers of the Applicant, corporations controlled by senior officers or directors of the Applicant, or spouses of directors of the Applicant.

7. The Inside Shareholders control approximately 99.79% of the outstanding Common Shares of the Applicant.

8. The remaining 12 registered shareholders own a *de minimis* number of securities in the capital of the Applicant (approximately 0.21% of the outstanding Common Shares).

9. The Applicant's securities are not listed on any stock exchange and are not available for trading on any stock exchange or market.

10. The Applicant does not intend to seek public financing by way of an offering to the public.

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

**IT IS ORDERED,** pursuant to section 83 of the Act, that the Applicant be deemed to have ceased to be a reporting issuer under the Act.

**AND IT IS FURTHER ORDERED,** pursuant to subsection 1(6) of the OBCA, that the Applicant is deemed to have ceased to be offering its securities to the public for the purposes of the OBCA.

January 26, 2001.

"Howard I. Wetston" "J. A. Geller"

## 2.3 Rulings

### 2.3.1 Insilicon Corporation et al. - ss. 74(1)

**Headnote**

Subsection 74(1) - registration and prospectus relief granted in respect of trades in common shares of non-reporting U.S. issuer upon the exercise of various rights attached to exchangeable securities - exchangeable securities issued by indirectly wholly-owned Canadian subsidiary of U.S. issuer - exchangeable securities provide the holder with a security of a Canadian issuer having economic rights, (excluding voting rights) which are, as nearly as practicable, equivalent to those of a common share of the U.S. issuer - first trade relief granted in respect of the underlying common shares

**Statute Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., 25, 53.

**Rules Cited**

Ontario Securities Commission Rule 72-501: *Prospectus Exemption fo First Trade Over a Market Outside Ontario*, (1198), 21 O.S.C.B. 3658.

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

**AND**

**IN THE MATTER OF INSILICON CORPORATION**

**AND**

**INSILICON CANADA LTD. AND INSILICON CANADA HOLDINGS ULC**

**RULING (Subsection 74(1))**

**UPON** the application (the "Application") of inSilicon Corporation ("inSilicon"), inSilicon Canada Holdings ULC ("Callco") and inSilicon Canada Ltd. ("Exchangeco") 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 the indirect acquisition (the "Acquisition") by inSilicon of Xentec Inc. pursuant to a securities exchange take-over bid (which take-over bid will be exempt from the requirements of Part XX of the Act by virtue of clause 93(1)(d) of the Act), shall not be subject to sections 25 or 53 of the Act;

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

**AND UPON** inSilicon, Callco and Exchangeco having represented to the Commission that:

1. inSilicon was incorporated on November 1, 1999 under the laws of Delaware. Its corporate headquarters are located at 411 East Plumeria Drive, San Jose, CA 95138.

2. inSilicon is currently subject to the reporting requirements of the United States *Securities Exchange Act of 1934*, as amended, and is not a reporting issuer under the Act or under the securities legislation of any other province of Canada.

3. The authorized capital of inSilicon consists of 100,000,000 shares of common stock (the "Parent Common Shares"), $0.001 par value, of which 14,129,080 were issued and outstanding as of the close of business on September 30, 2000. As of the close of business on September 30, 2000, inSilicon has reserved 4,706,454 Parent Common Shares for issuance to employees, directors and independent contractors pursuant to the 2000 inSilicon stock option plan, of which approximately 215,000 Parent Common Shares have been issued pursuant to option exercises, and 2,523,345 Parent Common Shares are subject to outstanding, unexercised options.

4. The Parent Common Shares are quoted on the Nasdaq National Market.

5. Callco is an unlimited liability corporation which was incorporated under the Companies Act (Nova Scotia) on November 14, 2000 for the sole purpose of participating in the Acquisition. Its corporate headquarters are located at Suite 800, 1959 Upper Water Street, P.O. Box 997, Halifax, Nova Scotia, B3J 2X2.

6. Callco is a private company within the meaning of the Act and is not a reporting issuer under the Act or under the securities legislation of any other province of Canada.

7. The authorized capital of Callco consists of 10,000,000 common shares, of which 100 common shares were issued and outstanding as of the close of business on November 14, 2000. All of the outstanding common shares of Callco are held by inSilicon Holdings Corp., a wholly-owned subsidiary of inSilicon, incorporated under the laws of Delaware.

8. Exchangeco is an indirect subsidiary of inSilicon and was incorporated under the Canada Business Corporations Act (the "CBCA") on November 10, 2000 for the sole purpose of participating in the Acquisition. Exchangeco's registered office address is 1 First Canadian Place, Toronto, Ontario, Canada, M5X 1B8.

9. Exchangeco is a private company within the meaning of the Act and is not a reporting issuer under the Act or under the securities legislation of any other province of Canada.

10. The authorized share capital of Exchangeco consists of an unlimited number of common shares, of which 1 common share was issued and outstanding as of the close of business on November 14, 2000. Prior to the closing of the Acquisition, Exchangeco filed articles of amendment to create an unlimited number of

exchangeable shares (the "Exchangeable Shares") and junior preferred shares. Upon completion of the Acquisition, all of the issued and outstanding Exchangeable Shares are held by former shareholders of Xentec who received such Exchangeable Shares in exchange for such holders' Xentec shares, and all of the issued and outstanding junior preferred shares are, for U.S. tax reasons, held by Xerxes Wania, a Canadian resident who is an employee of Insilicon.

11. Xentec was incorporated on July 13, 1998 under the CBCA. The registered office of Xentec is 2-1770 Argentina Road, Mississauga, Ontario, L5N 3K3.

12. Xentec is a private company within the meaning of the Act and is not a reporting issuer under the Act or under the securities legislation of any other province of Canada.

13. The authorized capital of Xentec consists of an unlimited number of class A common shares (the "Class A Target Shares") and an unlimited number of class B common shares (the "Class B Target Shares"), of which there were issued and outstanding as of November 15, 2000, 4,000,000 Class A Target Shares and 161,863 Class B Target Shares. As of the close of business on November 15, 2000, there were 460,380 Class B Target Shares reserved for issuance to employees and consultants pursuant to Xentec's stock option plan (the "Xentec Plan"), of which 161,863 shares have been issued pursuant to option exercises or direct stock purchases, 298,517 shares are subject to outstanding, unexercised options and no shares are subject to outstanding stock purchase rights.

14. All of the issued and outstanding Class A Target Shares are held by the following three holding companies: Cimex Holding Inc., 1291480 Ontario Inc. and 166482 Canada Inc. Prior to the completion of the Acquisition, these holding companies amalgamated with Xentec. Accordingly, all the Class A Target Shares and Class B Target Shares became the Class A Target Shares and Class B Target Shares of the amalgamated company and were acquired by Exchangeco and Callco pursuant to a share purchase agreement dated November 15, 2000 among inSilicon, Callco, Exchangeco, Xentec and the shareholders and optionholders of Xentec (the "Share Purchase Agreement").

15. The number of shareholders of Xentec (exclusive of employees) is less than fifty.

16. Pursuant to the terms of the Share Purchase Agreement, each of the holders of Class A Target Shares received a combination of Exchangeable Shares and an aggregate of US$2,933,000 in cash in exchange for their Class A Target Shares. Each of the holders of the Class B Target Shares, in the case of Canadian residents, received Exchangeable Shares, and in the case of non-Canadian residents, received Parent Common Shares, in exchange for their Class B Target Shares. In addition, each option to purchase Class B Target Shares was exchanged for an option to purchase those Parent Common Shares with similar terms as set forth in the Xentec Plan.

17. The Exchangeable Shares provide the former shareholders of Xentec with the ability to hold securities of a Canadian issuer (Exchangeco) having economic rights (excluding voting rights) which are, as nearly as practicable, equivalent to those of Parent Common Shares and are exchangeable at any time by the holder thereof for Parent Common Shares on a one-for-one basis.

18. The Exchangeable Shares are entitled to a preference over the common shares of Exchangeco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Exchangeco.

19. Dividends are payable on the Exchangeable Shares from Exchangeco at the same time as, and equivalent to, dividends payable by inSilicon on the Parent Common Shares.

20. Except as required by applicable law, the holders of Exchangeable Shares are not permitted to vote at meetings of the shareholders of Exchangeco. In addition, as part of the negotiation of the Acquisition, the holders of the Exchangeable Shares agreed that they would not have the right to vote at meetings of shareholders of inSilicon until such time as they had retracted their Exchangeable Shares and become holders of Parent Common Shares. InSilicon has a controlling shareholder and had the Exchangeable Shareholders been entitled to vote at inSilicon shareholder meetings, they would have represented less than 5.0 per cent of the total number of issued and outstanding Parent Common Shares as at September 30, 2000. Moreover, the establishment of voting procedures pursuant to which the Exchangeable Shareholders could exercise a right to vote at inSilicon shareholder meetings would have resulted in additional costs and expenses.

21. Subject to the overriding Retraction Call Right of Callco referred to below in this paragraph, upon retraction, the holder is entitled to receive from Exchangeco for each Exchangeable Share retracted an amount equal to the current market price of a Parent Share, to be satisfied by the delivery on behalf of Exchangeco of one Parent Common Share, plus an additional amount equivalent to the full amount of all declared and unpaid dividends on each such Exchangeable Share retracted (such aggregate amount being the "Retraction Price"). Upon being notified by Exchangeco of a proposed retraction by a holder of Exchangeable Shares, Callco has an overriding call right (the "Retraction Call Right") to purchase all, but not less than all, of the Exchangeable Shares that are the subject of the retraction notice for a price per share equal to the Retraction Price.

22. Subject to the overriding Redemption Call Right of Callco referred to below in this paragraph, Exchangeco is entitled to redeem all, but not less than all, of the Exchangeable Shares then outstanding, commencing

on December 18, 2005 (the "Redemption Date"). Upon redemption by Exchangeco, each holder of Exchangeable Shares will be entitled to receive from Exchangeco for each Exchangeable Share redeemed, an amount equal to the current market price of a Parent Common Share, to be satisfied by the delivery of one Parent Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the Redemption Date (such aggregate amount, the "Redemption Price"). Upon being notified by Exchangeco of a proposed redemption of Exchangeable Shares, Callco has an overriding call right (the "Redemption Call Right") to purchase all, but not less than all, of such shares for a price per share equal to the Redemption Price.

23. Exchangeco may accelerate the Redemption Date when:

    (a) there remain less than 155,007 Exchangeable Shares outstanding;

    (b) a change of control of inSilicon occurs;

    (c) an event occurs in respect of which holders of Exchangeable Shares are entitled to vote as shareholders of Exchangeco (the "Exchangeable Share Voting Event"), other than where the approval of the holders of the Exchangeable Shares is required to maintain the equivalence of the Exchangeable Shares and the Parent Common Shares (the "Exempt Exchangeable Share Voting Event"), and the board of directors has determined that it is not reasonably practical to accomplish the business intended by the Exchangeable Share Voting Event;

    (d) an Exempt Exchangeable Share Voting Event occurs and the holders of the Exchangeable Shares fail to take the necessary action to approve or disapprove, as applicable, the Exempt Exchangeable Share Voting Event; or

    (e) the *Income Tax Act* (Canada) is amended to permit holders of Exchangeable Shares to exchange their Exchangeable Shares for Parent Common Shares on a tax deferred basis.

24. Subject to the overriding Liquidation Call Right of Callco referred to below in this paragraph, on liquidation, dissolution or winding-up of Exchangeco, a holder of Exchangeable Shares is entitled to receive from Exchangeco for each Exchangeable Share an amount equal to the current market price of a Parent Common Share on the last business day prior to the liquidation date, to be satisfied by the delivery of one Common Parent Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the liquidation date (such aggregate amount, the "Liquidation Price"). Upon a proposed liquidation, dissolution or winding-up of Exchangeco, Callco has an overriding call right (the "Liquidation Call Right") to purchase all of the outstanding Exchangeable Shares from the holders thereof (other than inSilicon or its affiliates) for a price equal to the Liquidation Price.

25. Contemporaneously with the closing of the Acquisition, inSilicon, Callco, Exchangeco and the holders of the Exchangeable Shares entered into an agreement (the "Exchange Rights Agreement") pursuant to which a holder of an Exchangeable Share has the right (the "Exchange Right") upon the insolvency of Exchangeco to require inSilicon to purchase from the holder all or any part of the Exchangeable Shares held by such holder at a price equal to the then current market price of a Parent Common Share, to be satisfied by inSilicon issuing to such holder one Parent Common Share, plus an additional amount equivalent to the full amount of all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the purchase of such Exchangeable Shares by inSilicon.

26. Upon the liquidation, dissolution or winding-up of inSilicon, pursuant to the Exchange Rights Agreement, the Exchangeable Shares will be automatically exchanged for Parent Common Shares in order that holders of the Exchangeable Shares may participate in the dissolution of inSilicon on a *pro rata* basis with the holders of Parent Common Shares (the "Automatic Exchange Right").

27. Contemporaneously with the closing of the Acquisition, inSilicon, Callco and Exchangeco also entered into an exchangeable share support agreement (the "Exchangeable Share Support Agreement") which provides that inSilicon, among other things, will (i) not declare or pay dividends on the Parent Common Shares unless Exchangeco is able to and simultaneously declares and pays an equivalent dividend on the Exchangeable Shares; and (ii) ensure that Exchangeco and Callco will be able to honour the retraction and redemption rights and dissolution entitlements that are attributes of the Exchangeable Shares and the related Retraction Call Right, the Redemption Call Right and the Liquidation Call Right of Callco described above.

28. The Exchangeable Share Support Agreement also provides that, without the prior approval of the holders of the Exchangeable Shares, actions such as distributions of stock dividends, options, rights and warrants for the purchase of securities or other assets, reclassifications, reorganizations and other changes cannot be taken in respect of the Parent Common Shares without the same or an economically equivalent action being taken in respect of the Exchangeable Shares.

29. In order to enable inSilicon, Exchangeco or Callco, as the case may be, to deliver Parent Common Shares to a holder of Exchangeable Shares upon the exercise of the various exchange and call rights created under the share provisions of the Exchangeable Shares (the "Share Provisions"), the Exchange Rights Agreement and the Exchangeable Share Support Agreement, inSilicon may issue or transfer, or cause to be issued or

transferred, Parent Common Shares to or by its affiliates.

30. If all the holders of the Exchangeable Shares were to acquire the maximum number of Parent Common Shares to which they are entitled under the Share Provisions, the Exchange Rights Agreement and the Exchangeable Share Support Agreement, based on the number of Parent Common Shares outstanding as of September 30, 2000 and those issued pursuant to the Acquisition, the number of holders who are in Ontario and who would beneficially own Parent Common Shares would constitute less than 10% of the total number of beneficial holders of Parent Common Shares and would hold, in the aggregate, less than 10% of the total issued and outstanding Parent Common Shares.

31. Certain trades or potential trades in Exchangeable Shares and/or Parent Common Shares will or may take place in connection with the intra-group transfers by and between inSilicon and its affiliates and the various exchange and call rights created under the Share Provisions, the Exchange Rights Agreement and the Exchangeable Share Support Agreement. To the extent that there are no exemptions from sections 25 and 53 of the Act available for such trades (the "Non-Exempt Trades"), exemptive relief is required.

**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 Non-Exempt Trades are not subject to sections 25 or 53 of the Act, provided that the first trades in Exchangeable Shares or in Parent Common Shares acquired in connection with the Acquisition shall be a distribution unless:

(a) such first trade is executed in accordance with the provisions of Commission Rule 72-501 *Prospectus Exemption for First Trade Over a Market Outside of Ontario* as if the security was a restricted security (as defined in Commission Rule 72-501); or

(b) such first trade is made in accordance with the provisions of Section 72(5) of the Act and subsection 2.18(3) of Commission Rule 45-501 *Exempt Distributions* as if the security had been issued pursuant to one of the exemptions referenced in subsection 72(5) of the Act.

January 26, 2001.

"John A. Geller" " Howard I. Wetston"

## 2.3.2 Gearunlimited.com Inc. - ss. 74(1)

**Headnote**

Subsection 74(1) - exemption from prospectus and registration requirements for issuance of securities to arm's length and non-arm's length creditors by issuer in financial difficulty, subject to certain conditions - first trades in securities to be acquired by arm's length creditors subject to section 6.6 of Commission Rule 45-501 - first trade is securities to be issued to non-arm's length creditors subject to section 6.2 of Commission Rule 45-501.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53, 72(4), 72(5), 72(7) and 74(1).

**Regulations Cited**

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

**Rules Cited**

Ontario Securities Commission Rule 45-501 - Exempt Distributions, ss. 6.2 and 6.6.

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

**AND**

**IN THE MATTER OF GEARUNLIMITED.COM INC.**

**RULING**
**(Subsection 74(1))**

**UPON** the application of gearunlimited.com Inc. (the "Corporation") for a ruling pursuant to subsection 74(1) of the Act that the issuance of 750,000 common shares (the "Common Shares") in the capital of the Corporation to certain creditors of the Corporation shall not be subject to sections 25 and 53 of the Act, subject to certain conditions;

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

**AND UPON** the Corporation having represented to the Commission as follows:

1. The Corporation was formed by Articles of Amalgamation under the laws of Canada on November 26, 1999, is a reporting issuer under the Act and is not in default of any requirement of the Act or the regulations made thereunder (the "Regulations").

2. The authorized share capital of the Corporation consists of an unlimited number of common shares ("Common Shares") of which 21,104,352 were issued and outstanding as of December 20, 2000.

3. The Common Shares are listed and posted for trading on the Toronto Stock Exchange (the "TSE").

4. The Corporation is indebted to the following persons (collectively, the "Creditors") in the aggregate amount of $225,732.51, as follows:

| Creditor | Amount of Debt | Relationship |
|---|---|---|
| Ciris International Inc. | $91,080.29 | investor relations service provider |
| Transduction Ltd. | 50,825.00 | landlord |
| IBM Canada Ltd. | 33,577.02 | software solutions service provider |
| Shelley Shifman | 21,250.20 | accounting service provider |
| enet Capital | 20,000.00 | investor relations service provider |
| Tracey White | 5,000.00 | accounting service provider |
| Kevin Macer | 4,000.00 | customer service service provider |

5. The Corporation's current cashflows are minimal and, prior to the Shareholder Loan Conversion described below, it was in a negative working capital position.

6. As part of a larger restructuring of its capital and business, the principal amount of certain secured shareholder loans of the Corporation was recently converted to Common Shares of the Corporation and the outstanding interest on such loans was forgiven (the "Shareholder Loan Conversion") in order to place the Corporation in a modest positive cash position to continue its operations and proceed with a proposed share-for-share exchange with another business.

7. A condition of the Shareholder Loan Conversion was that the Corporation settle with the Creditors for cash and Common Shares in order to improve its balance sheet.

8. The Creditors have agreed to accept Common Shares in full or partial satisfaction of the Corporation's indebtedness.

9. The Creditors were not induced to accept Common Shares in payment of the indebtedness by the expectation or the opportunity to render or to continue rendering services to the Corporation.

10. The services were rendered with the expectation that the cost of such services would be satisfied in cash and payment in Common Shares was not contemplated at the time the services were provided.

11. Each of the Creditors deals at arm's length with the Corporation and is a *bona fide* creditor of the Corporation.

12. The Corporation and the Creditors in their respective agreements have agreed that the indebtedness of the Corporation to the Creditors shall be partially or fully satisfied as follows:

| Creditor | Common Shares to be Issued | Price per Common Share |
|---|---|---|
| Ciris International Inc. | 455,000 | $0.2000 |
| Transduction Ltd. | 50,000 | 1.0165 |
| IBM Canada Ltd. | 75,000 | 0.4477 |
| Shelly Shifman | 25,000 | 0.8500 |
| enet Capital | 100,000 | 0.2000 |
| Tracey White | 25,000 | 0.2000 |
| Kevin Macer | 20,000 | 0.2000 |

13. An aggregate of 750,000 Common Shares will be issued to the Creditors which represents approximately 3.6% of the issued and outstanding Common Shares of the Corporation as at December 20, 2000.

14. The Corporation has obtained approval of a majority of the shareholders for the conversion of the Creditor's debt to Common Shares.

15. The TSE has conditionally approved the additional listing of the Common Shares to the Creditors.

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

**IT IS RULED,** pursuant to subsection 74(1) of the Act, that the issuance by the Corporation of Common Shares to the Creditors in partial or full satisfaction of the indebtedness incurred by the Corporation in respect of services provided by the Creditors shall not be subject to sections 25 and 53 of the Act, provided that:

(a) the first trade in Common Shares issued pursuant to this ruling by the Creditors shall be a distribution unless such first trade is made in accordance with the provisions of subsection 72(5) of the Act, as if such securities had been acquired pursuant to an exemption referred to in subsection 72(5) of the Act, except that, for these purposes, it shall not be necessary to satisfy the requirement in clause 72(5)(a) of the Act that the issuer not be in default of any requirement of the Act or the Regulations 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; and

(b) concurrently with the issuance of Common Shares pursuant to this ruling, the Corporation shall provide to each Creditor a copy of this ruling together with a statement which explains that, as a consequence of this ruling, certain protections, rights and remedies provided under the Act to purchasers of securities distributed by way of prospectus, including statutory rights of rescission and damages, are not available.

January 30, 2001.

"Howard I. Wetston" "J. A. Geller"

### 2.3.3 Intecom Inc. et al. - ss. 74(1)

**Headnote**

Subsection 74(1) - trades in securities of U.S. issuer to be made pursuant to the exercise of various exchange rights attached to securities issued by Canadian subsidiary of U.S. issuer not subject to the registration and prospectus requirements - first trade relief provided, subject to a condition.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53, 74(1).

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

**AND**

**IN THE MATTER OF INTECOM INC., INTECOM HOLDINGS ULC AND INTECOM CANADA INC.**

**RULING (Subsection 74(1))**

**UPON** the application of Intecom Inc. ("Intecom"), Intecom Holdings ULC ("Intecom Holdings") and Intecom Canada Inc. ("Intecom Canada") (collectively, the "Applicants") to the Ontario Securities Commission (the "Commission") for a ruling pursuant to subsection 74(1) of the Act that certain trades in securities to be made as a result of the acquisition (the "Acquisition") by Intecom Canada of all of the issued and outstanding shares of Pyderion Contact Technologies Inc. ("Pyderion") be exempt from sections 25 and 53 of the Act;

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

**AND UPON** the Applicants having represented to the Commission the following:

1. Pyderion, a corporation incorporated under the Canada Business Corporations Act, is a private company within the meaning of the Act and is not a reporting issuer under the Act.

