**The Ontario Securities Commission**

# OSC Bulletin

May 4, 2001

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

**The Ontario Securites Commission**
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# Chapter 1

# Notices / News Releases

## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**May 4, 2001**

**CURRENT PROCEEDINGS**

**BEFORE**

**ONTARIO SECURITIES COMMISSION**

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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

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THE COMMISSIONERS

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| Paul M. Moore, Q.C., Vice-Chair | — | PMM |
| 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 |
| May 3/2001<br>10:00 a.m. | **Jack Banks a.k.a. Jacques Benquesus and Larry Weltman**<br>s. 127<br>Mr. Tim Moseley in attendance for staff.<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>s. 127<br>Mr. I. Smith in attendance for staff.<br>Panel: HIW / DB / MPC |
| May 28 and<br>May 30 /<br>2001<br>10:00 a.m. | **Robert Bruce Kyle & Derivative Services Inc.**<br>s. 8 (4)<br>Ms. Johanna Superina in attendance for staff.<br>Panel: JAG/PMM |

## ADJOURNED SINE DIE

**Michael Bourgon**

**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**

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

**Global Privacy Management Trust and Robert Cranston**

**Irvine James Dyck**

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

**Offshore