2. The authorized capital of Pyderion consists of an unlimited number of Class A common shares, an unlimited number of Class B common shares, an unlimited number of Class C common shares, an unlimited number of class D common shares and an unlimited number of common shares, of which 85,282 Class A common shares, 4,447,044 Class B common shares, 199,141 Class C common shares, 725,262 Class D common shares and 2,998,179 common shares are issued and outstanding (all such shares, the "Pyderion Shares").

3. As at the date hereof, the Pyderion Shares are all held by Intecom Canada.

4. Intecom Canada is a corporation incorporated under the laws of the Province of Nova Scotia, is a private company within the meaning of the Act and is not a reporting issuer under the Act.

5. The authorized capital of Intecom Canada consists of 100,000,000 common shares, 100,000,000 exchangeable shares and 100,000,000 preferred shares, of which, 1,436,291 common shares, 953,465 exchangeable shares (the "Exchangeable Shares") and no preferred shares are issued and outstanding.

6. The Exchangeable Shares are held by forty-five (45) shareholders (the "Exchangeable Shareholders"): seventeen (17) shareholders who are resident in Ontario, twenty-seven (27) shareholders who are resident in Québec and one (1) shareholder who is not a Canadian resident and who holds 78,276 Exchangeable Shares (approximately 8.21% of the Exchangeable Shares).

7. All of the Exchangeable Shareholders who are resident in Ontario are employees of Pyderion.

8. The Exchangeable Shares were issued by Intecom Canada to the Exchangeable Shareholders on December 6, 2000 in connection with the acquisition (the "Acquisition") by Intecom Canada of all of the Pyderion Shares.

9. Intecom Canada is a wholly-owned subsidiary of Intecom Holdings, which is an unlimited liability corporation incorporated under the laws of the Province of Nova Scotia, is a private company within the meaning of the Act and is not a reporting issuer under the Act.

10. Intecom Holdings is a subsidiary of Intecom incorporated to facilitate the Acquisition.

11. The authorized capital of Intecom Holdings consists of 100,000,000 common shares, of which 1,437,493 are issued and outstanding and held by Intecom.

12. Intecom is a corporation incorporated under the laws of the State of Delaware, is not a reporting issuer under the Act and the Intecom Common Shares are not listed on any stock exchange or quotation system.

13. The authorized share capital of Intecom consists of 50,000,000 shares of Common Stock ("Intecom Common Shares") and 1,562,500 shares of Class A Preferred Stock ("Intecom Preferred Shares"), of which 25,978,589 Intecom Common Shares are issued and outstanding as at the date hereof, 225,000 Intecom Common Shares are issuable under a Directors' Stock Option Plan, 2,966,750 Intecom Common Shares are issuable under a Stock Incentive Plan and 250,000 Intecom Common Shares are issuable pursuant to an option agreement. An additional 20,650 Intecom Common Shares are issuable pursuant to other options.

14. Pursuant to a First Stock Purchase Agreement entered into among Intecom Canada, Intecom, Pyderion and certain shareholders of Pyderion (the "Designated Sellers") and a Second Stock Purchase Agreement

entered into among Intecom Canada, Intecom, Pyderion and the other shareholders of Pyderion (such agreements, collectively, the "Stock Purchase Agreements") in connection with the Acquisition, the Exchangeable Shares were issued to the Exchangeable Shareholders in partial payment of the consideration payable for the purchase by Intecom Canada of the Pyderion Shares held by them. The four (4) remaining shareholders of Pyderion (none of whom are resident in Ontario) were granted, in addition to cash consideration, either Intecom Common Shares or options to purchase Intecom Common Shares.

15. Pursuant to the rights, privileges, restrictions and conditions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), each Exchangeable Share is exchangeable by the holder thereof (the "Holder Exchange Right") for Intecom Common Shares, on a one-for-one basis. Upon the exercise of the Holder Exchange Right by Exchangeable Shareholders, the appropriate number of Intecom Common Shares will be issued by Intecom to Intecom Holdings, delivered by Intecom Holdings to Intecom Canada and delivered by Intecom Canada to the Exchangeable Shareholders.

16. The Exchangeable Shares provide holders thereof with a security of a Canadian issuer having economic and voting rights which closely resemble those attaching to the Intecom Common Shares. The Exchangeable Shares are generally received for Canadian tax purposes on a tax-deferred rollover basis.

17. Under the Exchangeable Share Provisions:

(a) the Exchangeable Shares rank prior to the common shares of Intecom Canada and any shares of any other class ranking junior to the Exchangeable Shares with respect to the payment of dividends in the event that Intecom declares a dividend payable to the holders of common shares and each Exchangeable Share entitles the holder thereof to dividends from Intecom Canada payable at the same time as, and in the Canadian dollar equivalent of, dividends payable by Intecom on each Intecom Common Share;

(b) the Exchangeable Shares are non-voting; however, in accordance with the Voting Agreement as described below in paragraph,18, each Exchangeable Share entitles the holder thereof to voting rights in Intecom which are equivalent to the voting rights attached to one (1) Intecom Common Share;

(c) subject to the Call Right (as defined below), the Exchangeable Shares are retractable at the option of the holder thereof (the "Holder Retraction Right") at any time and, upon the exercise of the Holder Retraction Right, an Exchangeable Shareholder is entitled to receive from Intecom Canada for each such share an amount equal to and payable by remitting one Intecom Common Share for each Exchangeable Share requested to be redeemed.

18. Contemporaneously with the Acquisition, Intecom issued and delivered 953,465 Intecom Preferred Shares (the "Voting Rights Preferred Shares") to Laurentian Trust of Canada Inc., (the "Agent"), as agent for the Exchangeable Shareholders. The Agent will hold the Voting Rights Preferred Shares pursuant to the terms of a voting agreement entered into among the Agent, Intecom Canada, Intecom and the Exchangeable Shareholders (the "Voting Agreement"). The Agent, as the registered holder of the Voting Rights Preferred Shares, is entitled, at shareholder meetings of Intecom or other instances at which holders of Intecom Common Shares are entitled to vote (the "Voting Rights"), to vote such number of votes equal to that number of votes to which the Exchangeable Shareholders at such time would be entitled if they exchanged all of the Exchangeable Shares for Intecom Common Shares. The Voting Rights will be exercised by the Agent upon receipt of instructions from the Exchangeable Shareholders.

19. Upon the exchange of Exchangeable Shares for Intecom Common Shares, all rights of the holder of Exchangeable Shares to exercise votes attaching to the Voting Rights Preferred Shares will be terminated.

20. Contemporaneously with the Acquisition, Intecom, Intecom Holdings and Intecom Canada also entered into a support agreement (the "Support Agreement") which provides, among other things, that, so long as Exchangeable Shares are held by any of the Exchangeable Shareholders, Intecom will:

(a) not declare or pay any dividends on the Intecom Common Shares unless:

(i) Intecom Canada has sufficient assets available to pay equivalent dividends on the Exchangeable Shares, and

(ii) Intecom Canada simultaneously declares or pays such equivalent diidends on the Exchangeable Shares;

(b) take all action and do all things as are necessary or desirable to enable Intecom Canada to honour the redemption and retraction rights that are attributes of the Exchangeable Shares;

(c) not reorganise its capital in a manner affecting the Intecom Common Shares or make certain distributions on the Intecom Common Shares unless an economically equivalent change is made to, or benefit is conferred upon, the holders of the Exchangeable Shares.

21. Intecom Canada will not be liquidated, dissolved or wound up while any Exchangeable Shares are issued and outstanding.

22. Contemporaneously with the Acquisition, Intecom, Intecom Holdings, Intecom Canada and the

Exchangeable Shareholders entered into a Call Agreement (the "Call Agreement") pursuant to which the Exchangeable Shareholders granted to Intecom and Intecom Holdings, in consideration for the cash portion of the purchase price established under the Stock Purchase Agreements, the right (the "Call Right") to call the Exchangeable Shares and exchange such Exchangeable Shares into Intecom Common Shares upon the occurrence of:

(a) the receipt by Intecom Canada of a retraction notice;

(b) a merger in which the Exchangeable Shareholders will receive, in exchange for the Exchangeable Shares that they sell in such transaction, either cash or shares of stock that such holder may sell in the public markets without restriction; or

(c) a disposition in which the Exchangeable Shareholders will receive, in exchange for the Exchangeable Shares tat they transfer to another person in such disposition, either cash or shares of stock that such holder may sell in the public markets without restriction.

23. In the event that the Call Right is exercised by Intecom Holdings, the appropriate number of Intecom Common Shares will be issued by Intecom to Intecom Holdings, delivered by Intecom Holdings to Intecom Canada and delivered by Intecom Canada to the Exchangeable Shareholders. Alternatively, upon the exercise of the Call Right by Intecom, Intecom will issue the appropriate number of Intecom Common Shares directly to Intecom Canada to be delivered by Intecom Canada to the Exchangeable Shareholders.

24. Assuming the exchange of all Exchangeable Shares for Intecom Common Shares, all persons or companies whose last known address as shown on the books of Intecom is in Ontario will not hold more than 10 percent of the outstanding Intecom Common Shares or represent in number more than 10 percent of the total number of the holders of Intecom Common Shares.

25. The Acquisition closed on December 6, 2000. The Exchangeable Shares were issued by Intecom Canada to shareholders of Pyderion and the Pyderion Shares were traded by shareholders of Pyderion to Intecom Canada pursuant to registration and prospectus exemptions under the Act.

26. There are no statutory exemptions from the registration and prospectus requirements of the Act for the following trades (collectively, the "Trades"):

(a) the issuance by Intecom of Intecom Common Shares to Intecom Holdings upon the exercise of the Holder Exchange Right by Exchangeable Shareholders and the delivery of such shares by Intecom Holdings to Intecom Canada;

(b) the delivery by Intecom Canada of Intecom Common Shares to Exchangeable Shareholders, upon the exercise of the Holder Exchange Right by the Exchangeable Shareholders;

(c) the issuance of Intecom Common Shares by Intecom to Intecom Holdings in connection with the Holder Retraction Right and the delivery of such shares by Intecom Holdings to Intecom Canada;

(d) the delivery of Intecom Common Shares by Intecom Canada to Exchangeable Shareholders in connection with the Holder Retraction Right;

(e) the issuance by Intecom of Intecom Common Shares to Intecom Canada or, if applicable, to Intecom Holdings pursuant to the exercise by Intecom (or Intecom Holdings) of the Call Right, the delivery, if applicable, of the Intecom Common Shares by Intecom Holdings to Intecom Canada, and the delivery of such shares by Intecom Canada to the Exchangeable Shareholders; and

(f) the trades by Exchangeable Shareholders in Exchangeable Shares to Intecom Canada or Intecom, as the case may be, pursuant to trades (b), (d) and (e).

**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 Trades are not subject to sections 25 or 53 of the Act provided that the first trade in any Intecom Common Shares issued upon the exchange of Exchangeable Shares shall be a distribution under the Act unless such first trade is made in accordance with Ontario Securities Commission Rule 72-501 *Prospectus Exemption for First Trade Over a Market Outside Ontario* ("Rule 72-501") as if each Intecom Common Share was a "restricted security" as defined in Rule 72-501.

January 30th, 2001.

"H. I. Wetston" "R. Stephen Paddon".

# Chapter 3

# Reasons: Decisions, Orders and Rulings

## 3.1 Reasons

### 3.1.1 Warren Lawrence Wall, Shirley Joan Wall & Dual Capital Management Ltd.

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

AND

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

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REASONS FOR SENTENCE

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BEFORE THE HONOURABLE
MR. JUSTICE JON-JO A. DOUGLAS
ON OCTOBER 30TH, 2000 at Barrie, Ontario

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APPEARANCES:

| | |
|---|---|
| J. Superina, Ms. | Prosecutor for the Ontario Securities Commission |
| S. Shivarattan, Esq. | Counsel for the Accused |

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Court Room #7
114 Worsley Street
Barrie, Ontario

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REASONS FOR SENTENCE

Douglas, Jon-Jo A. (O.C.J.) Orally:

The circumstances of this sentencing are unusual in a number of respects.

First, because the sentencing involves a sentencing of accused persons who have plead guilty very near the conclusion of a trial, that trial had taken, to the point of plea, about twelve days, and was scheduled to take a further five days. A number of witness had, of course, testified.

The pleas were entered after the Crown had closed its case, meaning that the complainants that the Crown chose to call had already testified, after the defence had called four witnesses and during the re-examination of the accused Mr. Wall.

As well, the offences charged are not per se criminal offences under the Criminal Code, but quasi-criminal offences under the Securities Act of Ontario. The offences were recognized, however, by the legislature as being very serious offences, for the penalty for each infraction can be a fine of not more than a million dollars and/or a sentence of imprisonment of not more than two years.

Also, the direct loss to the 56 members or so of the public who relied upon the accused persons can be considered, which (ignoring, for the moment, so-called repayments of interest and principal) is something in the range of 1.5 million dollars U.S., or, at a generous current exchange rate of 66 cents Canadian to the U.S. dollar, approximately $2,265,000.00 Canadian [as seen in Exhibit 17.1, Exhibit 1.1 1(d), 2(d) and (e)]. It appeared to be the position of the accused that they did not particularly profit from this mis-adventure, but that other more culpable persons did.

Finally, there is no significant appellate court guidance with respect to the appropriate disposition in these circumstances. For all these reasons, it is imperative to consider, in some detail, not only the appropriate sentencing principles, but the particular conduct of the accused in respect of this matter; over the time period of 1994 through 1996 and after.

Dealing with the conduct of the accused until January 26th, 1995, during this period of time, the accused, with others, conceived and formulated this investment scheme. They in part documented it, and, importantly, sold it to their clients. In this period of time they raised $860,000.00 U.S. or 1.3 million dollars Canadian.

Respecting the conceptualization, formulation and documentation of the investment scheme, Mr. Wall testified that the idea of the investment scheme (referenced under various headings, including the "Roll Programme" and the "International Lending Programme") came to him by way of Dennis Little and D.J.L. Limited, Bob Adams, Mr. Altman of A.A.A. Financial Services, all of which led to Mr. Poirier and Mr. Adams of Dundas and, ultimately, Mr. Huppe of Oakville.

To varying degrees, Mr. Wall pointed to these gentlemen as being to blame for this fiasco, as through counsel, so did Mrs. Wall. I utterly reject the testimony of Mr. Wall in this regard.

> The evidence supports only the inference of guilty knowledge respecting these events on behalf of both Mr. Wall and Mrs. Wall.

I find that the Roll Programme as conceived, was and remains utter nonsense. The programme, considered in and of itself, is a fraudulent means within the meaning of R. v. Zlatic 1993 79 C.C.C. (3d) 466 in the Supreme of Canada and Theroux, 1993 79 C.C.C. (3d) 449 in the Supreme Court of Canada and Olan 1978 41 C.C.C. (2d) 145 in the Supreme Court of Canada.

Considered objectively, I have referenced what a reasonable person would consider to be dishonest. I find that the Roll Programme was per se dishonest. I further find that both accused persons, in selling the Roll Programme subjectively appreciated the dishonesty of the Roll Programme, in the sense that in undertaking to sell the Roll Programme, they subjectively appreciated that the consequences of their conduct would be actual deprivation or risk of deprivation.

At page 13 of the Supreme Court reports in Zlatic, the Supreme Court of Canada said this:

> "The fundamental question in determining the actus reas of fraud within the third head of the offence of fraud is whether the means to the alleged fraud can properly be stigmatized as dishonest. In determining this, one applies a standard of a reasonable person. Would a reasonable person stigmatize what was done as dishonest? Dishonesty is, of course, difficult to define with precision. It does however connote an underhanded design which has the effect or which engenders the risk of depriving others of what is theirs. J.D. Ewart in his Criminal Fraud (1986) defines dishonest conduct
> "as that which ordinary decent people would feel was discreditable as being clearly at variance with straightforward or honourable dealings." Negligence does not suffice nor does taking advantage of an opportunity to someone else's detriment where that taking has not been occasioned by unscrupulous conduct regardless of whether such conduct was wilful or reckless. The dishonesty of other fraudulent means has at its heart the wrongful use of something in which another person has an interest in such a manner that this other interest is extinguished or put at risk. A use is wrongful in this context of it constitutes conduct which reasonably decent persons would consider dishonest and unscrupulous'."

The conduct of Mr. and Mrs. Wall meets that test.

The Supreme Court of Canada also dealt with the mental element of fraud by other fraudulent means. They said, as is pointed out in Theroux, released concurrently:

> "Fraud by other fraudulent means does not require that the accused subjectively appreciated the dishonesty of his or her acts. The accused must knowingly, ie. subjectively undertake the conduct which constitutes the dishonest act and must subjectively appreciate that the consequences of such conduct could be depravation in the sense of causing another to lose his or her pecuniary interest in certain property on placing that interest at risk. This accused knew precisely what he was doing and knew that he would have the consequence of putting his creditors' pecuniary interests at risk."

In short, again, citing from the Supreme Court of Canada:

> "There is nothing in the evidence which negates the natural inference that when a person gambles with funds in which others have

> pecuniary interests, he knows that he puts that interest at risk."

I make these findings because the Securities Act, while regulatory (in the sense of allowing conduct to continue, provided it is done within certain fixed parameters) and hence creative of a regulatory regime, has, as the purpose of that regulatory regime (as stated in the legislation):

> "To provide protection to investors from unfair, improper or fraudulent practices", (section 1.1).

It does this by means of putting:

> "restrictions on fraudulent and unfair market practices and procedures."

Breaches of the Security Act that are not merely technical, but strike at the very heart of and the purposes of the Securities Act and the means chosen by the legislature to enforce those purposes, that is, means that are unfair, improper and fraudulent must be punished appropriately.

Regarding the Roll Programme this is described in a number of places. For example, one might have reference to Exhibit 11 tab three, what I call the "First Offering Memorandum", Exhibit 15 tab 2 the "Second Offering Memorandum", and Exhibit 6 tab 12, the "First International Lending Programme", Exhibit 8 tab 16 the "Second International Lending Programme", and Exhibit 15 tabs one and two certain "Summaries." In each of these, other than the First and Second Offering Memorandum, the Role Programme is described differently and without due regard for the enormous risks it entailed.

Any complete reading of the Investor Lending Programme One or Investor Lending Programme Two will show the nonsensical nature of the proposal.

Under cross-examination, Mr. Wall was forced to admit that many of the eight representations numbered and contained in each of these were essentially false throughout the time-frame of the Programme.

Referencing the investment concept provisions of the two Offering Memoranda leads one to a similar conclusion. I reject utterly that Mr. Wall, a seasoned business man, trained in the arcane of insurance contracts and insured investments, and Mrs. Wall, similarly exposed and trained and also licensed, at least from June 1995 to sell mutual funds, did not recognize the significant risks associated with the concept, even as it was described in the Offering Memoranda.

For example, at page five of the First Offering Memorandum, under the heading Investment Concept, the following is stated:

> "The business of the limited partnership is to realize profits on trades of financial instruments such as bank debentures and thus provide income for the limited partners. To this end, the net proceeds of the offering will be placed through an intermediatory company on deposit with Canadian or international bank. The trading company; the trading partners will be selected by the general partner will arrange for the purchase and sale by an international bank financial institution or brokerage firm, the financial institution, a financial instrument such as bank debentures without placing the limited partners' funds at risk. The funds placed on deposit by the limited partnership together with funds from other sources will serve as a guarantee to the other contracting party that the transactions will be effected. The trading partner will seek to provide an annual rate of return to the limited partner and related parties equal to 30 percent of the amount of funds placed on deposit by the partnership. The annual rate of return to the limited partners is expected to be 14 percent. The rate of return ultimately realized will be based on the performance of the trading partner which will be on a best efforts basis. The limited partnership will not buy or sell financial instruments and it is not expected that the funds placed on deposit will be used directly in such transactions, rather the trading partner will seek a potential purchaser of the financial instrument, and at such time as the purchase is confirmed will then identify the seller. The limited partnership's funds on deposit will be combined with funds from other sources and serve as a guarantee to the seller that the financial institution will be able to effect the purchase. The trading party will not arrange for the purchase of a financial instrument unless the ultimate purchaser has been identified and payment effected by that party. The financial institution will realize a profit on the transaction based on the spread between the price at which the financial institution buys the financial instrument and the price at which it immediately thereafter sells the financial instrument. A similar process will be followed when the trading partner first identifies a potential seller of the financial instrument as opposed to a purchase."

Apart altogether from the nonsensical notion that international banks, financial institutions or brokerage firms would need the assistance of a yet to be created or found trading partner to effect trades in financial securities such as bank debentures, the Offering Memorandum, itself, contradicts itself. It first states: (1), the transaction will occur "without placing the limited partnership funds at risk": because (2), these funds will be placed, "On deposit with a Canadian Bank."; and (3), only "serve as a guarantee that the transactions will be effected." Funds on deposit are at risk to the viability of the institution to which they are deposited. More importantly, if on deposit, once they guaranteed transactions, to use the language of the offering memorandum, they, as collateral, are at further risk to those transactions, which, here, included, at a minimum, equity risk, interest rate risk and currency risk -- only the latter of which is mentioned in the Offering Memoranda, if at all.

I simply reject that Mr. and Mrs. Wall had any belief in the viability of this scheme based on this fundamental contradiction between the assertion of no risk and the assertion of placing these funds on guarantee.

I find that Mr. and Mrs. Wall made a series of misrepresentations designed to mislead investors with respect to this risk, and indeed to take the risk.

Turning to the sale of the investment scheme, to sell this scheme, the Investment Lending Programme and Summaries were prepared either in the Wall's office or forwarded from there. They were forwarded to clients and various brokers. No effort was made to screen the investment so that only sophisticated investors were solicited. No effort was made to ensure that only those who could afford such significant losses were solicited.

Indeed, the evidence is conclusive and nearly complete that all of the investors were neither sophisticated (but naive), nor rich (but poor) or, at least, dependent upon the little money they had.

The Secretary at the time testified, for example, that some people were to be told the minimum was $10,000.00 while others were to be told the minimum was $40,000.00. No doubt the reason to tell these people different stories was based on the assessment by the Walls of what they thought they could talk these people into.

The Walls told some people that they were themselves investing in this. They were not. Others were told to borrow money to invest in this scheme.

As noted above, the Investment Lending Programme One and Two and Summaries were finally admitted, for the most part, to be misrepresentations.

By way of a limited example, I'm looking at the first International Lending Programme document in Exhibit 6 tab 12. I look to the third page of that document in its heading, "High Annual Returns With Absolutely No, underlined, Risk." These words are, of course, in bold black print.

It then begins, "if you qualify for this exclusive offering". By way of comment, they pick through their client lists and sent out potentially hundreds of pieces of paper to clients and agents to get people into this exclusive group.

Most importantly item one, "worry free. Your investment is on account with an assured major U.S. brokerage firm." This was false. From the beginning it was false and it never changed in its falsity, it was false.

Item two, "no market risk. Your investment will not fluctuate in value like the stock market, real estate or bond investments." This is a lie. Anyone with a modicum of interest in investments knows that all investments fluctuate in value. One can go on and on and again, note at item eight, the exclusivity, "This offering will be made only to certain qualified investors through selected dealers."

The short point, here, was that the documentation was prepared, either by the Walls or someone else, but it was accepted by the Walls, reviewed by the Walls and went out on their letterhead. It went to their clients. It was prepared, in my view, quite deliberately to highlight the selling points. Those selling points were false. The Walls knew they were false.

The Summaries, similarly, are similar. Exhibit 15 contains an example of that Summary at Tab One. Under the head, "Summary of Offering", it says "Your money is guaranteed by a major world bank." At no time was this ever true, it was false. The document was used to support the falsity.

The Programme was not only sold by written falsehoods, but also orally, and, here, the evidence dramatically points to the equal participation of both Warren and Joan Wall. Mrs. Wall, on that evidence, perhaps played somewhat of an unique role in convincing people, particularly women, to invest in this programme.

Given the pleas, I do not intend to refer to all the evidence, but some pointed references are noted.

Ethel White, now 79 invested nearly her full life savings of $10,000.00 U.S. based on an introduction to the Walls by her daughter Linda White. Her source of funds for this particular investment was the sale of her highly secure segregated fund investments, which she had made with Empire Life.

Mrs. Wall told her this deal was so good the Walls were going to invest themselves. They, of course, did not. This was confirmed by Linda White. The dollars were invested because they trusted the Walls and this was an investment in government securities. Such trust was obviously ill placed and it was never an investment in government securities. She did not know it was long term or risky and said, "She didn't know a lot of things about a lot of things." The impact on Mrs. White was significant as the dollars were earmarked for her grandchildren and the monies are gone. Her health suffered from stress.

Francis Gibney came to court for Betty Ann. He was introduced to the deal by Ben Poirier. Mr. Gibney now a 70 year old retired labourer invested U.S. $25,000.00. These funds came from mutual funds. Interestingly enough, having been introduced by Mr. Poirier, they came to Barrie to meet the Walls.

After Joan had coffee with them, Mr. Warren Wall came in and did much of the talking from that point on. They were told it was guaranteed. As a result of their loss, his wife was sick, they couldn't eat, sleep.

Laurie Neill and Paul Neill had a difficult experience. After losing her job, she moved to Barrie with her husband. Both are now self-employed, met Joan Wall at the Barrie Business Women's organization, moved her severance money to Dual, bought segregated funds from Empire Life, bought into and was sold on the Montabello deal. She was told "100 percent guaranteed, investment in U.S. dollars." It's the "sort of deal to move your segregated funds for." She says that they are hard working couple. Certainly they could have used the money to live on over the last few years, and now they cannot retire when they wanted to.

Ann O'Donnell was told by Joan that she could make her rich. She first sold her segregated funds in the amount of $25,000.00. Ms. O'Donnell worked part-time in a store, if I recollect. She was told "No risk, risk-free. It's an elite little group." Joan told her they were getting the people together so

these "little people' in this group could act like the "big players." She says she's in no desperate need, but could certainly use the money.

Zelda Olsen $25,000.00 U.S. "100 percent guaranteed" said Joan, "100 percent secure, money back in 30 days, no risk." She "went by what I was told. I know it was stupid, but I was trusting."

And then there is Denis Leveille. He's a disabled heavy equipment operator. As a result of his settlement from a law suit, he received about $650,000.00 Canadian in order to live on for the rest of his life and support his family. He ended up putting $370,000.00 Canadian into this deal. Now, he was introduced by Ms. Gingas through Mr. Little. But who should come to his house in Northern Ontario but Warren Wall to get more money. He was told that it's a "safe 14 percent and the money is in the bank." To him, the impact was quite simply as he put `a nightmare.' He uses that word with respect, Mr. Wall's use of that word shows disrespect for the people he has victimized.

Hinirka Coort got a severance package, $50,000.00 "all we had", put it in segregated funds. The Walls advised them to mortgage their house. Warren arranged it, got $40,000.00 U.S. for their house. They were told it was a "real good real estate investment."

Interestingly enough, they had some doubts. On the way to carry the cheque to close the deal, they stopped the car, they were so worried about it. They sat in the car and said, "Should we do it" to one another. And when they got to the Walls, they said to Warren, "This is all we have, are you sure?" And he said, "Sure, it's going to the Bank of America."

This took a significant toll on their marriage. It made them sick, they had to sell their home. They will not be taking their boat to the Bahamas, thanks to the Walls.

My point, here, is, of course, that all of these people and, indeed, many more were lied to by Joan Wall and Warren Wall to get their money. They were lied to in writing, they were lied to in person.

Now, that is bad enough, but these were not any sophisticated people, these were the vulnerable people. These were unsophisticated people. They were people who relied on you, and what didn't you tell the people?

Well, let's take a look at some of the non-disclosures that came out in the course of this trial.

The Offering Memoranda, one and two, both describe Woodland as the Turks and Caicos company to whom the money would be remitted under the deposit agreement that would seek to safeguard the money. The ownership of Woodland is not described, but the implication is that it is either an agent of the partnership or an arms-length's entity.

Indeed, in evidence, Mr. Wall first said, attempting to lie yet again, that it was owned by the partners. That was ultimately retracted and he admitted that it was owned by he and Joan. Interestingly enough, under the Offering Memorandum, Woodland was entitled to four percent of the expected 30 percent return. Unbeknownst to the investors, this would have gone to Mr. and Mrs. Wall, not in Canada, however, but in their Turks and Caicos secret account.

Wall also testified, Mr. Wall, that is, that they were entitled to 50 percent of the 4.5 percent return due to the promoter D.J.L. who was mentioned in the prospectus, but that was not disclosed in the prospectus or the Offering Memorandum.

Of course, both these amounts are in addition to the 7.5 percent the deal describes them being entitled to.

Similarly, at page eight, under "Plan of Distribution", and it is in about as plain as English as you can get, the Offering Memorandum says, "The units will be sold directly to investors by the general partner on behalf of the limited partnership." This was false. From the beginning the Walls knew that various people would be involved in the sale of this. Indeed, they sent out all sorts of documents to all sorts of agents in order to bring in more and more participants.

It also says, "No commission will be paid in connection with the sale of the units." And, from the beginning, there was a plan to split commission payments amongst the various sellers of this transaction.

I reject the spurious reason and excuse offered to charge the commissions by Mr. Wall that is, that Mr. Little said it was okay. In testimony, Mr. Wall, in trying to deny commissions were paid, said they were calculated on their returns. This was, in part, false. They were not paid until funds were, I point out, notionally, received back as interest, but were calculated in portions as a percentage of the total investments the agents had brought to the deal. They included in that group, the Walls; more non-disclosure about who was getting what out of this deal.

One can also look at various other aspects of the Offering Memoranda. The section at page one on "Net Proceeds" and the sections on "Use" at page three and five make it quite clear that only $25,000.00 of the total was going to be used for any sort of payments, that is payment for legal and other incidental expenses. There were not to be any other expenses.

In short, in the events prior to the first investment, a fraudulent scheme was devised, false documents were prepared, false statements were made and vulnerable people were targeted. Now, why? One never knows, necessarily, the motive. In these circumstances, two present themselves: (1), that they would share in the ultimate proceeds with their criminal accomplices overseas; or (2), and, certainly one that the evidence supports completely, they were driven by greed to receive the fees.

Of course, for every `seg.' fund investment that had been made, the capacity to earn fees was steadily declining. This deal allowed them to capture something in the range of ten to 15 percent guaranteed, as a fee for the money going in.

I find that, in part, the motive here for the greed in their lives was the commissions they sought to earn.

What was the conduct of the accused on or about January the 26th and after that for a period of time? Well, they

sent to the Nevis account in the name of the third party with no supporting documentation and in breach of their own business plan the $835,000.00 U.S.

Within days of that, while I find they knew in advance, within days of that, they knew the money was not coming back by way of interest payments. And what did they decide to do? Instead of saying 'Oh My God, this is a fraud, we're in the middle of this, we better call the police,' what did they do? They decided they would just simply use the capital that was left over and start making interest payments so that the con could continue.

They then, over a long period of time, started preparing false letters to consistently send to mollify the investors, and it is worthwhile looking at Exhibit Six of the nature of some of these letters.

February 9th, tab one, letter to Mr. and Mrs. Neill, (this whole document deals with the Neills),

> "at this time, we are pleased to announce the U.S. investment you were involved in was successfully positioned January 20th, '95."

This of course was a false statement because, even if the Offering Memorandum made a modicum of sense, they decided to do it completely differently than was described. Woodland Capital was not to get the money. Woodland Capital was not to put it in a Canadian account and get a guaranteed investment certificate. None of this was done. Instead, willy-nilly the money was shipped to Nevis in the name of some third party. They knew this was false and they wrote it on February 9th because they knew where they were sending it.

November 30th, 1996:

> "Dear Paul: We would like to take this opportunity to inform you there will be a hesitation in the Dual Capital Management programme."

A hesitation, at the best possible case, they knew in early 1995 that they had been conned, (that is what they would like me to believe) out of $835,000.00 U.S., but they are going to call it a hesitation.

They then continue the falsehoods. "This necessitated in the changing of our prime lending bank" -false- "and we expect to resume full distributions once the transactions have been investigated and approved." -false- "Ride out this temporary re-positioning as quickly as possible." -false.

February 4th, 1997, "We are pleased to inform you that we have successfully positioned ourself into a new trading programme." It is false unless you consider the continuing identical scam in Portugal as a new trading programme..

What is missing here? Not a reference to the fact that the Ontario Securities Commission is now investigating quite thoroughly.

On April 7th, 1997, "The hold up has been with banking and government procedures beyond our control. Mr. Huppe has been our coordinator. He is arranged interim financing to speed up the pay outs to redeem the remainder who are expecting."-false.

May 9th, 1997, "Interim financing money should be released next week." False. Good news letter here. "Constant contact with professional advisors." Well, they had not been contacting any significant counsel, and they had not been counselling with any significant accountants. They had been dealing with people who were introduced to them, by people who were introduced to them, by people who were making phone calls, and they were very close to ending the hesitation. More falsehoods.

"I just spent the last week with Allan Huppe in Los Angeles," June 23rd, 1997, "to ensure payouts of accumulated interest and principals." It must have been a nice trip, but he did not go to any meetings while in Los Angeles. Mr. Huppe went to all the meetings according to Mr: Wall, if you believe a word he says.

"We now have only one step left to take with the Bank of America and Allen is completing it this week." False.

July 31, 1997, "Bank of America following their protocol of disbursements." False. And onwards, and onwards, and onwards.

Not only did they do all of that with respect to the money they previously collected and squandered, but more money was collected under similar false pretences, and that money, in part, was used to fund the interest payments for the other people, and to suggest the return of capital and to suggest that the hesitation was over, when in fact more money was being shipped overseas on spurious reasoning with no safeguards to protect the investors.

What was the conduct after December 17th, 1996, the start of the Ontario Securities investigation? Was the conduct `Boy, I'm glad you called because I'm such an innocent guy, and I've just been feeling terrible for the last two years, and you know, there's just something going on here and I just can't --' No, that was not the conduct of Mr. Wall or Mrs. Wall.

Well, there is no doubt that there is some bad blood between the secretary, Ms. Alderman and the Walls. I accept her evidence in all essential aspects, notwithstanding the attempts by the Walls, in my view, to seduce, co-op and buy her silence over the years of her employment.

She told us the truth when she said the following. First, that the computer records were deleted to remove them from the grasp of the Ontario Securities Commission. Second, the hard copy records were put into garbage bags so they could be destroyed. Third, she was told to lie to the Ontario Securities Commission as to what happened to those records. And fourth, Exhibit Two(d) was created to falsely provide the Ontario Securities Commission with the impression there were only 24 investors, and that the Walls through D.F. Group had personally invested $440,000.00.

Conduct such as that continued as well. Jim Millson was called to the scene, a man whose credibility is only surpassed by Mr. Wall's, and whose evidence, except where it is clearly corroborated by documentation, I utterly reject. Mr.

Millson, I find, was hired by Mr. Wall knowingly to prepare false financial statements for the use of the investors at the investors' meeting. He had to do this, of course, because the capacity to produce correct financial statements had been destroyed at some point, and of course, correct financial statements would not be something they would like their investors to see.

Here, I caution myself with respect to the conduct of the defence, but must comment on two other aspects, that is, in my view, by calling the investors they did to testify on their behalf, in-chief, they were willing to continue to abuse those persons who trust them. These people continue to be effectively duped by the Walls as to the legitimacy of their investments, or have escaped by their skin of their teeth from putting their money into these fraudulent programmes that are before me.

And finally, I find that Mr. Wall, quite simply, in almost every utterance, lied to this Court when he attempted to explain his conduct. I find all of the above conduct amounting to obstruction of justice, and consistent with, and in furtherance of his keeping the lid on this matter.

If it amounts to conduct after the fact of the offence, it is, in my view, relevant to the consideration of the accused's prior intention, knowledge, and degree of remorse.

There are some things that a Judge cannot take into account when sentencing. These are admirably laid out by Mr. C. Ruby in his book Sentencing [4th ed. Butterworths 1997, Toronto]. They include other offences disclosed by the evidence, and, here, I specifically caution myself that the offences before me, for which I must sentence Mr. and Mrs. Wall and their company is under the Securities Act of the Province of Ontario and not the Criminal Code, though it amounts to fraudulent conduct.

I specifically caution myself that I must not take into account the conduct of the defence, nor that according to the most recent submissions, there are ongoing civil matters outstanding [Ruby, Chapter 8, pp 245 to 260].

As well, I must be cautious with respect to the public response to any disposition, but I similarly must recognize the impact on members of the community of the conduct before me.

There are a number of factors that I must take into account in effecting a sentence. [Ruby, Chapter 5, pp 135 to 200].

These include, the method. Was there planning? Was there was deliberation? Was there continuation over a period of time? I find there was on each matter. This matter continued from '94 through '95, through '96, and with the letters seeking to subvert the course of justice or the discovery of the problem by the victims, well into '98.

I must consider, and I do, the magnitude and impact of the crime. I must consider the profits available from the crime. Here I reference both the submissions of Mr. Shivarattan, which are largely consistent with the recent Exhibit One put in on sentence, and note D.J.L. received here some $161,000.00, Dual Financial Group received at least another $56,000.00, A.A.A. Financial received $30,550.00, and although there is no evidence there of a direct connection, there's clearly a pattern that has been established.

In short, there was a significant opportunity to profit by commissions, here and at every turn, at every chance, and even though the money had disappeared, the Walls were taking their piece, off the top.

Now, some of this may have been returned as the pressure and heat mounted. I find that of very little significance, insofar as whatever payments were made back were payments to ensure silence.

The motives I have discussed. As well I must look to the conduct, character, lifestyle and vulnerability of the victims. I have largely mentioned that, but I think, given the demographic of the complainants in this area, some further comment is made.

Published in the Journal of Elder Abuse and Neglect Volume Four 1992, [The Haworth Press, Inc.] Elizabeth Podniecks, MES has done the nation a service by publishing the National Survey on Abuse of the Elderly in Canada. She has noted, at page 15 of that article, respecting what she characterizes as material abuse, and I quote:

> "Material abuse was the most common of the four categories of abuse covered by the study, with a prevalence rate of about 25 per 2,000 elderly population in private dwellings or about 2.5 percent of the sample. It was measured by six items describing actions persons known to the victims might have taken. The most common type of action was trying to persuade the respondent to give money (1.5%)."

I mention this because I think it is appropriate to notice that, to a large extent, the victims here were elderly, or persons planning for their retirement. This, of course, makes perfect economical and demographic sense. The population is aging, those who are aging have had an opportunity to save for their retirement. If you want to steal retirement funds, go after those who have saved for their retirements. That is what happened here. This is, I believe, a significant aggravating circumstance.

I must look at whether there was a breach of trust and that is self evident. Every one of these people were in a relationship of trust which was abused and violated by the conduct of Mr. and Mrs. Wall.

I must consider whether there were others involved in the crime, and that is in some senses a significant aspect here. Yes, there is no doubt, in my view, that others were involved in the crime. How they were involved will be for others to determine. My view, as I have found, is that the Walls knew perfectly well of the significant risk that they were putting this money at by giving it to these other people.

I must consider the background and attitude of the offender and the behaviour after the offence, which I have noted. With respect to background and attitude of the offenders, as I commented earlier, it is often said that fraudsmen are generally thought of as people of good character. It is their reputation of good character that enables

them to commit their frauds and, hence, having had a good character prior to being caught for incidents like this, ought not to be given particularly great weight.

There has been, under the heading, Cooperation with the police or prosecution none, I consider the issue of restitution, and from what I can make, there is no offer to make restitution, none.

There is, of course, no prior involvement with the judicial system; that is, there is no prior criminal or quasi-criminal record, and, in the words of Mr. Shivarattan, they are not recidivist.

There is no violence involved.

Then I must deal with the prevalence of the crime. Sadly, this seems to me, and I will return to this theme when I look to the authorities prepared and tendered, that this crime is growing. Again, perhaps rationally, people are getting older, people are saving their money - perhaps those who wish to get that money by criminal means will grow in population too.

The age of the offenders is not, in my view, a significant feature, given that they had to be of a certain age to get in the position to do what they did.

It is not an offence of marginal criminality.

Certainly there is an effect of stigma by way of the plea and by way of the finding on these offenders. That, in my view, pales in comparison to the effect upon the victims here.

There is no time spent in custody.

I must examine carefully the role of each and the offence and while I will comment later on it, I see some distinction here between the roles, and in my view, Mr. Wall is the most significant offender here, but followed very closely by Mrs. Wall, with her particular expertise in talking the good people out of their money.

Looking then, to some of the authorities cited by the Crown, I note, in particular, the article referenced at Tab 11 of that Book of Authorities entitled "An Emerging Trend Toward Jail Sentences for Securities Act Violations in Ontario." This was prepared by Mr. Tim Morsley, I gather an employee of the Ontario Securities Commission, no doubt for a seminar or what not.

I note, in particular, the comment at page 15, at the bottom of the page. It says:

> "Probably the single most important development to account for the increased frequency of jail sentences in Ontario is the significant recent increase in penalties provided for under the Act. Effective February 1988 the maximum term was increased."

The legislature, that is, has spoken (about ten years ago) and said these are serious offences. I believe I owe it to that legislature to consider their penalties as they laid them down. As well at page 17, he concludes his remarks and says:

> "Whether it signals an emerging trend or an aberration will remain a particular interest to those convicted of securities offences in Ontario and a challenge to those who defend them."

I refer to that article because I think it is important to try and see what and why a trend has or has not developed in the authorities.

It is not new that people go to jail for securities frauds, indeed Bowman and Thibaudeau 1948 [Tab 1] articulated the concept that the point of securities law was protecting the "innocent abroad", and there was a need, where the conduct amounted to fraudulent conduct, as opposed to technical violation, to call for incarceration. In that context a sentence of 12 months was imposed.

At page 381, the Court said:

> "When breaches of the Act such as these occur, dealing with failure to register or to file required reports designed to protect the investing public, the dividing line between imprisonment and monetary punishment as the appropriate penalty must be in which the class offender falls, merely careless a designedly evasive delinquent who has been defrauding the public unhindered by the watchful supervision of the Commission's investigators."

Coming to the 90's, the decision of Justice Harris in Hugh Betts is cited at Tab 2. This decision in 1990 was the first under the new Act with the increased penalties. Emphasizing the importance of deterrence, generally speaking, the Court imposed a six month period of incarceration.

Justice Harris returned to the issue and in the case of Edward Fuger [Tab 3] and, emphasizing the absence of remorse, and the need for deterrence, imposed another sentence of six months.

In Silver Bar Mines et al [Tab 4], a false press release case, a three month sentence was imposed, though apparently or as it appears in the decision, there was little loss in that case.

In Zodenberger 1992, [Tab 5] $850,000.00 was lost by 41 investors and. in what might be an aberration, a mere 15 days was given. It was however, done, on a early plea of guilty.

In Sisto Finance et al [Tab 6], which has been discussed extensively by, particularly, the defendants' counsel, various people were sentenced. The most interesting comments appear, in my view, to be respecting the sentences with respect to Jasper Naude. I note the sentence with respect to Ms. Davidson was argued to be of some importance here, but I take greater comfort in Justice Babe's decision with respect to Mr. Naude's sentence.

I do not see the decision or Armough Corporation [Tab 7] or David Holden and Peter Adams [Tab 8] of being of much help.

Warrington et al, 1997 [Tab 9] involved approximately a half million dollar loss, involved fraudulent conduct and it was a late plea and resulted in a sentence of nine months.

In Thomas Lau [Tab 10], an offence of a similar nature, involving a loss of about $450,000.00, to a fraudulent type scheme, general deterrence was emphasized and a sentence of six months was considered.

In Harper, an insider trading case, Justice Sheppard, (and I will return to the theme of consecutive sentences in a moment) dealt with a sentence for a 1.7 million dollar offence, and gave an one year sentence. I note that is an event that seemed to occurred over a period of time.

Throughout these cases, in my view, there have been some developing themes. First, on their face, all of these Courts are primarily interested in the aspect of deterrence. There seems to be a sense among all Judges who look at this that the sort of people who commit these types of offences are not those that can be rehabilitated. In short, they are not people who are doing these events out of personal emotional difficulties such as we see in the family or youth area. They are doing these out of a sense of greed. For that reason, rehabilitation is less important.

They also seem to suggest that the principle of sentencing to consider is that of specific and general deterrence, that is, stopping the accused before the Court from doing it again, and stopping others, by way of example, from doing it again.

In that regard, the Thomas Lau decision [cited at tab ten (a) at page 35 of O.S.C. Bulletin] contains an interesting comment by Justice MacDonnell, referring to a decision of Justice Rosenberg in the Court of Appeal. He states:

> "I acknowledge that the effectiveness of jailing individuals in order to achieve general deterrence continues to be subject of debate. In R. v. J.W. 1997 O.J. 1380 Court of Appeal, Justice Rosenberg acknowledged the force behind the view that 'the general deterrent effect of incarceration has been and continues to be somewhat speculative. He stated that in his view, 'In view of this extremely negative collateral effects, incarceration should be used with great restraint where the justification is general deterrence.'"

However Justice Rosenberg went on to imply: "That for certain offences, general deterrence works. He indicated that large scale well planned fraud is one of those offences. I recognize that the defendants have not been found guilty of fraud, but a fraudsman can be generally deterred by incarceration, I see no reason why the same cannot be said for those who for financial gain, dishonestly attempt to operate outside of the restraints of this Province's securities law.'

I certainly acknowledge the authority of Mr. Justice Rosenberg noted in the comments by Justice MacDonnell. I must point to the recently published book by Mr. Nigel Walker, entitled "Why Punish? Theories of Punishment Re-Assessed." [Oxford University Press, Oxford, 1991].

Nigel Walker is no light weight. He was the Director in the Institute of Criminology and a Professor of Criminology at Cambridge, and then before that, he had been the founder of the Oxford Centre for Criminological Research. He is the author of several books.

After discussing a significant part of the literature on deterrence, at page 17, he has the following to say:

> "In plain terms, if a person is contemplating the commission of a crime, he will think above all of the likelihood of being caught; but he will also consider whether being caught is likely to lead to a prison sentence or a mere non-custodial sentence; and if a prison sentence seems likely, he may even wonder how long it will be. All of which is closer to common sense beliefs than the exaggerated doctrine that only the likelihood of being caught deters or fails to deter.

He notes that there is some difference between offences and continues [at p. 18]

> "We do know where parking fines were replaced by wheel clamping, for example, in certain part of Central London, illegal parking decreased sharply. As for driving offences, it is disqualification, not fines, which motorists are most anxious to avoid.... what is quite implausible, and supported by no evidence whatsoever, is to claim that this [that "there are people who refrain solely because they fear detection on public prosecution"] is true of all potential perpetrators of any kind of petty offence. And if we consider offences which do not stigmatize for example, illegal parking - it becomes obvious that not only the existence of the penalty, but also its nature play a part in deterrence.... Common sense says that it [deterrence] is not negligible; most of the evidence is consistent with common sense" [p.18].

The long and the short, and the importance of the reference is that there has been within the judicial authorities, some criticism with whether deterrence is actually effective, based on some early studies by criminologists. Mr. Walker believes in bringing some of that into question.

The Ontario Court of Appeal, through Mr. Justice Rosenberg is on the mark when he said that some crimes are deterrable by the size of the penalty. I believe this is one of those crimes.

In my view, one issue to determine here is the applicability of the maximum sentence provisions. The maximum here is two years. In the book on sentencing by Clewly, Gover, Humphrey and McDermott [Sentencing: The Practitioners Guide, Canada Law Book, Aurora, 1998] edition, referencing Pontello (77) 38 C.C.C. (2d) 262 Ontario Court of Appeal and Prumer (79) 9 C.R. (3d) Ontario Court of Appeal, they say that the maximum sentence ought to be reserved for "the worse sort of offence by the worse sort of offender" [p 1-22].

Another issue live in this case is the appropriateness of consecutive or concurrent sentences. In his work on sentencing the learned Mr. Ruby, citing Paul (82) 67 C.C.C. (2d) Supreme Court of Canada, notes, and I quote:

"Consecutive sentences are to be the rule."

That of course, is the imperative stated in the Provincial Offences Act.

The totality principle is the guiding principle, of course, and not the simple issue of consecutive or concurrent. Citing numerous authorities at page 354, Mr. Ruby goes through how Courts have attempted to distinguish the circumstances of when a consecutive sentence should be imposed and when it should not be. He says that there must be a reasonably close nexus between the offences in time and place to justify a concurrent sentence. The offences must not be part of the 'continuing criminal operation or transaction.' The offences must not be 'part and parcel of one other' and not 'multifaceted aspects of one transaction.'

In a decision he cites, Hines, dealing with, particularly, fraudulent cases, the suggestion is made that you ought to break the offences into categories, that match. Within the categories the sentence ought to be concurrent and without the category, the sentence ought to be consecutive.

He notes some decisions particularly in Quebec, which say [Turlond being one [1968] C.L.R. 28, Court of Appeal] that the "total sentence.... should not exceed the maximum for the most serious offence." But he also references Beaupre [73] 21 C.R.N.S. 205, where the same Quebec Court of Appeal indicated that this rule is not a general rule, and to hold it to be such would mock the notion of separate offences.

The question, therefore, is, are the offences charged here so distinct, [and I draw here the distinction between the trading offences on the selling offences, and the distribution of securities offences]. In my view, the simple offence here is the trading offence; that is, the selling of securities offence prohibits a rather simple act of convincing, inducing one person to purchase or sell a particular security for a price, that is prohibited for probably self-evident reasons, unless licensed or exempt.

Distribution, however, is a far broader and different offence. It may contain aspects of the first sale of securities, but it encompasses a whole series of events that are different. To overly simplify, it involves the creation of the investment, the organization of the investment, the organization of the documentation respecting the investment. Subsequent to the sale, or at the time of the sale, it involves collection of the money from the sale. It involves the investment of that money and, to some extent, the management of the investment or the management of the business as that as created by that investment.

None of those essential elements of the offence of distribution encompassed are within the notion of the simple offence of trading. In my view, these are, and, indeed, as essentially conceded by Mr. Shivarattan, essentially different offences.

In my view, accordingly, they ought to be treated by way of consecutive periods of incarceration; that is, the offence of trading should be dealt with, as a separate sentence than the offence of distributing.

Turning then, as I must, to the ultimate disposition to be imposed here, I must recognize there are some, as I said, differences between the conduct of Warren Wall and Joan Wall.

Warren Wall, at least on the evidence I have was, as a general proposition, more involved in the details of the distribution, the various management items I mentioned before; that is, with one noticeable exception, and that was the Portugal investment. As the evidence recalls, Portugal was not in fact an investment of the limited partnership, even in name, but a personal investment of Joan Wall, using, illegally, the funds of the limited partnership.

But having said that, for the most part, on the evidence, it appears that Mr. Wall was more involved than Joan Wall in the various notions of distribution. Her expertise, if it was, came into the selling of this issue to various persons, where, no doubt, Mr. Wall's then considerable selling skills were also used. This suggests to me that there should be some distinction in the sentence.

Prior to the plea being entered, I canvassed with the defendants and with their counsel several points with respect to the freedom and voluntariness of the plea, including the fact that the sentence is ultimately in the purview of the Court. What I receive from counsel are merely recommendations or arguments, as it were, as to what the appropriate sentence should be. Here, I have received, in particular, an argument from counsel for the Ontario Securities Commission with respect to the appropriate sentence.

That argument or that suggestion by the Crown has been made, in my view, in the absence of appellant authority, and in the face of what I will call a developing trend in the law to consider these sorts of offences, with the particularly aggravating factors of this offence, in a more and more serious light.

In my view, the sentence proposed by counsel for the Ontario Securities Commission, constrained in that nature by what has happened in the cases in the past, which to, varying degrees, are just beginning to recognize the depth of this, might I call, social problem, are too light.

In my view, an appropriate sentence for Mr. Warren Wall, for the distribution offence, is 18 months. In my view, the appropriate sentence for the trading offence is 12 months. That trading offence shall be served consecutively for an aggregate sentence of 30 months.

For Joan Wall, in my view, her significant if slightly less participation in the distribution is worth, and she is hereby sentenced to 13 months for the distribution, plus nine months for the trading offences, for an aggregate penalty of 22 months. Those sentence to be served consecutively.

In addition, each person shall be on probation for a period of two years, during which time they shall report to a probation officer, provide that person their residence, not

change that residence without the prior written consent of the probation officer, surrender and not apply for any passport, and refrain absolutely from any act of trading, distributing or promoting the sale of insurance products or securities. I emphasize insurance, as well, here, because invariably in these cases, clients of their insurance business were induced into the securities business they chose to participate in.

Finally, with respect to the corporate accused, in this case being Dual Capital Management Limited, although I doubt very much whether my order will be enforceable, it was the entity in a position to control the significant flow of funds here, and I accede to the request that the maximum fine be imposed upon Dual Capital Management. I would impose a larger fine if it was available with respect to that corporate entity, but it is not.

With respect to count one of Dual Capital Management there will be a fine of $500,000.00 and with respect to count four which effects Dual Capital Management, there will be a fine $500,000.00

Are there any other probationary terms that are requested?

MR. SHIVARATTAN: Your Honour, can we plead to the Court for a deferment so they can wind up their businesses. I think the Act allows the Court to --

THE COURT: Today is the sentencing date and they have been sentenced.

MS. SUPERINA: Your Honour, I have no further submissions or requests on the probations terms. I do have, through Larry Macsi the passports and the question of what should be done with them.

THE COURT: Surrender them.

Finally before I conclude this matter completely, I think I would be neglectful in my duties if I did not comment, very briefly, on some recommendations I think should be considered as arising from this case.

First, it strikes me as self-evident that there is a problem within the country as a result of the roles of people licensed to sell one form of product being in a position to influence persons into the purchase of other products for which they are not licensed and to represent, as was clearly the case here, that they are capable of offering general financial advice, general investment advice, and indeed that that advice is in any essence independent, as opposed to fee driven. I would recommend that this matter be reviewed.

I would further recommend, if it has not already happened, that the various other players involved here, Mr. Millson, Mr. Huppe, Mr. Little, Mr. Poirier, Mr. Adams all be subject to appropriate investigation.

To the extent that the business of Dual has continued subsequent to the investigation of the Ontario Securities Commission and any licensing has remained in place with respect to insurance or otherwise, I am, frankly, shocked. No licensing authority, if I am correct, should have allowed this to continue in the face of these sorts of charges, and I fear for the security of any investments made through that agency. I would recommend strongly that the Insurance Commission consider its position there.

I would further recommend that the Securities Act or the Provincial Offences Act be amended so that the issue of restitution, forfeiture and seizure of property could be dealt with by the Court who tries this matter. As I understand it now, and it is conceded as a matter of law, I have no power to order restitution to the victims. Instead, costly, complex civil litigation is going to ensue unless the position of the defendants clearly changes. It ought, in my view, to be within my purview to order their assets seized, their assets sold, and restitution made to the people - having made the findings of fact I have.

I further recommend that the limited partnership method of sale and, particularly, its use or abuse under 72 of the Securities Act be reviewed. The authorities cited refer, in large part, to that sort of exemption being used or, more accurately, abused. When asked in the stand as to why the limited partnership method was chosen, Mr. Wall's sole response was that, 'it was a vehicle to raise the money.'

And finally, and with some trepidation, I suggest that inquires should be made into the role and liability of law firms and accounting firms who assist in the preparation of documentation so obviously fraudulent as occurred in this case.

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**THIS IS TO CERTIFY** that the foregoing is a true and accurate transcription from recordings made herein, and as reviewed by the Court to the best of my skill and ability.

Cathy Knelsen
Certified Court Reporter

**NOT A CERTIFIED COPY UNLESS ORIGINALLY SIGNED**

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# Chapter 4

# Cease Trading Orders

## 4.1.1 Temporary and Cease Trading Orders

| Company Name | Date of Order or Temporary Order | Date of Hearing | Date of Extending Order | Date of Rescinding Order |
|---|---|---|---|---|
| Beaver Lake Resources Corporation | 24 Jan 01 | 05 Feb 01 | - | - |
| Carmanah Resources Ltd. | 24 Jan 01 | 05 Feb 01 | - | - |
| HR Café Ltd. | 15 Jan 01 | - | 26 Jan 01 | - |
| TJR Coatings Inc. | 15 Jan 01 | - | 26 Jan 01 | - |
| FT Capital Ltd. | 17 Jul 00 | - | - | 25 Jan 01 |
| Minpro International Ltd. | 13 Sep 00 | - | - | 24 Jan 01 |
| Kafus Industries Ltd. | 18 Jan 01 | - | 30 Jan 01 | - |
| The Chippery Chip Factory Inc. | 26 Jul 00 | - | - | 30 Jan 01 |
| Groupe Covitec Inc. | 01 Feb 01 | 13 Feb 01 | - | - |
| Golden Gram Capital Inc. | 01 Feb 01 | 13 Feb 01 | - | - |

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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 |
|---|---|---|---|---|
| 20Dec00 | | Acuity Pooled Fixed Income Fund - Trust Units | 358,246 | 30,320 |
| 19Dec00 | | Acuity Pooled Global Equity Fund - Trust Units | 281,803 | 14,848 |
| 18Dec00 | | Acuity Pooled Fixed Income Fund - Trust Units | 383,933 | 32,570 |
| 01Jan00 to 31Dec00 | | AGF Canadian High Income Fund - Units | 1,441,577 | 1,441,577 |
| 01Jan00 to 31Dec00 | | AGF Canadian Bond Fund - Series I Units | 4,182,895 | 4,182,895 |
| 01Jan00 to 31Dec00 | | AGF Canadian Balanced Fund - Series I Units | 19,128,910 | 19,128,910 |
| 01Jan00 to 31Dec00 | | AGF Canadian Stock Fund - Series I Units | 71,825,244 | 71,825,244 |
| 01Jan00 to 31Dec00 | | AGF International Group Limited - International Stock Class - Series I Shares | 15,581,181 | 15,581,181 |
| 01Jan00 to 31Dec00 | | AGF International Group Limited - American Growth Class - Series I Shares | 122,199,496 | 122,199,496 |
| 01Jan00 to 31Dec00 | | AGF RSP American Growth Fund - Series I Units | 40,789,894 | 40,789,894 |
| 22Dec00 | | Book4golf.com Corporation - Common Shares and Special Warrants | 1,150,000 | 2,500,000, 1,800,000 Resp. |
| 29Dec00 | | BPI American Opportunities Fund - Units | 250,000 | 1,875 |
| 05Jan01 | | BPI American Opportunities Fund - Units | 523,296 | 4,125 |
| 08Jan01 | | Burgundy Smaller Companies Fund - Units | 210,000 | 12,078 |
| 10Jan01 | | Cadillac Fairview Corporation Limited, The - First Mortgage Bonds, Series B due 04Jun13 | 25,500,000 | 25,500,000 |
| 29Dec00 | # | Diadem Resources Ltd. - Common Shares | 200,000 | 1,000,000 |
| 19Jan01 | | Ella Resources Inc. - Units and Common Shares | 300,000, 1,235,000 | 300,000, 1,235,000 Resp. |
| 09Jan01 | | Gametele Systems Inc. - Common Shares | 753,930 | 2,513,100 |
| 29Dec00 | | Geomaque Explorations Ltd. - Units | 250,000 | 892,858 |
| 18Jan01 | | GolfNorth Properties Inc. - Common Shares | 1,800,000 | 6,000,000 |
| 16Jan01 | | Headline Media Group Inc. - Class a Subordinate Voting Shares | 551,250 | 175,000 |
| 05Dec00 | | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund - Units | 61,390 | 531 |
| 24Nov00 | | Lifepoints Achievement Fund, Russell Canadian Equity Fund - Units | 18,458 | 82 |

| Trans. Date | Security | Price ($) | Amount |
|---|---|---|---|
| 12Dec00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units | 70,927 | 546 |
| 04Dec00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund - Units | 4,644 | 42 |
| 30Nov00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund - Units | 17,948 | 152 |
| 13Dec00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units | 26,808 | 213 |
| 20Nov00 | Lifepoints Achievement Fund, Lifepionts Opportunity Fund, Lifepoints Progress Fund - Units | 12,010 | 107 |
| 06Dec00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund, Russell Overseas Equity Fund - Units | 5,446 | 46 |
| 29Nov00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund, Russell Canadian Equity Fund, Russell Global Equity Fund - Units | 2,223 | 19 |
| 04Dec00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund - Units | 46,057 | 407 |
| 12Dec00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund - Units | 12,602 | 109 |
| 23Nov00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units | 24,347 | 197 |
| 28Nov00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund - Units | 258 | 2 |
| 29Nov00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units | 23,152 | 188 |
| 28Nov00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units | 4,730 | 41 |
| 27Nov00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units | 231,137 | 1,945 |
| 30Nov00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund - Unit | 226 | 1 |
| 07Dec00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units | 237,108 | 1,905 |
| 11Dec00 | Lifepoints Achievement Fund, Lifepoints Progress Fund, Lifepoints Opportunity Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units | 6,566 | 54 |
| 13Dec00 | Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Russell Canadian Equity Fund, Russell U.S. Equity Fund - Units | 42,251 | 377 |
| 06Dec00 | 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 | 63,715 | 541 |
| 30Nov00 | Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units | 19,019 | 110 |
| 07Dec00 | Lifepoints Balanced Growth - Units | 449 | 4 |
| 27Nov00 | Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Overseas Equity Fund - Units | 170,224 | 1,484 |
| 07Dec00 | Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Global Equity Fund, Russell Overseas Equity Fund - Units | 40,894 | 328 |
| 12Dec00 | Lifepoints Balanced Growth Fund, Lifepoints Balanced Long Term Growth Fund - Units | 11,954 | 105 |
| 24Nov00 | 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 | 20,583 | 168 |

| Trans. Date | Security | Price ($) | Amount |
|---|---|---|---|
| 29Nov00 | Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units | 75,263 | 603 |
| 28Nov00 | 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 | 40,260 | 297 |
| 20Nov00 | 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 | 7,422 | 64 |
| 04Dec00 | Lifepoints Balanced Long Term Growth Fund, Russell Global Equity Fund, Russell Overseas Equity Fund - Units | 145,493 | 1,234 |
| 29Nov00 | Lifepoints Balanced Growth Fund, Russell Overseas Equity Fund - Units | 38,324 | 329 |
| 11Dec00 | Lifepoints Balanced Long Term Growth - Units | 478 | 3 |
| 21Nov00 | Lifepoints Balanced Long Term Growth, Lifepoints Balanced Growth, Lifepoints Balanced Income - Units | 15,651 | 142 |
| 05Dec00 | Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Income Fund - Units | 183,949 | 1,552 |
| 06Dec00 | Lifepoints Balanced Long Term Growth - Units | 944 | 8 |
| 12Dec00 | 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 | 134,000 | 1,140 |
| 21Nov00 | Lifepoints Balanced Long Term Growth Fund, Russell Global Equity Fund - Units | 1,692 | 16 |
| 22Nov00 | 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 | 129,258 | 1,118 |
| 12Dec00 | Lifepoints Balanced Growth Fund - Unit | 45 | .41 |
| 14Dec00 | Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund, Russell Canadian Equity Fund, Russell Global Equity Fund, Russell Overseas Equity Fund - Units | 78,557 | 693 |
| 11Dec00 | 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 - Units | 101,374 | 874 |
| 27Nov00 | Lifepoints Balanced Income Fund, Russell Canadian Fixed Income Fund - Units | 14,846 | 140 |
| 11Dec00 | Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Income Fund - Units | 119,525 | 1,053 |
| 04Dec00 | Lifepoints Balanced Long Term Growth, Lifepoints Balanced Growth, Lifepoints Balanced Income - Units | 16,498 | 152 |
| 24Nov00 | Lifepoints Balanced Income Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Long Term Growth Fund - Units | 4,731 | 42 |
| 23Oct00 | Lifepoints Balanced Long Term Growth Fund, Russell Canadian Equity Fund, Russell Global Equity Fund, Russell Overseas Equity Fund - Units | 69,708 | 622 |
| 12Dec00 | Lifepoints Balanced Long Term Growth, Lifepoints Balanced Growth, Lifepoints Balanced Income - Units | 16,907 | 149 |
| 14Dec00 | Lifepoints Opportunity Fund, Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Global Equity Fund - Units | 395 | 2 |
| 20Nov00 | Lifepoints Opportunity Fund - Units | 40,000 | 374 |
| 29Nov00 | Lifepoints Opportunity Fund, Russell Canadian Equity Fund - Units | 20,126 | 346 |
| 04Dec00 | Lifepoints Opportunity Fund, Russell Overseas Equity Fund - Units | 2,209 | 18 |
| 22Nov00 | Lifepoints Opportunity Fund - Units | 986 | 8 |
| 13Dec00 | Lifepoints Progress Fund, Lifepoints Achievement Fund, Lfiepoints Opportunity Fund - Units | 79,564 | 696 |
| 23Nov00 | Lifepoints Progress Fund - Units | 1,200,000 | 11,338 |
| 22Nov00 | Lifepoints Progress Fund - Units | 5,978 | 56 |
| 23Nov00 | Lifepoints Progress Fund, Lifepoints Opportunity Fund, Russell Canadian Fixed Income Fund - Units | 33,764 | 299 |
| 24Nov00 | Lifepoints Progress Fund, Russell Canadian Equity Fund, Russell Global Equity Fund - Units | 7,759 | 73 |
| 23Nov00 | Lifepoints Progress Fund, Lifepoints Opportunity Fund - Units | 3,475 | 31 |

| Trans. Date | Security | Price ($) | Amount |
|---|---|---|---|
| 15Jan01 | Luxell Technologies Inc. - Special Warrants | 2,919,591 | 834,169 |
| 28Dec00 | Magin Energy Inc. - Common Shares | 4,656,000 | 1,164,000 |
| 29Dec00 | McLean Watson Venture II Limited Partnership -Units | 5,000,000 | 5,000,000 |
| 31Dec00 | Morgan Stanley Dean Witter Investment Management Inc. - Units | 9,467,924 | 712,829 |
| 31Dec00 | Morgan Stanley Dean Witter Investment Management Inc. - Units | 4,082,366 | 307,352 |
| 22Jan01 | Mortice Kern Systems Inc. - Special Debentures Exchangeable into Convertible Debentures and Warrants to Purchase Common Shares | 335,400 | 335,400 |
| 07Dec00 | National Gold Corporation - Special Warrants | 1,050 | 3,500 |
| 19Jan01 | NSI Communications Inc. - Common Shares | 923,127 | 767,164 |
| 17Mar00 to 07Nov00 | QSA Enterprises Fund - Units | 3,097,960 | 199,230 |
| 30Nov00 | R3 Media Inc. - Units | US$125,000 | 125,000 |
| 11Dec00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 2,600,000 | 16,381 |
| 22Nov00 | Russell Canadian Equity Fund - Units | 224,801 | 1,001 |
| 29Nov00 | Russell Canadian Fixed Income Fund, Russell US Equity Fund - Units | 17,206 | 139 |
| 29Nov00 | 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 | 86,912 | 86,912 |
| 28Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units | 69,488 | 559 |
| 24Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell US Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units | 153,977 | 1,233 |
| 29Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 112,550 | 762 |
| 27Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units | 277,137 | 2,051 |
| 21Nov00 | Russell Canadian Fixed Income Fund - Units | 120,233 | 1,021 |
| 28Nov00 | Russell Canadian Equity Fund - Units | 153,519 | 674 |
| 23Nov00 | Russell Canadian Equity Fund, Russell US Equity Fund - Units | 68,574 | 338 |
| 21Nov00 | Russell Canadian Equity Fund, Russell US Equity Fund, Lifepoints Balanced Long Term Growth Fund - Units | 64,705 | 326 |
| 20Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units | 164,351 | 1,423 |
| 27Nov00 | Russell Canadian Fixed Income Fund - Units | 186,297 | 1,576 |
| 20Nov00 | Russell Canadian Fixed Income Fund, Russell Canadian Equity Fund - Units | 33,116 | 146 |
| 12Dec00 | Russell Canadian Fixed Income Fund - Units | 5,272 | 44 |
| 04Dec00 | Russell Canadian Equity Fund, Russell US Equity Fund, Russell Overseas Equity Fund - Units | 29,069 | 196 |
| 07Dec00 | Russell Canadian Equity Fund - Unit | 282 | 1 |
| 15Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund - Units | 9,740,233 | 58,995 |
| 20Nov00 | Russell Canadian Equity Fund - Units | 1,506,386 | 6,577 |
| 11Dec00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell US Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units | 116,120 | 948 |
| 21Nov00 | Russell Canadian Equity Fund - Units | 79,164 | 345 |
| 22Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 62,122 | 367 |
| 11Dec00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 2,290,484 | 16,085 |

| Trans. Date | Security | Price ($) | Amount |
|---|---|---|---|
| 01Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 2,213,890 | 15,677 |
| 20Nov00 | Russell Canadian Fixed Income Fund - Units | 99,072 | 841 |
| 14Dec00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units | 111,120 | 581 |
| 14Dec00 | Russell Canadian Equity Fund, Russell US Equity Fund, Russell Overseas Equity Fund - Units | 27,444 | 169 |
| 30Nov00 | Russell Canadian Equity Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 49,000 | 256 |
| 04Dec00 | Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund - Units | 5,391 | 43 |
| 06Dec00 | Russell Canadian Fixed Income Fund - Units | 339 | 20 |
| 11Dec00 | Russell Canadian Fixed Income Fund, Russell US Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units | 155,508 | 1,396 |
| 28Nov00 | Russell Canadian Equity Fund - Units | 191,899 | 842 |
| 17Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund - Units | 12,457,790 | 88,061 |
| 07Dec00 | Russell Canadian Equity Fund, Russell Overseas Equity Fund - Units | 21,000,000 | 127,256 |
| 27Nov00 | Russell Canadian Fixed Income Fund - Units | 186,297 | 1,576 |
| 13Dec00 | Russell Canadian Equity Fund, Russell U.S. Equity Fund - Units | 7,000,000 | 37,538 |
| 14Dec00 | Russell Canadian Equity Fund, Russell Overseas Equity Fund - Units | 14,000,000 | 74,284 |
| 12Dec00 | Russell Canadian Fixed Income Fund - Units | 7,227 | 60 |
| 24Nov00 | Russell Canadian Equity Fund - Units | 12,299 | 53 |
| 07Dec00 | Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund - Units | 76,275 | 635 |
| 12Dec00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units | 224,868 | 1,883 |
| 30Nov00 | Russell Canadian Fixed Income Fund, Russell US Equity Fund, Russell Overseas Equity Fund, Lifepoints Balanced Growth Fund, Lifepoints Balanced Income Fund - Units | 25,897 | 222 |
| 17Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund - Units | 16,038,300 | 120,344 |
| 24Nov00 | Russell Canadian Equity Fund - Units | 16,860 | 73 |
| 11Dec00 | Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund - Units | 16,182 | 128 |
| 14Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund - Units | 14,051,415 | 92,265 |
| 06Dec00 | Russell Canadian Fixed Income Fund - Units | 68,278 | 570 |
| 29Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 155,709 | 1,054 |
| 16Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 20,741,574 | 132,986 |
| 22Nov00 | Russell Canadian Equity Fund - Units | 271,496 | 1,210 |
| 14Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund - Units | 15,848,793 | 105,800 |
| 15Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell Overseas Equity Fund - Units | 11,075,585 | 66,451 |
| 20Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund - Units | 1,155,832 | 6,530 |
| 20Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund - Units | 9,090,154 | 63,061 |
| 11Dec00 | Russell Canadian Fixed Income Fund - Units | 10,000,000 | 41,088 |
| 20Nov00 | Russell Canadian Fixed Income Fund - Units | 82,449 | 700 |
| 20Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund - Units | 5,676,629 | 42,135 |
| 11Dec00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 3,600,000 | 24,934 |
| 16Nov00 | Russell Canadian Equity Fund, Russell Canadian Fixed Income Fund, Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 13,975,691 | 93,794 |
| 21Nov00 | Russell Canadian Equity Fund - Units | 160,283 | 699 |
| 05Dec00 | Russell Global Equity Fund - Units | 10,000,000 | 99,985 |

| Trans. Date | Security | Price ($) | Amount |
|---|---|---|---|
| 05Dec00 | Russell Global Equity Fund - Units | 5,103 | 51 |
| 06Dec00 | Russell Overseas Equity Fund, Lifepoints Opportunity Fund - Units | 6,058 | 52 |
| 06Dec00 | Russell Overseas Equity Fund - Units | 41,000,000 | 313,744 |
| 11Dec00 | Russell Overseas Equity Fund, Russell U.S. Equity Fund - Units | 16,832 | 126 |
| 12Dec00 | Russell Overseas Equity Fund - Units | 16,824 | 128 |
| 21Nov00 | Russell Overseas Equity Fund - Units | 763 | 5 |
| 29Nov00 | Russell Overseas Equity Fund - Units | 13,928 | 121 |
| 20Nov00 | Russell Overseas Equity Fund - Units | 421 | 3 |
| 20Nov00 | Russell Overseas Equity Fund, Lifepoints Progress Fund, Lifepoints Achievement Fund, Lifepoints Opportunity Fund - Units | 80,496 | 712 |
| 22Nov00 | Russell Overseas Equity Fund, Lifepoints Opportunity Fund - Units | 1,278 | 10 |
| 29Dec00 | Russell Overseas Equity Fund - Unit | 8 | .07 |
| 04Dec00 | Russell U.S. Equity Fund - Units | 22,500,000 | 157,160 |
| 30Nov00 | Russell U.S. Equity Fund - Units | 10,440 | 74 |
| 09Nov00 | Russell U.S. Equity Fund - Units | 3,308,014 | 21,740 |
| 09Nov00 | Russell U.S. Equity Fund - Units | 2,583,894 | 16,981 |
| 10Nov00 | Russell U.S. Equity Fund - Units | 277,455 | 1,857 |
| 30Nov00 | Russell U.S. Equity Fund - Units | 63,664 | 453 |
| 12Dec00 | Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 72,504,853 | 523,879 |
| 10Nov00 | Russell U.S. Equity Fund - Units | 355,221 | 2,378 |
| 05Dec00 | Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 43,500,000 | 318,752 |
| 12Dec00 | Russell U.S. Equity Fund, Russell Overseas Equity Fund - Units | 115,000 | 820 |
| 23Nov00 | Russell U.S. Equity Fund, Russell Overseas Equity Fund, Lifepoints Balanced Long Term Growth Fund - Units | 81,179 | 694 |
| 12Jan01 | Saddle Creek of Atlanta Limited Partnership - Limited Partnership Units | US$850,000 | 34 |
| 22Dec00 | Sentinel Hill Alliance Atlantis Equicap Millennium Limited Partnership - Limited Partnership Units | 53,882,927 | 3,367 |
| 31Dec00 | Signalta Resources Limited - 6.37% of Joint Ventures | 2,800,000 | 2,800,000 |
| 07Jan00 to 21Dec00 | Sprucegrove International Fund, Sprucegrove Global Pooled Fund - Units | 52,178,836 | 571,646 |
| 11Jan01 | Tropika International Limited - Special Warrants | 150,000 | 681,819 |
| 16Jan01 | Venture Coaches Fund LP - Class B Limited Partnership Units | 2,300,000 | 2,300,000 |

## Resale of Securities - (Form 45-501f2)

| Date of Resale | Date of Orig. Purchase | Seller | Security | Price ($) | Amount |
|---|---|---|---|---|---|
| 24May00 | 18Jan01 | ClubLink Capital Corporation | GolfNorth Properties Inc. - Debentures | 4,229,000 | 4,229,000 |
| 04Dec98 | 26Jul00 | Investors Group Trust Co. Ltd. as Trustee for Investors Canadian High Yield Income | IMAX Corporation - 7.875% Senior Notes Debentures due 12-01-05 | 500,000 | 500,000 |

## Notice of Intention to Distribute Securities Pursuant to Subsection 7 of Section 72 - (Form 23)

| Seller | Security | Amount |
|---|---|---|
| Timis, Frank | Gabriel Resources Ltd. - Common Shares upon the exercise of Warrants and Common Shares | 2,118,193, 500,000 Resp. |
| Black, Conrad M. | Hollinger Inc. - Series II Preference Shares | 1,611,039 |
| Gastle, Susan M.S. | Microbix Biosystems Inc. - Common Shares | 285,000 |
| Solomos, George | Neotel Inc. - Common Shares | 2,000,000 |
| Ontex Resources Limited | Pifher Resources Inc. - Common Shares | 50,000 |
| Malion, Andrew J. | Spectra Inc. - Common Shares | 250,000 |
| Faye, Michael R. | Spectra Inc. - Common Shares | 250,000 |
| Hawkins, Stanley G. | Tandem Resources Ltd. - Common Shares | 2,000,0000 |

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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:**
Canada's Leading Companies Growth Trust, 2001 Portfolio
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectus dated January 30th, 2001
Mutual Reliance Review System Receipt dated January 31st, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s) or Distributor(s):**
First Defined Portfolio Management Inc.
**Promoter(s):**

**Project** #328928

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**Issuer Name:**
Cominar Real Estate Investment Trust
Principal Regulator - Quebec
**Type and Date:**
Preliminary Short Form Prospectus dated January 26th, 2001
Mutual Reliance Review System Receipt dated January 29th, 2001
**Offering Price and Description:**

**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
TD Securities Inc.
Desjardins Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
**Promoter(s):**

**Project** #328540

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**Issuer Name:**
Hemosol Inc.
**Type and Date:**
Amended and Restated Preliminary Short Form PREP Prospectus dated January 31st, 2001
Receipted February 1st, 2001
**Offering Price and Description:**
US$ * - 7,000,000 Common Shares
**Underwriter(s) or Distributor(s):**

UBS Bunting Warburg Inc.

**Promoter(s):**

**Project** #326099

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**Issuer Name:**
Infowave Software, Inc.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated January 26th, 2001
Mutual Reliance Review System Receipt dated January 29th, 2001
**Offering Price and Description:**
$ * - * Common Shares and * Warrants to purchase Common Shares
**Underwriter(s) or Distributor(s):**
Canaccord Capital Corporation
CIBC World Markets Inc.
**Promoter(s):**

**Project** #328371

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**Issuer Name:**
Sixty Split Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated January 30th, 2001
Mutual Reliance Review System Receipt dated January 31st, 2001
**Offering Price and Description:**
$ * - * Capital Shares and * Preferred Shares @ $ * per Capital Share and $25.00 per Preferred Share
**Underwriter(s) or Distributor(s):**
Scotia Capital Inc.
**Promoter(s):**
Scotia Capital Inc.
**Project** #329108

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**Issuer Name:**
CI Global Value Fund
CI International Value Fund
CI Global Consumer Products RSP Fund
CI Global Financial Services RSP Fund
CI Global Technology RSP Fund
CI American Managers RSP Fund
CI Global Managers RSP Fund
**Type and Date:**
Amendment #2 dated December 18th, 2000 to Simplified Prospectus and Annual Information Form dated July 17th, 2000
Mutual Reliance Review System Receipt dated 5th day of January, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
**Promoter(s):**
**Project** #283287

**Issuer Name:**
CI Sector Fund Limited - CI Global Value Sector A Shares
CI Sector Fund Limited - CI International Value Sector A Shares
CI Sector Fund Limited - CI Global Consumer Products Sector A Shares
CI Sector Fund Limited - CI Global Financial Services Sector A Shares
CI Sector Fund Limited - CI Global Technology Sector A Shares
CI Sector Fund Limited - CI American Managers Sector A Shares
CI Sector Fund Limited - CI Global Managers Sector A Shares
CI Sector Fund Limited - CI Global Value Sector F Shares
CI Sector Fund Limited - CI Global Consumer Products Sector F Shares
CI Sector Fund Limited - CI Global Financial Services Sector F Shares
CI Sector Fund Limited - CI Global Technology Sector F Shares
CI Sector Fund Limited - CI American Managers Sector F Shares
CI Sector Fund Limited - CI Global Managers Sector F Shares
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated December 18th, 2000 to Simplified Prospectus and Annual Information Form dated July 17th, 2000
Mutual Reliance Review System Receipt dated 5th day of January, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Registered Dealers
**Promoter(s):**
CI Mutual Funds Inc.
**Project #275181**

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**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:**
Amended and Restated Simplified Prospectus and Annual Information Form dated January 18th 2001, Amending and Restating the Simplified Prospectus and Annual Information Form dated January 3rd, 2001
Mutual Reliance Review System Receipt dated 24th day of January, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Registered Dealer
**Promoter(s):**
N/A
**Project #307321**

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**Issuer Name:**
Mcdonald Canada plus Fund
Mcdonald Enhanced Bond Fund
Mcdonald New America Fund
Mcdonald Euro plus Fund
Mcdonald Asia plus Fund
Mcdonald New Japan Fund
Mcdonald Emerging Economies Fund
Mcdonald Enhanced Global Fund
Ambassador Growth Portfolio
Ambassador Growth RRSP Portfolio
Ambassador Balanced Portfolio
Ambassador Balanced RRSP Portfolio
Ambassador Conservative Portfolio
Ambassador Conservative RRSP Portfolio
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated January 26th, 2001 to the Simplified Prospectus and Annual Information Form dated August 29th, 2000
Mutual Reliance Review System Receipt dated 31st day of January, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Registered Dealer
**Promoter(s):**

**Project #284833**

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**Issuer Name:**
Viscount Canadian Equity Pool
Viscount U.S. Equity Pool
Viscount International Equity Pool
Viscount Canadian Bond Pool
Viscount High Yield U.S. Bond Pool
Viscount RSP U.S. Index Pool
Viscount RSP International Index Pool
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated January 19th, 2001 to the Simplified Prospectus and Annual Information Form dated February 8th, 2000
Mutual Reliance Review System Receipt dated 26th day of January, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Registered Dealer
**Promoter(s):**
Dynamic Mutual Funds Ltd.
**Project #212654**

**Issuer Name:**
AltaRex Corp.
Principal Regulator - Alberta
**Type and Date:**
Final Prospectus dated January 25th, 2001
Mutual Reliance Review System Receipt dated 26th day of January, 2001
**Offering Price and Description:**
**Underwriter(s), Agent(s) or Distributor(s):**
HSBC Securities (Canada) Inc.
**Promoter(s):**
N/A
**Project #**312206

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**Issuer Name:**
Boralex Inc.
Principal Regulator - Quebec
**Type and Date:**
Final Prospectus dated January 26th, 2001
Mutual Reliance Review System Receipt dated 29th day of January, 2001
**Offering Price and Description:**
$33,000,000.00 - 6,000,000 Class A Shares Issuable upon the Exercise of Special Warrants
**Underwriter(s), Agent(s) or Distributor(s):**
NewCrest Capital Inc.
National Bank Financial Inc.
Desjardins Securities Inc.
**Promoter(s):**
N/A
**Project #**319403

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**Issuer Name:**
ConjuChem Inc.
Principal Regulator - Quebec
**Type and Date:**
Final Prospectus dated November 20th, 2000
Mutual Reliance Review System Receipt dated 21st day of November, 2000
**Offering Price and Description:**
**Underwriter(s), Agent(s) or Distributor(s):**
Yorkton Securities Inc.
BMO Nesbitt Burns Inc.
HSBC Securities (Canada) Inc.
National Bank Financial Inc.
**Promoter(s):**
N/A
**Project #**302329

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**Issuer Name:**
Copper Ridge Explorations Inc.
Principal Jurisdiction - British Columbia
**Type and Date:**
Final Prospectus dated January 26th, 2001
Mutual Reliance Review System Receipt dated 26th day of January, 2001
**Offering Price and Description:**
$900,999.60 - 2,252,499 Special Warrants Issuable Upon the Exercise of 2,252,499 previously issued Special Warrants
**Underwriter(s), Agent(s) or Distributor(s):**
Haywood Securities Inc.
**Promoter(s):**
Gerald G. Carlson
**Project #**322280

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**Issuer Name:**
Home Ticket Network Corporation
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated January 24th, 2001
Mutual Reliance Review System Receipt dated 26th day of January, 2001
**Offering Price and Description:**
13,279,837 Common Shares Issuable Upon the Exercise of 13,279,837 Special Warrants
**Underwriter(s), Agent(s) or Distributor(s):**
BayStreetDirect Inc.
**Promoter(s):**
N/A
**Project #**322747

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**Issuer Name:**
YEARS Trust
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated January 29th, 2001
Mutual Reliance Review System Receipt dated 30th day of January, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
CIBC World Markets Inc.
Merrill Lynch Canada Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
HSHB Securities (Canada) Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Goepel McDermid Inc.
Trilon Securities Corporation
Yorkton Securities Inc.
**Promoter(s):**
Highstreet Asset Management Inc.
**Project #**320565

**Issuer Name:**
AnorMED Inc.
Principal Regulator - British Columbia
**Type and Date:**
Final Short Form Prospectus dated January 29th, 2001
Mutual Reliance Review System Receipt dated January 29th, 2001
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Goepel McDermid Inc.
**Promoter(s):**
Michael J. Abrams
**Project #327163**

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**Issuer Name:**
Canbras Communications Corp.
Principal Regulator - Quebec
**Type and Date:**
Final Short Form Prospectus dated January 22nd, 2001
Mutual Reliance Review System Receipt dated 23rd day of January, 2001
**Offering Price and Description:**
$99,105,209.00 - Issue of Rights to Subscribe for up to 23,047,723 Common Shares
**Underwriter(s), Agent(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
**Promoter(s):**
N/A
**Project #322208**

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**Issuer Name:**
MGI Software Corp.
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated January 25th, 2001
Mutual Reliance Review System Receipt dated January 25th, 2001
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
BMO Nesbitt Burns Inc
Yorkton Securities Inc.
**Promoter(s):**
-
**Project #326384**

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**Issuer Name:**
Yorkton Knowledge Industries Fund
Yorkton Health Sciences Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated January 9th, 2001
Mutual Reliance Review System Receipt dated 30th day of January, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Lion Funds Management Inc.
**Promoter(s):**
Lion Funds Management Inc.
**Project #317531**

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**Issuer Name:**
AGF RSP MultiManager Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated 16th day of January, 2001
Mutual Reliance Review System Receipt dated January 19th, 2001
**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**

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**Issuer Name:**
AGF RSP MultiManager Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated January 16th, 2001
Mutual Reliance Review System Receipt dated 19th day of January, 2001
**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 #310008**

**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 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:**
Final Simplified Prospectus and Annual Information Form dated January 22nd, 2001
Mutual Reliance Review System Receipt dated 25th day of January, 2001
**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

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**Issuer Name:**
Jones Heward RSP American Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated January 26th, 2001
Mutual Reliance Review System Receipt dated 29th day of January, 2001
**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

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**Issuer Name:**
iProfile Canadian Equity Pool
iProfile U.S. Equity Pool
iProfile International Equity Pool
iProfile Emerging Markets Pool
iProfile Fixed Income Pool
iProfile Global Equity RSP Pool
iProfile Money Market Pool
Principal Regulator - Manitoba
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated January 8th, 2001
Mutual Reliance Review System Receipt dated 11th day of January, 2001
**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** #308512

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**Issuer Name:**
1World Conservative Portfolio
1World Moderate Conservative Portfolio
1World Moderate Portfolio
1World Moderate Aggressive Portfolio
1World Moderate Aggressive Registered Portfolio
1World Aggressive Portfolio
1World Aggressive Registered Portfolio
Principal Regulator - Manitoba
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated January 19th, 2001
Mutual Reliance Review System Receipt dated 24th day of January, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
Investors Group Financial Services Inc.
Les Services Investors Limitee
**Promoter(s):**
Investors Group Financial Services Inc.
**Project** #308487

**Issuer Name:**
Synergy Global Fund Inc. - Synergy American Growth Class
Synergy Global Fund Inc. - Synergy Global Value Class
Synergy American Growth RSP Fund
Synergy Global Value RSP Fund
Synergy Extreme Global Equity Fund
Synergy Extreme Global Equity RSP Fund
(Series A and F)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated January 26th, 2001
Mutual Reliance Review System Receipt dated 29th day of January, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
N/A
**Promoter(s):**
Synergy Asset Management Inc.
**Project #322362**

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**Issuer Name:**
Trimark Government Income Fund
Trimark Canadian Bond Fund
Trimark Advantage Bond Fund
Trimark Global High Yield Bond Fund
Trimark Income Growth Fund
Trimark Select Balanced Fund
Trimark Global Balanced Fund
Trimark Canadian Fund
Trimark RSP Equity Fund
Trimark Select Canadian Growth Fund
Trimark Enterprise Fund
Trimark Canadian Small Companies Fund
Trimark Enterprise Small Cap Fund
Trimark U.S. Companies Fund
Trimark Fund
Trimark Select Growth Fund
Trimark International Companies Fund
Trimark Europlus Fund
Trimark Indo-Pacific Fund
The Americas Fund
Trimark Canadian Resources Fund
Trimark Discovery Fund
Trimark Global High Yield Bond RSP Fund
Trimark Global Balanced RSP Fund
Trimark U.S. Companies RSP Fund
Trimark Select Growth RSP Fund
Trimark International Companies RSP Fund
Trimark Europlus RSP Fund
Trimark Indo-Pacific RSP Fund
The Americas RSP Fund
Trimark Discovery RSP Fund
(Series F units)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated January 26th, 2001
Mutual Reliance Review System Receipt dated 29th day of January, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s), Agent(s) or Distributor(s):**
N/A
**Promoter(s):**
N/A
**Project #320492**

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**Issuer Name:**
Dynamic Global Fund Corporation - Dynamic Global Precious Metals Class
Dynamic Global Fund Corporation - Dynamic Global Resources Class
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectus and Annual Information Form dated October 31st, 2000
Withdrawn January 23rd, 2001
**Offering Price and Description:**
**Underwriter(s), Agent(s) or Distributor(s):**
N/A
**Promoter(s):**

**Project #308458**

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**Issuer Name:**
Icron Systems Inc.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Prospectus dated November 9th, 2000
Withdrawn January 18th, 2001
**Offering Price and Description:**
**Underwriter(s), Agent(s) or Distributor(s):**
Acumen Capital Finance Partners Limited
Taurus Capital Markets Ltd.
Haywood Securities Inc.
**Promoter(s):**
Kelly Edmison
**Project #310813**

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**Issuer Name:**
Synergy Extreme Global Equity Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectus and Annual Information Form dated October 31st, 2000
Withdrawn December 27th, 2000
**Offering Price and Description:**
**Underwriter(s), Agent(s) or Distributor(s):**
N/A
**Promoter(s):**
Synergy Asset Management Inc.
**Project #308797**

# Chapter 12

# Registrations

## 12.1.1 Securities

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| New Registration | Synergy Services Corporation<br>Attention: James Emerson Ross<br>The Exchange Tower<br>130 King St. West, Suite 3640<br>Toronto ON M5X 1E4 | Mutual Fund Dealer | Jan 24/01 |
| New Registration | 360 Venture Partners Inc.<br>Attention: Susan Elizabeth Coleman<br>181 Bay Street, Suite 830<br>BCE Place, Bay Wellington Tower, P.O. Box 750<br>Toronto ON M5J 2T3 | Investment Counsel & Portfolio Manager | Jan 26/01 |

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# Chapter 13

# SRO Notices and Disciplinary Proceedings

## 13.1 SRO Notices and Disciplinary Decisions

### 13.1.1 Joseph Michael Shaughnessy

NOTICE TO PUBLIC RE: DISCIPLINARY HEARING

January 31, 2001

RE: IN THE MATTER OF JOSEPH MICHAEL SHAUGHNESSY

**Toronto, Ontario** – The Investment Dealers Association of Canada (Association) announced today that a hearing date has been set for the continuation of a discipline hearing before the Ontario District Council (District Council).

The proceeding is in respect of matters alleged by the Member Regulation staff of the Association to have occurred while Mr. Joseph Michael Shaughnessy was employed as a Registered Representative at the Toronto, Ontario head office of Research Capital Corporation, a Member of the Association. Mr. Shaughnessy is not currently employed or registered with a Member of the Association.

The hearing is scheduled to commence at **9:30 a.m.** or shortly thereafter on **Tuesday, February 13 through Thursday, February 15, 2001,** at the **Standard Life Building, 121 King Street West, Xchange Conference Centre, 17th Floor, Boardroom A, Toronto, Ontario.** The hearing is open to the public except as may be required for the protection of confidential matters.

If the District Council determines that discipline penalties are to be imposed upon Mr. Shaughnessy, the Association will issue a Bulletin giving notice of the discipline penalties assessed, the regulatory violation(s) committed by Mr. Shaughnessy, and a summary of the facts. Once the District Council has issued its decision, copies of the Bulletin and decision will be made available.

Contact:

Kathleen O'Brien
Public Affairs Co-ordinator
(416) 943-6921

### 13.1.2 Dual Employment of Trading Officers in Affiliated Firms - By-Law 7.1

INVESTMENT DEALERS ASSOCIATION OF CANADA
DUAL EMPLOYMENT OF TRADING OFFICERS IN AFFILIATED FIRMS - BY-LAW 7.1 (1)(b)(iv)

**I OVERVIEW**

**A Current Rules**

By-law 7.1 (1)(b)(iv) does not currently permit dual employment of trading officers. Under the current By-law a trading officer can only be employed as a trading officer with respect to one person, firm, or corporation.

**B The Issue**

Ontario Securities Commission Rule 31-501 "Registrant Relationships" permits dual employment of officers provided that procedures are implemented to minimize conflicts of interest and that appropriate disclosure is made to clients.

**C Objective**

In light of Rule 31-501, the Association is amending its By-laws as to be more in line with the Ontario Securities Commission Rule by allowing trading officers to be dually employed by affiliated firms.

**D Effect of Proposed Amendment**

The proposed amendment allows for more flexibility to individuals designated as trading officers by allowing them to be dually employed by affiliated firms.

**II DETAILED ANALYSIS**

**A Present Rules, Relevant History and Proposed Policy**

Ontario Securities Commission Rule 31-501 came into force on June 27, 1997. Part 2.1(b) of Rule 31-501 states that a person or company that has a principal shareholder, officer, partner or director that is a principal shareholder, officer, partner or director of another registrant shall disclose in the application the details and the business reasons for the relationship, adopt policies and procedures to minimize the potential for conflicts, and disclose to a customer the details of the relationship and the policies and procedures adopted to minimize the potential for conflict of interest resulting from the relationship.

As a result, the Association recognized that By-law 7.1(1)(b)(iv) was inconsistent with Part 2 of Rule 31-501 and revisions were therefore necessary. Consequently, By-law 7.1(1)(b)(iv) now provides that a trading officer may be

employed at two separate firms that are affiliated when certain requirements are satisfied. The requirements that need to be satisfied include:

1. disclosure of the details and reasons for the dual employment,

2. policies and procedures must be adopted by both firms in which the trading officer is dually employed to minimize the potential for conflicts of interest and they must be filed with the Association, and

3. customers whose accounts are personally handled by the trading officer must be informed of the dual employment as well as of the polices and procedures adopted by both firms in order minimize the potential for conflicts.

### B Issues and Alternatives Considered

No other alternatives were considered.

### C Comparison with Similar Provisions

The Ontario Securities Commission has implemented Rule 31-501, which permits dual employment of trading officers provided that procedures are implemented to minimize conflicts of interest and that appropriate disclosure is made to clients.

### D Public Interest Objective

The Association believes that the proposed amendment is in the public interest in that it ensures consistency with Ontario securities laws. The proposed amendment assists in the protection of the investing public by ensuring that clients know that the trading officer they are dealing with is dually employed and bringing potential for conflicts of interest to the attention of the client.

The proposed by-law does not permit unfair discrimination among clients, issuers, brokers, dealers, or others. It does not impose any burden on competition that is not necessary or appropriate in furtherance of the above purposes.

## III COMMENTARY

### A Filing in Other Jurisdictions

These proposed amendments will be filed for approval in Alberta, British Columbia, Saskatchewan and Ontario and will be filed for information in Nova Scotia.

### B Effectiveness

The Association believes that allowing trading officers to be dually employed increases the flexibility needed in today's corporate structure without causing risk of harm to clients. As long as procedures are implemented to minimize conflicts of interest and as long as clients are made aware of the dual employment, risk of harm is unlikely to occur.

### C Process

The proposed amendment was approved by the Executive Committee of the Joint Industry Compliance Group.

## IV SOURCES

IDA By-law 7.1(1)(b)(iv)
OSC Rule 31-501-Registrant Relationships

## V OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the accompanying amendment so that the issue referred to above may be considered by OSC staff.

**The Association has determined that the entry into force of the proposed amendment would be in the public interest. Comments are sought on the proposed amendment.** Comments should be made in writing. One copy of each comment letter should be delivered within 30 days of the publication of this notice, addressed to the attention of Deborah L. Wise, Investment Dealers Association of Canada, Suite 1600, 121 King Street West, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of the Manager, Document Management, Market Operations, Ontario Securities Commission, 20 Queen Street West, Suite 800, Toronto, Ontario, M5H 3S8.

Questions may be referred to:

Deborah L. Wise
Legal and Policy Counsel
Regulatory Policy
Investment Dealers Association of Canada
(416) 943-6994
**dwise@ida.ca**

INVESTMENT DEALERS ASSOCIATION OF CANADA

BY-LAW 7.1 (1)(b)(iv) - DUAL EMPLOYMENT OF OFFICERS

**THE BOARD OF DIRECTORS** of the Investment Dealers Association of Canada hereby makes the following amendments to the By-laws, Regulations, Forms and Policies of the Association:

1. By-law 7.1(1)(b)(iv) is repealed and replaced as follows:

"an officer may be dually employed as a trading officer of both a Member and another Member who are affiliates or dually employed as a trading officer of a Member and a non-Member who are affiliates pursuant to applicable securities legislation and provided that:

A) the reasons for the dual employment are disclosed to the Association,

B) policies and procedures are adopted by both Members in which the trading officer is dually employed to minimize the potential for conflicts of interest resulting from the dual employment. The polices and procedures must be filed with the Association unless such policies and procedures have been previously filed, and

C) customers whose accounts are personally handled by the trading officer must be informed of the details of the dual employment as well as of the polices and procedures adopted to by both firms in order minimize the potential for conflicts of interest arising from the dual employment;"

**PASSED AND ENACTED BY THE** Board of Directors this 17th day of 2001, to be effective on a date to be determined by the Association Staff.

## 13.1.3 Referral Arrangements & Commission Splitting

INVESTMENT DEALERS ASSOCIATION OF CANADA
REFERRAL ARRANGEMENTS AND COMMISSION SPLITTING

I OVERVIEW

The proposed by-law will permit Member firms that receive commissions on the sale of securities to pay referral fees to or split commissions with other Members or financial services entities.

A CURRENT RULES

Currently, the Association has no clear by-laws or regulations addressing the use of referral arrangements or commission splitting.

B THE ISSUE

In August 1999, the Canadian Securities Administrators' ("CSA") Distribution Structures Committee issued a Position Paper (the "Paper"). The positions put forward in the Paper were to address the regulatory issues that have arisen due to changes occurring in the manner in which securities firms structure their businesses to facilitate the commercial provision of securities trading and advising services to the public. The intention was that the positions outlined in the Paper were intended to apply to all securities regulatory systems including SROs.

One of the subjects discussed in the Paper concerned referral arrangements and commission splitting and under what circumstances such arrangements would be permitted.

As a result of the CSA addressing this issue, the IDA determined that it was necessary to respond with an appropriate by-law on the matter that substantially mirrored the CSA's position on referral arrangements and commission splitting.

C EFFECT OF REVISION

The proposed by-law will be simple and effective. It will clearly set out provisions for the use of referral arrangements that ensure compliance with the Paper.

II DETAILED ANALYSIS

The proposed by-law will permit referral arrangements and commission splitting only between Member firms or between Member firms and entities that are licensed or registered under some other regulatory system that is acceptable for the purpose of referral arrangements ("financial services entity"). The arrangements therefore, cannot be between individual salespersons or with non- regulated financial services entities, such as lawyers or accountants.

However, these arrangements must satisfy certain conditions. These conditions include the requirement that there be a written agreement governing the payment of referral fees between the Member firms, or the Member firm and the

acceptable financial services entity. In addition, all forms of compensation under these arrangements must be recorded in the books and records of the Member. Lastly, written disclosure must be made to the client of these arrangements and the disclosure must include certain items.

The proposed by-law broadly outlines the parties that may be involved in referral arrangements and the types of compensation that may be paid within these arrangements. Clarification is also provided to exclude from the definition of referral arrangements payments to or from a third party provider not involved in securities related business. Further clarification also permits referral arrangements whereby a retired salesperson may continue to receive a commission as a form of compensation for the referral of his or her client books to another salesperson.

### A ISSUES AND ALTERNATIVES CONSIDERED

Due to the CSA intending that the positions put forward in the paper were to apply to the SROs, there were no alternatives considered.

### B COMPARISON WITH SIMILAR PROVISIONS

The Mutual Fund Dealers Association has also proposed Rule 2.4.2 Referral Arrangements, which is based upon the CSA Position Paper.

In the United States, the issue of referral fees and commission splitting has been under consideration for some time.

The Securities and Exchange Commission has issued a number of no action letters indicating that registrations are not required in some cases, permitting payment of the fees to unregistered persons. The SEC has also approved a number of networking arrangements between brokers or dealers and financial institutions in which payment to the financial institution could be a share of the commissions generated.

The National Association of Securities Dealers first published a draft amendment to its rules of fair practice which would have generally prohibited the payment of any referral fee in connection with the referral of potential customers for brokerage services, although fixed fees would have been permitted on an occasional basis.[1] The 1989 draft rule was never finalized.

In March 1997 the NASD issued a notice to members[2] requesting comments on a new proposed rule which, if implemented, would prohibit a member from making any payment of cash or non-cash compensation to a non-NASD member. The NASD has not yet finalized a rule.

However, under an NASD Regulation 2420 Dealing with Non-Members, an interpretation was issued entitled "NASD-M-CR IM 2420-2 Continuing Commissions Policy". Under this interpretation, the Board of Governors held that it was permissible to have the payment of continuing commissions to registered representatives after they ceased to be employed by a member of the Association (or payment to their widows or other beneficiaries) provided bona fide contracts call for such payment. Furthermore, an individual dealer may enter into a bona fide contract with another dealer to take over and service his or her accounts and, after he or she ceases to be a member, to pay to him or to his widow or other beneficiary continuing commissions generated on such accounts.

### C PUBLIC INTEREST OBJECTIVE

The Association believes that the proposed amendment is in the public interest in that it standardizes industry practice with respect to the use and availability of referral arrangements. Furthermore, the proposed amendment assists in the protection of the investing public by ensuring that clients know who is responsible for certain activities and in bringing potential conflicts of interest to the attention of the client.

The proposed amendment will assist in ensuring compliance with securities legislation by clarifying that an individual may be acting in furtherance of trades in securities or giving advice regarding securities by engaging in prohibited referral arrangements.

## III COMMENTARY

### A FILING IN ANOTHER JURISDICTION

The proposed amendment will be filed for approval in Alberta, British Columbia, Saskatchewan and Ontario and will be filed for information in Nova Scotia.

### B EFFECTIVENESS

This proposed amendment is simple and effective.

### C PROCESS

The proposed amendment was approved by the Joint Industry Compliance Group. Input was received from the Retail Sales Committee. The proposed amendment was also distributed to the District Councils of the Association.

## IV SOURCES

CSA Distribution Structures Committee: Position Paper, August 1999.

Mutual Fund Dealers Association, proposed Rule No. 2 – Business Conduct.

NASD Notice to Members 89-3 and 97-11.

NASD-M-CR IM 2420-2 Continuing Commissions Policy.

## V OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the proposed amendments so that the issue referred to above may be considered by OSC staff.

**The Association has determined that the entry into force of the proposed amendment would be in the public**

[1] NASD Notice to Members 89-3.

[2] NASD Notice to Members 97-11.

**interest. Comments are sought on the proposed amendment.** Comments should be made in writing. One copy of each comment letter should be delivered within 30 days of the publication of this notice, addressed to the attention of the Michelle Alexander, Investment Dealers Association of Canada, Suite 1600, 121 King Street West, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of the Manager, Document Management, Market Operations, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8.

Questions may be referred to:

Michelle Alexander
Senior Legal and Policy Counsel
Investment Dealers Association of Canada
(416) 943 – 5885

## INVESTMENT DEALERS ASSOCIATION OF CANADA

### REFERRAL FEES AND COMMISSION SPLITTING ARRANGEMENTS BY-LAW 29.6A

**THE BOARD OF DIRECTORS** of the Investment Dealers Association of Canada hereby makes the following amendments to the By-laws, Regulations, Forms and Policies of the Association:

1. By-law 29 is amended by adding the following:

"29.6A.

(1) Referral arrangements shall be permitted if:

(a) prior to implementation, a written agreement exists governing the referral arrangement between the Members or between the Member and the financial services entity;

(b) for greater certainty, the written agreement referred to in subparagraph (1)(a) is not between individually approved persons of the Member or financial services entity;

(c) all fees or other forms of compensation paid as part of the referral arrangement to or by the Member are recorded in the books and records of the Member;

(d) written disclosure is made to the client of any referral arrangement prior to any transactions taking place;

(e) the disclosure referred to in sub paragraph (1)(d) shall include:

(i) a clear definition of how the referral fee is calculated in order to assist the client in a determination of the exact dollar amount payable,

(ii) the reason for the payment,

(iii) the name of the parties receiving and paying the fee, and

(iv) a statement that it is illegal for the party receiving the fee to trade or advise in respect of securities if it is not duly licensed or registered under applicable securities legislation to provide such advice; and

(g) the Member has received instructions directly from the client and shall not receive instructions or advice regarding client transactions from the party receiving the fee.

(2) For the purposes of By-law 29.6A:

(a) "**referral arrangement**" means an agreement whereby a Member earns or pays a fee for the referral of a client to or from

(i) another Member; or

(ii) a financial services entity that is licensed or registered in another category pursuant to applicable securities legislation or subject to another regulatory regime. Financial services subject to another regulatory regime would include banking, insurance, deposit taking, and mortgage brokerage activities and, in Quebec, financial planning activities.

(b) The fee earned or paid in relation to the referral arrangement may be a flat fee, may be contingent and based on commissions or fees earned, or may be based on the value of assets transferred.

(c) A referral arrangement does not include any payment to or from a third party service provider where the services do not constitute securities related business.

(3) The payment of continuing commissions to individual salespersons once they have retired and ceased to be employed by a Member for commissions or fees generated on his or her accounts now serviced by another salesperson, shall be permitted notwithstanding the provisions of By-law 29.6A(1) provided

(a) a written agreement exists governing the continuing commission arrangement between the individual and the Member;

(b) written disclosure is made to the client of the continuing commission arrangement prior to any further transactions with the replacing salesperson taking place; and

(c) all fee or other forms of compensation paid as part of the continuing commission arrangement by the Member are recorded in the books and records of the Member."

**PASSED AND ENACTED BY THE** Board of Directors this 17th day of January 2001, to be effective on a date to be determined by Association staff.

## 13.1.4 Proposed Amendments to By-laws Re.: The Disciplinary Process

### INVESTMENT DEALERS ASSOCIATION OF CANADA PROPOSED AMENDMENTS TO BY-LAWS REGARDING THE DISCIPLINARY PROCESS

### I OVERVIEW

Under the current disciplinary process, hearing panels are selected from industry members of the District Councils with public members acting as Chairs. All industry members also assist in carrying out other functions of the District Councils. In view of the increase in the number of enforcement actions, the efficiency of the disciplinary process would be improved if designated Hearing Committees were created and detailed procedures established for hearings. By-law amendments are proposed to facilitate these improvements.

### A Current Rules

By-law 20 sets out the current process for conducting disciplinary proceedings. Four issues related to this process need to be addressed.

1. Make up of Hearing Panels: Hearing panels are selected from industry and public members of District Councils.

2. Setting Panels: The Chairs of the District Councils have the discretion to appoint members to conduct the hearings. In practice, however, the Regional Directors co-ordinate the appointments.

3. Hearing Procedures: There are only six procedural rules that outline how a hearing is to be conducted.

4. Review of Hearing Decisions: There is no uniform method of reviewing decisions of hearing panels.

### B The Issue

The last major revision to IDA enforcement procedures occurred in 1992. Since that time there have been substantive changes to the mandate of the IDA and the hearing process of other SROs. As the number of enforcement proceedings increases and the process becomes more adversarial, improvements are needed to increase efficiency. There are a number of issues that need to be addressed:

- The length of time required to conduct enforcement hearings is increasing. As a result, the time commitment expected of fully employed industry members of District Councils has increased.

- Industry members perform various functions while serving on District Councils and may not always be in a position to develop expertise in serving as "judges" in disciplinary hearings.

- Regional Directors are involved in the selection of panelists to hear particular cases in addition to having input into the setting of specific penalties, and as such a "reasonable apprehension of bias" may arise

- As the number of hearings increases, specific rules governing each stage of a disciplinary proceeding need to be implemented.

- A uniform process to review hearing decisions needs to be implemented to ensure consistency of standards.

C **Objective**

The Association believes that implementing the proposed changes would improve the efficiency and effectiveness of the disciplinary process.

D **Effect of Proposed Amendment**

The proposed amendments will improve the timeliness of disciplinary proceedings. This efficiency will arise through the creation of hearing committees comprised of individuals with certain expertise. In addition, detailed procedures governing the proceedings will assist the hearing panels and the parties.

II **DETAILED ANALYSIS**

A **Present Rules and Relevant History**

A critical element of successful self-regulation in the securities industry is an effective disciplinary process within SROs. In an industry that changes rapidly, a disciplinary process should not remain static, but should continually evolve in order to meet such changes. The number of disciplinary matters being processed by the Association has increased dramatically over the last few years.

The Regulation Oversight Committee ("the Committee"), a sub-committee of the IDA Board of Directors with the mandate to oversee the operation of the IDA's member regulation functions, was advised of matters impacting the effectiveness of the disciplinary process. The Committee agreed to review a report and recommendations of the Enforcement staff. Upon receipt of staff's report, the Committee authorized the appointment of an outside consultant, the Hon. Fred Kaufman, Q.C., to review the recommendations. The consultant found the recommendations of the Enforcement staff to be sound and endorsed them. Input was obtained from the District Councils and all recommendations were approved, in principle, by the Board of Directors of the IDA. Final approval of the Executive Committee was given as well.

The issues determined by the Association that need to be addressed are as follows:

**Make up of Hearing Panels:** The current structure of hearing panels is that panelists are selected from members of the District Councils. The normal practice is to have panels of three members, two industry representatives and a public member who serves as chair. Public members must be legally trained and unaffiliated with any member firm of the IDA. Neither industry nor public members of a District Council may sit on a panel hearing a case against a broker or member firm with whom there has been any prior association.

The proposed changes will permit the appointment of designated hearing committees for each district. A Chair will be appointed for each hearing committee and will be responsible for appointing members to specific hearing panels. The hearing committees will be comprised of industry representatives, either currently employed by a member firm or retired from such a position, and public members prepared to serve strictly as panelists on hearings. The expertise of the industry representatives would be varied to accommodate hearings involving different types of alleged misconduct. Appointments to hearing committees would be for terms of three years with the option to be extended beyond that time period.

Members of a District Council may be appointed to the hearing committee, but a District Council would no longer be responsible for disciplinary hearings.

**Setting Panels:** The current process is that the Chair of a District Council has the discretion to appoint members to conduct hearings. Regional Directors generally co-ordinate the selection of the panels from District Council members. However, this is not a uniform practice. The proposed amendments specify that the Chair of a hearing committee will be responsible for the selection of panel members. Consideration will be given to the expertise required for the hearing, avoidance of any conflicts of interest, and availability. Furthermore, Regional Directors will provide the administrative support to the hearing committees.

**Hearing Procedures:** There are currently only six procedural rules governing the conduct of hearings. This lack of procedural clarity fails to allow issues to be identified and dealt with in a timely manner. The proposed amendments will provide more comprehensive procedural rules which will narrow issues before hearings are held. For example, parties will be required to give full disclosure of evidence, be specific in replies and may be required to attend pre-hearing conferences.

**Review of Hearing Decisions:** There is currently no uniform method of reviewing the decisions of District Councils in hearings. In the five provinces in which the IDA is not recognized as a SRO all decisions in hearings by District Councils are final and not subject to any review unless the penalty imposed is the suspension or termination of IDA membership. In other words, District Councils in non-recognition provinces have the final word on discipline. In provinces in which the IDA is recognized as a SRO, the appeal is to the Securities Commission. There is, therefore, no method of ensuring consistency of standards or sanctions through a uniform power to review disciplinary decisions. The proposed amendments permit the Board of Directors, or a designated subcommittee of the Board, to review any panel decision in a disciplinary proceeding in a province in which the IDA is not recognized as a SRO. A decision will only be subject to review upon the application of either the defendant or IDA staff within a specified time period after release of the decision by a hearing panel.

### B Issues and Alternatives Considered

There were no other alternatives considered.

### C Comparison with Similar Provisions

The proposed amendments are currently modeled after existing rules of the Toronto Stock Exchange ("TSE"), New York Stock Exchange ("NYSE") and the National Association of Securities Dealers-Regulation ("NASDR").

The TSE and NYSE currently have in place designated hearing committees which consist of both industry representatives and public members to hear disciplinary proceedings. The industry representatives are appointed on the basis of particular expertise in various areas. The expertise is then applied to any hearings which involve matters in those areas. Rule 476(b) of the NYSE requires at least one of the members of a hearing panel be engaged in similar activities to the Respondent to the extent reasonably possible.

Recently procedural rules for conducting hearings have been implemented by both the TSE and NASDR. In 1996 the TSE implemented "Rules Governing the Practice and Procedures of Hearings" which contain twelve very detailed rules of procedure. These rules later served as the model for similar rules implemented by the Ontario Securities Commission. The detailed rules serve to help narrow the issues with the added advantage that cases frequently settle. Alternatively, if not settled, the process is conducted and resolved in a more timely manner.

The NASDR also put in place a "Code of Procedure" containing fifty-seven rules regarding hearings. Since the current rules of the IDA give little guidance to the parties or to the panelists in terms of the conduct of hearings, comprehensive rules similar to those set out by the TSE and NASDR are required.

### D Public Interest Objective

The Association believes that the proposed amendments are in the public interest in that they promote efficiency, fairness and high standards of operations, business conduct and ethics. Furthermore, the amendments will promote public confidence of the goals and activities of the IDA. It will standardize industry practices and create a more efficient disciplinary process.

## III COMMENTARY

### A Filing in Other Jurisdictions

These proposed amendments will be filed for approval in Alberta, British Columbia, Saskatchewan and Ontario and will be filed for information in Nova Scotia.

### B Effectiveness

The proposed changes clearly set out procedures in disciplinary proceedings in a detailed and concise manner. The changes are simple and will improve efficiency of disciplinary proceedings.

### C Process

The proposed amendments were reviewed by District Councils and approved of in principle by the Board of Directors on October 18, 2000. The Executive Committee granted final approval on November 15, 2000.

## IV SOURCES

IDA By-laws 11, 20, 25 and 28
TSE Rules: "Rules Governing the Practice and Procedures of Hearings"
National Association of Securities Dealers Rules, United States: "Code of Procedure"
New York Stock Exchange Rules, United States: Section 476 (b)

## V OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the accompanying proposed amendments so that the issue referred to above may be considered by OSC staff.

The Association has determined that the entry into force of the proposed amendments would be in the public interest. Comments are sought on the proposed amendments. Comments should be made in writing. One copy of each comment letter should be delivered within 30 days of the publication of this notice, addressed to the attention of Fredric L. Maefs, Investment Dealers Association of Canada, Suite 1600, 121 King Street West, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of the Manager, Document Management, Market Operations, Ontario Securities Commission, 20 Queen Street West, Suite 800, Toronto, Ontario, M5H 3S8.

Questions may be referred to:

Name: Fredric L. Maefs
Vice President
Enforcement Division
Investment Dealers Association of Canada
(416) 943-6904
**fmaefs@ida.ca**

### 13.1.5 Amendments to By-laws 11, 20, 25 & 28

**THE INVESTMENT DEALERS ASSOCIATION OF CANADA**
**AMENDMENTS TO BY-LAWS 11, 20, 25 AND 28**

The By-laws of the Association are amended as follows:

1. By-law 11 is amended by deleting Section 11.1A.

2. By-law 20.1 "**District Council Hearings**" is amended by deleting the reference to "20.11 or 20.26" in the first sentence.

3. By-law 20.10 "**Powers of District Councils: Discipline**" is repealed and replaced by new By-law 20.10 "Hearing Committees" which is enacted as follows:

**Hearing Committees**

(1) The District Council of each Province shall appoint a Hearing Committee.

(2) Each Hearing Committee shall be comprised of:

(A) individuals who are:

(i) officers, partners, directors or employees of Members; or

(ii) persons who have retired in good standing from positions as officers, partners, directors or employees of Members; and

(B) at least two public members. Public members must be resident in the District and are, or have been, qualified to practice law. No person shall be eligible to be appointed as or to remain as a public member if he or she is or becomes during his or her term associated in any way with a Member or affiliate or related company of a Member, an employee of the Association, a member of a District Council, or any associate thereof.

(3) The term of appointment to a Hearing Committee shall be a period of three years, but may be renewed by the District Council. A member of a District Council may be appointed to the Hearing Committee.

(4) Any hearing by the Hearing Committee shall be heard by a panel consisting of two individuals described in Clause 2(A), and one individual described in Clause 2(B) (the "Hearing Committee Panel"), who shall be the Chair of the Hearing Committee Panel.

(5) The District Council shall appoint a Chair of the Hearing Committee who will be responsible for the selection of the Hearing Committee Panel for any hearing. The Chair of the District Council shall not be appointed as Chair of the Hearing Committee.

4. By-law 20.11 "**Discipline Hearings**" is repealed and replaced by new By-law 20.11 "**Powers of Hearing Committee Panels**" which is enacted as follows:

**Powers of Hearing Committee Panels**

20.11 A Hearing Committee Panel, after holding a hearing into allegations against an individual or a Member (the "Respondent"), shall have the power:

(a) to impose upon a registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director or officer of a Member or any other person who may be subject to the jurisdiction of the Association any one or more of the following penalties:

(i) a reprimand;

(ii) a fine not exceeding the greater of:

(1) $1,000,000.00 per offence; and

(2) an amount equal to three times the pecuniary benefit which accrued to such person as a result of committing the violation;

(iii) suspension of approval of the person for such specified period and upon such terms as the Hearing Committee Panel may determine;

(iv) revocation of approval of such person;

(v) prohibition of approval of the person in any capacity for any period of time;

(vi) such conditions of approval or continued approval as may be considered appropriate by the Hearing Committee Panel;

if, in the opinion of the Hearing Committee Panel, the person:

(1) has failed to comply with or carry out the provisions of any federal or provincial statute relating to trading or advising in respect of securities or commodities or of any regulation or policy made pursuant thereto;

(2) has failed to comply with the provisions of any By-law, Regulation, Ruling or Policy of the Association;

(3) has engaged in any business conduct or practice which such Hearing Committee Panel in its discretion considers unbecoming or not in the public interest; or

(4) is otherwise not qualified whether by integrity, solvency, training or experience.

(b) to impose upon a Member any one or more of the following penalties:

(i) a reprimand;

(ii) a fine not exceeding the greater of:

(1) $1,000,000.00 per offence; and

(2) an amount equal to three times the pecuniary benefit which accrued to the Member as a result of committing the violation;

(iii) suspension of the rights and privileges of the Member (and such suspension may include a direction to the Member to cease dealing with the public) for such specific period and upon such terms as such Hearing Committee Panel may determine, or, if the rights and privileges have already been suspended under By-law 20.25, the continuation of such suspension (including a prohibition on the Member dealing with the public) for such specified period and upon such terms as such Hearing Committee Panel may determine;

(iv) termination of the rights, privileges and Membership of the Member;

(v) expulsion of the Member from the Association;

(vi) such terms and conditions as may be considered appropriate by the Hearing Committee Panel; if, in the opinion of the Hearing Committee Panel, the Member:

(1) has failed to carry out an agreement with the Association;

(2) has failed to meet liabilities to another Member or to the public;

(3) has engaged in any business conduct or practice which such Hearing Committee Panel in its discretion considers unbecoming a Member or not in the public interest;

(4) has failed to comply with or carry out the provisions of any of the By-laws, Regulations, Rulings or Policies of the Association; or

(5) has failed to comply with or carry out the provisions of any applicable federal or provincial statute relating to trading or advising in respect of securities or commodities or of any regulation or policy made pursuant thereto.

If the rights, privileges or Membership of a Member are suspended or terminated or a Member is expelled from the Association, the Member or former Member shall remain liable to the Association for all amounts due to the Association by it.

5. By-law 20.12 is repealed and replaced by new By-law 20.12 which is enacted as follows:

Assessment of Expenses -

(1) Upon the conclusion of any proceedings commenced pursuant to the Rules Governing the Practice and Procedure of Hearings, the Hearing Committee Panel may assess against the Respondent any one or more of the following expenses incurred by the Association as a result of the proceedings:

(a) recording or transcription fees;

(b) expenses of preparing transcripts;

(c) witness fees and reasonable expenses of witnesses;

(d) professional fees for services rendered by expert witnesses, legal counsel or accountants other than full-time Association staff;

(e) expenses of staff time incurred by the Association;

(f) travel costs;

(g) disbursements; or

(h) any other expenses determined to be appropriate under the circumstances.

6. By-law 20.13 is repealed.

7. By-law 20.14 is repealed.

8. By-law 20.15 is repealed.

9. By-law 20.16 is repealed.

10. By-law 20.17 is repealed and replaced by new By-law 20.13 which is enacted as follows:

If, pursuant to By-law 20.11, a Hearing Committee Panel revokes the approval of a Respondent, the

Hearing Committee Panel may order that the Respondent not re-apply for approval for such period as the Hearing Committee Panel provides.

11. By-law 20.18 is repealed.

12. By-law 20.19 is re-numbered as By-law 20.14.

13. By-law 20.20 is repealed and replaced by new By-law 20.15 which is enacted as follows:

A hearing pursuant to By-law 20.11 shall be open to the public except where the Hearing Committee Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the Hearing Committee Panel may hold the hearing concerning any such matter *in camera.*

14. By-law 20.21 "**Jurisdiction**" is renumbered as By-law 20.16.

15. By-law 20.22 "**Parties to Proceedings and Witnesses**" is repealed and replaced by new By-law 20.17 which is enacted as follows:

The parties to proceedings before a Hearing Committee Panel are:

(a) the Association, which shall be represented by the Senior Vice-President, Member Regulation, or any person designated by him or her; and

(b) the Respondent.

16. By-law 20.23 is repealed and replaced by new By-law 20.18 which is enacted as follows:

Every Member, registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director, officer or investor of a Member or any other person approved pursuant to the By-laws or Regulations or under the jurisdiction of the Association may be required by a Hearing Committee Panel:

(a) to attend before it at any of its proceedings and give information respecting any matter involved in the proceeding; and

(b) to produce for inspection and provide copies of any books, records and accounts of such person, or within such person's possession and control, relevant to the matters being considered.

17. By-law 20.24 is repealed and replaced by new By-law 20.19 which is enacted as follows:

In the event that a Hearing Committee Panel requires the attendance before it of any employee of a Member who is not a person approved pursuant to By-law 4, 7 or 18 the Member shall direct such employee to attend and to give information or make such production as could be required of a person referred to in By-law 20.18.

18. By-law 20.25 "**Settlement Agreement**" is repealed.

19. By-law 20.26 is repealed and replaced by new By-law 20.20 which is enacted as follows:

(1) A Settlement Agreement may, with the consent of the Association Staff and the Respondent, be referred to a Hearing Committee Panel;

(2) The Hearing Committee Panel may:

(i) accept the Settlement Agreement,

(ii) reject it,

(iii) amend it by imposing a lesser penalty or terms less onerous to the Respondent than those contained in the Settlement Agreement as negotiated; or

(iv) amend it with the consent of the Respondent by imposing a penalty or terms more onerous than those contained in the Settlement Agreement as negotiated;

(3) A Settlement Agreement shall only become binding in accordance with its terms upon the making of a decision pursuant to clauses (2)(i), (iii) or (iv) and, in such event, the Respondent shall be deemed to have been penalized by the applicable Hearing Committee Panel for the purposes of giving notice thereof.

20. By-law 20.27 is repealed and replaced by new By-law 20.21 which is enacted as follows:

(1) If a Hearing Committee Panel rejects a Settlement Agreement pursuant to By-law 20.20, (2)(ii) a discipline hearing may be commenced pursuant to By-laws 20.11. However, nothing in this By-law shall preclude the parties engaging in further settlement discussions.

(2) No Member of the Hearing Committee Panel which participated in the deliberations of the Hearing Committee Panel rejecting the Settlement Agreement shall participate in any hearing conducted by the Hearing Committee Panel with respect to the same matters which are the subject of the Settlement Agreement.

21. By-law 20.28 is renumbered as 20.21(3).

22. By-law 20.29 "**Reasons**" is repealed and replaced by By-law 20.22 which is enacted as follows:

Any decision of a Hearing Committee Panel pursuant to By-law 20.11 shall contain a concise statement of the

reasons for the decision. Written decisions and reasons shall be delivered to the Chair of the Hearing Committee who shall then promptly give notice to the parties.

23. By-law 20.30 is renumbered as By-law 20.23.

24. By-law 20.31 is renumbered as By-law 20.24 and the reference therein to By-law 20.30(a) or (c) is amended to By-law 20.23(a) or (c).

25. By-law 20.32 is renumbered as By-law 20.25 and the reference therein to By-law 20.30(b) is amended to refer to By-law 20.23(b).

26. By-law 20.33 is renumbered as By-law 20.26 except that the reference to By-law 20.33 is amended to refer to By-law 20.26 and the reference to "District Council" in the last sentence is amended to refer to "Hearing Committee Panel".

27. By-law 20.34 is renumbered as By-law 20.27 and the references to By-laws 20.30, 20.31, 20.32, or 20.33 are amended to refer to By-laws 20.23, 20.24, 20.25, or 20.26.

28. By-law 20.35 is renumbered as By-law 20.28.

29. By-law 20.36 is renumbered as By-law 20.29 and the reference in sub-paragraph (a) to "District Council" is amended to refer to "Hearing Committee Panel".

30. By-law 20.37 is renumbered as By-law 20.30 and the reference to By-law 20.36 is amended to refer to By-law 20.29.

31. By-law 20.38 is renumbered as By-law 20.31 and the reference to By-law 20.36 is amended to refer to By-law 20.29.

32. By-law 20.39 is repealed and replaced by By-law 20.32 which is enacted as follows:

(1) Any decision of a Hearing Committee Panel by which a Member's rights and privileges are suspended or terminated or a Member is expelled from the Association shall have effect only in the District where such Hearing Committee Panel has jurisdiction, unless and until otherwise ordered by the Board of Directors (the "Board"). In the event of a decision by a Hearing Committee Panel:

(i) by which a Member's rights and privileges are suspended or terminated or a Member is expelled from the Association, the Board shall, upon the application of either the Association or the Member concerned made within 30 days of receiving notice of the decision of the Hearing Committee Panel, review the said decision and:

(A confirm or modify the decision of the Hearing Committee Panel in its application to that District; or

(B) confirm or modify the decision of the Hearing Committee Panel and extend its application and effect to all Districts of the Association;

(ii) imposing a fine or conditions upon a Member, the Board shall, upon the application of either the Association or the Member concerned made within 21 days of receiving notice of the decision of the Hearing Committee Panel, review the said decision and confirm or modify the decision of the Hearing Committee Panel.

(2) In all provinces except those which provide for an appeal or hearing and review to the provincial securities commission, any final decision of a Hearing Committee Panel may be reviewed by the Board or a Sub-Committee of the Board to which the Board may delegate its powers of review. An application for review may be made by any party to the proceedings and must be made within 30 days following release of the decision of the Hearing Committee Panel.

33. By-law 20.40 is repealed.

34. By-law 20.41 is repealed.

35. By-law 20.42 is repealed.

36. By-law 20.43 is renumbered as By-law 20.33 and the reference to By-laws 20.39 and 20.41 are amended to refer to By-law 20.32.

37. By-law 20.34 is enacted as follows:

The Board may enact, amend, repeal and re-enact as required rules governing the practice and procedure of hearings before District Councils, Hearing Committee Panels, and the Board.

38. Following By-law 20.34 will be:

## RULES GOVERNING THE PRACTICE AND PROCEDURE OF HEARINGS PURSUANT TO BY-LAWS 20.11 AND 20.32 OF THE INVESTMENT DEALERS ASSOCIATION

Pursuant to By-law 20.34, the Board enacts the following rules governing the practice and procedure of Discipline Hearings and Applications for Review:

Rule 1 - General Rules of Practice
Rule 2 - Motions
Rule 3 - Pre-Hearing Conferences
Rule 4 - Disclosure
Rule 5 - Notice of Hearing and Particulars
Rule 6 - Settlement Agreement
Rule 7 - Oral Hearings
Rule 8 - Written Hearings
Rule 9 - Review of Decisions
Rule 10 - Reports to the Board

### Rule 1 - General Rules of Practice

1.01 Application of Rules - Unless otherwise stated, these rules apply to Discipline Hearings held pursuant to By-law 20.11 of the Association, and Applications for Review pursuant to By-law 20.32 of the Association.

1.02 Definitions - In these rules "Tribunal" means the applicable Hearing Committee Panel, or the Board or subcommittee of the Board.

1.03 In these rules "party" includes the staff of the Association.

1.04 In these rules "hearing" applies to disciplinary proceedings commenced by Notice of Hearing and Particulars pursuant to By-law 20.11, and to review proceedings commenced pursuant to By-law 20.32, as well as any motions brought by any party in relation to those proceedings.

1.05 In these rules "Office of the Chair of the Hearing Committee" means the office of the Chair of the Hearing Committee in the District where the hearing is taking place.

1.06 In these rules "Office of the Corporate Secretary" means the Office of the Corporate Secretary of the Association in Toronto.

1.07 General - The Tribunal may exercise any of its powers under these rules on its own initiative or at the request of a party.

1.08 The Tribunal may issue general or specific procedural directions at any time before or during a hearing.

1.09 The Tribunal may waive any procedural requirement with the consent of the parties.

1.10 No hearing is invalid by reason only of a defect or other irregularity in form.

1.11 Service and Filing - Service - A document required under the rules to be served must be served by one of the following methods:

(a) personal service on an individual, by leaving a copy of the document with the individual;

(b) personal service on any corporation, by leaving a copy of the document with an officer or director of the corporation, or with an individual at any place of business of the corporation who appears to be employed in the place of business;

(c) service by sending a copy of the document by mail, courier or telephone transmission to the last known address or fax number of the party to be served;

(d) service on a party who is represented by a solicitor or an agent by,

(i) acceptance of a copy of the document on behalf of the solicitor or the agent;

(ii) sending a copy of the document by mail, courier or telephone transmission to the office of the solicitor or agent; or

(iii) depositing a copy of the document at a document exchange of which the solicitor or agent is a member or subscriber; or

(e) service by any other method permitted by the Tribunal.

1.12 Proof of Service - The Tribunal may accept proof of service of a document by an affidavit of the person who served it.

1.13 Filing - A document required to be filed with the Tribunal under the rules must be filed by either personal delivery of a copy or sending a copy by mail, courier or telephone transmission or electronic transmission to the Office of the Chair of the Hearing Committee, except in the case of review proceeding before the Board, in which case documents may be filed in any manner set out above with the Office of Corporate Secretary.

1.14 Effective Date of Service or Filing - Service or filing of a document is deemed to be effective:

(a) if served personally on the same day as service;

(b) if sent by mail on the fifth day after the day of mailing;

(c) if sent by telephone transmission, on the same day as the transmission unless received after 4:30 p.m., in which case the document will be deemed to have been served or filed on the next day that is not a holiday;

(d) if sent by courier, on the second day after the day on which the document was given to the courier by the party serving or filing, unless the

second day is a holiday, in which case the effective date is the next day which is not a holiday;

(e) if deposited at a document exchange, on the first day after the day on which the document was deposited, unless the first day is a holiday, in which case the effective date is the next day which is not a holiday; or

(f) as otherwise ordered by the Tribunal.

1.15 Required Information on Documents - A party serving or filing a document shall include the following information:

(a) the party's name, address, telephone number and fax number;

(b) the style of cause of the hearing to which the document relates;

(c) the name, address, telephone and fax number of the party's solicitor or agent; and

(d) the name of the party or solicitor or agent with whom the document is being served or filed.

1.16 Extension or Abridgement of Time - Any time period prescribed by these rules may be extended or abridged as follows:

(a) upon order of the Tribunal before or after expiration of a prescribed time period on such terms as the Tribunal considers appropriate; or

(b) on consent of the parties before the expiration of a prescribed time period.

**Rule 2 - Motions**

2.01 Notice - Where a party intends to bring a motion before the Tribunal, written notice shall be served on all other parties and filed with the Tribunal.

2.02 The notice of motion must contain a statement of the relief sought, the grounds for the motion and the evidence to be relied upon.

2.03 Form of Hearing - The moving party shall propose in the notice whether the party wishes the motion to be heard orally or by way of a written hearing.

**Rule 3 - Pre-Hearing Conferences**

3.01 Order for a Pre-Hearing Conference - At any time prior to a hearing, the Tribunal on its own initiative, or at the request of one or more of the parties, may order the parties to attend a pre-hearing conference.

3.02 Composition of the Tribunal at the Pre-Hearing Conference - A pre-hearing conference shall be held before the Chair of the Tribunal and any other member of the Tribunal who may be required to assist the Chair.

3.03 Issues to be Considered - At a pre-hearing conference the Tribunal may consider any appropriate issue, including:

(a) the settlement of any or all of the issues;

(b) the identification and simplification of the issues;

(c) the disclosure of documents;

(d) facts or evidence that may be agreed upon;

(e) evidence to be admitted on consent;

(f) the identification of any preliminary objections;

(g) procedural issues including the dates by which any steps in the hearing are to be taken or begun, the estimated duration of the hearing, and the date that the hearing will begin; and

(h) any other issue that may assist in the just and most expeditious disposition of the hearing.

3.04 Notice - The Chair of the Tribunal shall give notice of any pre-hearing conference to the parties and to such other persons as the Tribunal directs.

3.05 The notice must include:

(a) the date, time, place and purpose of the pre-hearing conference;

(b) whether parties are required to exchange or file documents or pre-hearing submissions as prescribed by sub-rule 3.06 and, if so, the issues to be addressed and the date by which the documents or pre-hearing submissions must be exchanged and filed;

(c) whether parties are required to attend in person, and

(i) if so, that they may be represented by counsel or such other person determined by the Tribunal to be appropriate; or

(ii) if not, that their counsel or agent must be given authority to make agreements and undertakings on their behalf respecting the matters to be addressed at the pre-hearing conference;

(d) a statement that if a party does not attend in person or by counsel or an agent at the pre-hearing conference, the Tribunal may proceed in the absence of that party; and

(e) a statement that the Tribunal presiding at the pre-hearing conference may make orders with respect to the conduct of the proceeding which will be binding on all parties.

3.06 Exchange of Documents - The Tribunal designated to preside at the pre-hearing conference may:

(a) order the parties to exchange or file by a specified date documents or pre-hearing submissions; and

(b) prescribe the issues to be addressed in the pre-hearing submissions and at the pre-hearing conference.

3.07 Oral, Written, Electronic - A pre-hearing conference may be held in person, in writing or electronically as the tribunal may direct.

3.08 Inaccessible to Public - A pre-hearing conference shall be held in the absence of the public unless the Tribunal directs that it be open to the public.

3.09 Any pre-hearing documents or pre-hearing submissions ordered under sub-rule 3.06 (a) shall not be disclosed to the public.

3.10 Settlement - If settlement of any issues is discussed at a pre-hearing conference:

(a) statements made without prejudice at a pre-hearing conference may not be communicated to the hearing panel;

(b) the Tribunal members presiding at the pre-hearing conference shall not preside at the hearing of the proceeding unless all parties consent in writing or on the record;

(c) an agreement to settle any or all of the issues binds the parties to the agreement but is subject to approval by such other panel of the Tribunal as is assigned to consider the settlement; and

(d) all agreements, orders and decisions which dispose of a proceeding as it affects any party shall be made available to the public unless the tribunal directs otherwise.

3.11 Orders, Agreements, Undertakings -

(1) Any orders, agreements and undertakings made at a pre-hearing conference shall be recorded in a memorandum prepared by or under the direction of the members of the Tribunal presiding at the pre-hearing conference.

(2) Copies of this memorandum shall be provided to the parties and to the Tribunal members presiding at the hearing of the matter and to such other persons as the members of the Tribunal presiding at the pre-hearing conference direct.

(3) Any orders, agreements and undertakings in the memorandum shall govern the conduct of the hearing and are binding upon the parties at the hearing unless otherwise ordered by the Tribunal.

3.12 No Communication to Tribunal - Other than any orders, agreements and undertakings recorded in a memorandum prepared in accordance with sub-rule 3.11, no information about the pre-hearing conference shall be disclosed to the Tribunal members who preside at the hearing unless all parties consent in writing or on the record.

**Rule 4 - Disclosure**

4.01 Definition of Document - The term "document" includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device.

4.02 Requirement to Disclose Documents - Each party to a hearing shall, as soon as practicable after service of the Notice of Hearing and Particulars, and in any case no later than 10 days before the day upon which the hearing is scheduled to commence, deliver to every other party copies of all documents that the party intends to refer to or tender as evidence at the hearing.

4.03 Requirement to Make Available Things Other Than Documents - Each party to a hearing shall, as soon as practicable after service of the Notice of Hearing and Particulars and in any case no later than 10 days before the day upon which the hearing is scheduled to commence, make available for inspection by every other party any thing other than a document that the party intends to refer to or tender as evidence at a hearing.

4.04 Orders for Further Disclosure - At any stage in a hearing, the Tribunal may order a party to provide to another party any other disclosure which the Tribunal considers appropriate within a time period and on terms and conditions as specified by the Tribunal.

4.05 Failure to Make Disclosure - If a party fails to make disclosure of a document or thing in compliance with sub-rules 4.02 and 4.03 or an order made under sub-rule 4.04, the party may not refer to the document or thing or tender it as evidence at the hearing without the consent of the Tribunal on such terms and conditions as the Tribunal considers just.

4.06 Witness Lists and Statements - Provision of Witness List - A party to a hearing shall, as soon as practicable after service of the Notice of Hearing and Particulars, and in any case no later than 10 days before the day upon which the hearing is scheduled to commence, provide to every other party a list of the witnesses the party intends to call to give evidence at the hearing.

4.07 Provision of Witness Statements - A party to a hearing shall, as soon as practicable after services of the Notice of Hearing and Particulars, and in any case no later than 10 days before the day upon which the hearing is scheduled to commence, provide to every other party witness statements signed by the witnesses, or for any witness for which a signed statement does not exist, a summary of the anticipated evidence that the witness is expected to give at the hearing.

4.08 Content of Witness Statements - A witness statement or summary of the anticipated evidence that the witness is expected to give at the hearing must contain:

(a) the substance of the evidence of the witness;

(b) a reference to all documents, if any, that the witness will refer to; and

(c) the name and address of the witness, or in the alternative, the name of a person through whom the witness can be contacted.

4.09 Failure to Provide Witness List or Statement - If a party fails to include a witness in the witness list or provide a witness list or a witness statement or a summary of the anticipated evidence that the witness is expected to give at the hearing in compliance with sub-rules 4.06, 4.07 and 4.08, the party may not call the witness at the hearing without the consent of the Tribunal on such terms and conditions as the Tribunal considers just.

4.10 Incomplete Witness Statement - A party may not call a witness to testify to matters not disclosed in the witness statement or summary of the anticipated evidence without the consent of the Tribunal on such terms and conditions as the Tribunal considers just.

4.11 Expert Witness - Notice of Intent to Call Expert - A party that intends to call an expert witness at the hearing shall, at least 30 days before the day upon which the hearing is scheduled to commence, inform the other parties of the intent to call the expert witness and the issue on which the expert will be giving evidence.

4.12 Provision of Expert's Report - A party that intends to refer to or to tender as evidence a report prepared by an expert witness at a hearing shall, at least 15 days before the day upon which the hearing is scheduled to commence, provide to every other party a copy of the report signed by the expert containing:

(a) the name, address and qualifications of the expert;

(b) the substance of the anticipated evidence of the expert; and

(c) a list of all the documents, if any, to which the expert will refer.

4.13 Failure to Advise of Intent to Call Expert - A party that fails to comply with sub-rule 4.11 may not call the expert as a witness without the consent of the Tribunal on such terms and conditions as the Tribunal considers just.

4.14 Failure to Provide Expert's Report - A party that fails to comply with sub-rule 4.12 may not refer to or tender as evidence the expert's report without the consent of the Tribunal on such terms and conditions as the Tribunal considers just.

**Rule 5 - Notice of Hearing and Particulars**

5.01 Whenever the Association proposes to commence discipline proceedings pursuant to By-law 20.11, the Association must serve a Notice of Hearing and Particulars on the Respondent, at least 45 days in advance of a hearing of the matter.

5.02 Contents of Notice of Hearing and Particulars - A Notice of Hearing and Particulars must contain:

(a) a statement of the date, time and place of the hearing of the matter;

(b) the facts alleged and intended to be relied upon by the Association and the conclusions drawn by the Association based on the alleged facts; and

(c) the provisions of sub-rules 5.03, 5.04, 5.05 and 5.07.

5.03 Response by the Respondent – The Respondent shall, within 20 days from the date of service of the Notice of Hearing and Particulars, serve on the Association a Response signed by the Respondent or a person authorized to sign on behalf of the Respondent.

5.04 Contents of Response - A Response must contain:

(a) a statement of the facts alleged in the Notice of Hearing and Particulars which the Respondent admits;

(b) a statement of the facts alleged in the Notice of Hearing and Particulars which the Respondent denies and the grounds for denial; and

(c) particulars of all other facts alleged by the Respondent and arguments relied on in response to the facts alleged in the Notice of Hearing and Particulars.

5.05 The Tribunal may accept as having been proven any facts alleged or conclusions drawn by the Association in the Notice of Hearing and Particulars that are not specifically denied, with the particulars of the supporting facts and arguments, in the Response.

5.06 Order for Particulars - At any time in a hearing, the Tribunal may order any party to provide to any other party such particulars as the Tribunal considers necessary for a full and satisfactory understanding of the subject of the hearing.

5.07 Amendment of Particulars - At any time, the Tribunal, after providing parties an opportunity to make submissions, may order that particulars be amended in accordance with the evidence introduced or anticipated at the hearing.

5.08 If the Respondent served with a Notice of Hearing and Particulars fails to:

(a) serve a Response in accordance with sub-rules 5.03 and 5.04; or

(b) attend at the hearing specified in the Notice of Hearing and Particulars, notwithstanding that the Respondent may have served a Response in accordance with sub-rules 5.03 and 5.04,

the Hearing Committee Panel may proceed with the hearing on the matter on the date and at the time and place set out in the Notice of Hearing and Particulars without further notice to and in the absence of the Respondent, and the Tribunal may accept the facts alleged or the conclusions drawn by the Association in the Notice of Hearing and Particulars as having been proven by the Association and may impose any penalties described in By-law 20.11.

**Rule 6 - Settlement Agreement**

6.01 Contents of Offer of Settlement - A Settlement Agreement shall:

(a) be in writing;

(b) be signed by the Respondent entering into the Settlement Agreement, or by a person authorized to sign on behalf of the Respondent, and by Association staff; and

(c) contain:

(i) a reference to any statutes or regulations thereto, By-laws, Regulations, Rulings or Policies of the Association with which the Respondent has not complied and a statement as to future compliance;

(ii) a statement of the facts agreed upon by the Association and the Respondent;

(iii) the disposition of the matter, including any penalty to be imposed, agreed upon by the Association and the Respondent;

(iv) the consent of the Respondent to the Settlement Agreement; and

(v) a waiver by the Respondent of all rights under the By-laws to a hearing or to an appeal or review if the Settlement Agreement is accepted or if a lesser penalty than the one agreed upon in the Settlement Agreement is imposed by a Tribunal, or if a greater penalty than the one agreed upon in the Settlement Agreement is imposed by the Tribunal with the consent of the Respondent.

6.02 In the event a Settlement Agreement is accepted, or a higher penalty than the one agreed upon in the Settlement Agreement is imposed, by the Tribunal, the matter becomes final and there can be no appeal or review of the matter.

6.03 In the event a lesser penalty than the one agreed upon is imposed by the Tribunal, Association Staff may apply for a review of the matter and By-law 20.32(2) applies.

**Rule 7 - Oral Hearings**

7.01 The Respondent is entitled at an oral hearing:

(a) to attend and be heard in person;

(b) to be represented by counsel or a person determined by the Tribunal to be appropriate;

(c) to call and examine witnesses and to present arguments and submissions; and

(d) to conduct such cross-examinations of witnesses at the hearing as are reasonably required for a full and fair disclosure of the facts.

7.02 Decision at Hearing - The Tribunal shall give its final decision and order, if any, in a hearing and shall give reasons in writing therefore if requested by a party. Alternatively, the Tribunal can give oral reasons for its decision on the record.

7.03 The Chair of the Hearing Committee shall send to each party to the hearing a copy of any final decision and order, if any, within 60 days of the last day of the hearing (unless otherwise required by the Tribunal), including the reasons therefore, if any have been given, by any method of service permitted under sub-rule 1.11.

**Rule 8 - Written Hearings**

8.01 Definition of Applicant - In this rule "applicant" means the party who instituted the proceedings for a written hearing.

8.02 When to Hold Written Hearing - The Tribunal may conduct any hearing or part of a hearing by means of a written hearing.

8.03 Factors in Deciding Whether to Hold a Written Hearing - In deciding whether to hold a written hearing, the Tribunal may take into account any relevant factors, which may include:

(a) the suitability of a written hearing format considering the subject matter of the hearing, including the extent to which matters are in dispute;

(b) whether the nature of the evidence is appropriate for a written hearing, including whether credibility is an issue and the extent to which the facts are in dispute;

(c) the extent to which the matters in dispute are questions of law;

(d) the convenience of the parties;

(e) the cost, efficiency and timeliness of the proceedings;

(f) avoidance of unnecessary length or delay;

(g) ensuring a fair and understandable process;

(h) the desirability or necessity of public participation or public access to the Tribunal's process; and

(i) any other consideration affecting the fulfillment of the Tribunal's statutory mandate.

8.04 Converting from or to Written Hearing - The Tribunal may,

(a) continue a written hearing as an oral hearing; or

(b) continue an oral hearing as a written hearing.

8.05 If the Tribunal decides to convert a written hearing into an oral hearing, it shall notify the parties of its decision and may supply directions as to the holding of that hearing and any procedures set down in these rules for such a hearing will apply.

8.06 Notice of a Written Hearing - The Tribunal shall provide a notice of written hearing which shall include:

(a) a reference to the authority under which hearing is to be held;

(b) a statement of the purpose of the hearing;

(c) details of the manner in which the hearing will be held;

(d) a statement that a party may object to the hearing being held as a written hearing by filing an objection with the Tribunal;

(e) a statement that if a party does not participate in accordance with the notice, or does not object in accordance with clause (d), the Tribunal may proceed without the party's participation and the party will not be entitled to any further notice of the proceeding; and

(f) any other information the Tribunal considers advisable.

8.07 Objections - A party objecting to the hearing being held as a written hearing shall file and serve a notice of objection within 5 days after receiving notice of the written hearing.

8.08 Contents of Notice of Objection - In a notice of objection, the objecting party shall,

(a) state whether holding the hearing as a written hearing is likely to cause the party significant prejudice or whether there are other reasons for the objection;

(b) set out all reasons for the objection; and

(c) state all facts upon which the party relies and provide the evidence on which the party relies in relation to the objection.

8.09 Procedure When Objection Made - If the Tribunal receives a notice of objection, it shall forthwith,

(a) accept the objection, cancel the written hearing and schedule an oral hearing;

(b) reject the objection if satisfied that a written hearing will cause no significant prejudice to the objecting party, and inform every other party that they are not required to respond to the notice of objection; or

(c) notify all other parties that they may respond to the notice of objection by serving on every other party and filing a written response in such form and within such time as is directed by the Tribunal and, after considering the objection and all responses, confirm that a written hearing will be held or schedule an oral hearing.

8.10 Submissions and Supporting Documents -

(1) Except where clause 8.09(c) applies, the applicant shall, within 7 days after receiving notice of the written hearing, file and serve on all other parties its written submissions setting out,

(a) the grounds upon which the request for a remedy or order is made;

(b) a statement of the facts relied on in support of the remedy or order requested;

(c) the evidence relied on in support of the remedy or order requested; and

(d) any law relied on in support of the remedy or order requested.

(2) The Tribunal may require the applicant to provide further information, and this information must be supplied to every other party.

8.1 Response -

(a) If a party wishes to respond to the submissions referred to in sub-rule 8.08, the party shall do so by filing and serving on every other party a written response within 5 days after the applicant's submissions and supporting documents are served on the party.

(b) The response must set out the party's submissions relating to the matter before the Tribunal and be accompanied by a statement of the facts and any evidence and any law relied on in support of the response.

8.12 Reply -

(a) The applicant may reply to a response by filing and serving on every other party a written reply within 5 days after a response from a party is served on the applicant.

(b) The reply must set out the position of the applicant to the response and be accompanied by any additional facts, evidence and law that the applicant relies on in support of the reply.

8.13 Questions and Answers - If a written hearing involves evidentiary issues, the Tribunal may direct that,

(a) the applicant and any responding party may ask such questions of the other as are reasonably necessary for the purpose of clarification of the other's evidence by filing and serving on every other party written questions within such time as is directed by the Tribunal; and

(b) the party to whom the questions are directed shall file and serve on every other party written answers to such questions within such time as is directed by the Tribunal.

8.14 Evidence - The evidence must be in writing, or when electronic transmission is permitted, it must be in the form directed by the Tribunal.

8.15 The evidence must identify the person giving the evidence and must either be in certified form or in affidavit form.

8.16 Evidence must include all documents and things a party is relying on to support the remedy or order requested or the response or to otherwise support the position a party is taking in the hearing.

8.17 Oral Examination - In a written hearing, there will be no oral examination unless ordered by the Tribunal.

8.18 If a party requests, the Tribunal may order that a party present a witness to be examined or cross-examined upon such conditions as the Tribunal directs.

**Rule 9 - Review of Decisions**

9.01 Where there is an application for review pursuant to By-law 20.32, the decision of a Hearing Committee Panel may be reviewed by the Board of the Association (or such sub-committee of the Board to which the Board may delegate its powers of review) at the request of any party to the proceedings.

9.02 Notice of Request for Review - A review pursuant to sub-rule 10.01 is to be commenced by serving on the Office of the Corporate Secretary and each of the parties entitled to seek a review of the decision a written Notice of Request for Review, that specifies the grounds with a summary of the supporting reasons for the request for review, within 30 days from the date the copy of the final decision and order, if any, including the reasons therefore were served pursuant to sub-rule 7.03.

9.03 Within 20 days from the date of receipt by the Office of the Corporate Secretary of the Notice of Request for Review, the Office of the Corporate Secretary must notify in writing all parties to the discipline hearing of the date, time and place for the review hearing, the date for the review hearing to be within 30 days from the date of the notification by the Office of the Corporate Secretary.

9.04 Hearing of Review - On a review of the decision of a hearing, the Board must consider the record of the hearing and, on application by a party to the review, may consider any new evidence that the Board determines appropriate under the circumstances.

9.05 Upon a review of the decision of a hearing, the Board may confirm, reject or vary the decision.

9.06 Upon holding a review of the decision of a hearing, the Board must give its final decision and send copies as required by sub-rules 7.02 and 7.03.

9.07 After a review of the decision of a hearing, the Association must publish the decision of the review, the references to statutes and regulations, the Association By-laws, Regulations, Rulings or Policies alleged by the Association to have been contravened or not complied with and a summary of the facts.

**Rule 10 - Reports to the Board**

10.01 Where a Hearing Committee has:

(a) conducted a hearing pursuant to sub-rule 7.01 and the time period for review has expired and no review of the decision of the hearing has been commenced; or

(b) reviewed and accepted a Settlement Agreement pursuant to sub-rule 6.03,

Association staff must report the results of the proceedings to the Board.

39. By-law 25 "**Indemnification**" is repealed and new By-law 25 is enacted as follows:

25.1 No person who is, shall be or has been a member of the Board of Directors, an officer or employee of the Association, or a member of the National Advisory Committee, the Executive Committee, the Audit Committee, any other committee or sub-committee of, or appointed or created by, the Board of Directors, a District Council, a member of a Hearing Committee or a panel thereof, a standing or sub-committee of, or appointed or created by, a District Council or a District Audit Committee, and his or her heirs, executors, administrators, estate and effects, respectively, shall be liable to a Member for the acts, neglects or defaults of any other such member, officer or employee, or for any other loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his or her office or position or in relation thereto unless the same are occasioned by his or her own wilful neglect or default.

25.2 Each person who is, shall be or has been a member of the Board of Directors, an officer or employee of the Association, or a member of the National Advisory Committee, the Executive

Committee, the Audit Committee, any other committee or sub-committee of, or appointed or created by the Board of Directors, a District Council, a member of a Hearing Committee or a panel thereof, a standing or sub-committee of, or appointed or created by a District Council or a District Audit Committee and his or her heirs, executors, administrators, estate and effects, respectively, shall from time to time and at all times be indemnified and saved harmless out of the funds of the Association, from and against:

(a) all costs, charges, damages and expenses whatsoever that such member, officer or employee sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him or her for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him or her in or about the execution of his or her office or position; and

(b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs of the Association, the Board of Directors, a District Council, a Hearing Committee or a panel thereof, any committee or sub-committee of, or appointed or created by, the Board of Directors or a District Council or a District Audit Committee;

except such costs, charges, damages and expenses as are occasioned by his or her own wilful neglect or default.

25.3 The Board of Directors may, in its discretion and without obligation to do so, indemnify and save harmless out of the funds of the Association any Member from and against all costs, charges and expenses whatsoever, which such person sustains or incurs in or about any action, suit or proceeding which is proposed, brought, commenced or prosecuted against it as a Member of the Association or in relation to the affairs of the Association.

40. Subsection (d) of By-law 28.4 is repealed and replaced as follows:

(d) to pay the fees, expenses or other remuneration of the following members of a Hearing Committee appointed pursuant to By-law 20.10(2):

(i) persons who have retired in good standing from positions as officers, partners, directors or employees of Members; and

(ii) public members.

## Chapter 25

# Other Information

THERE IS NO MATERIAL FOR THIS CHAPTER

IN THIS ISSUE

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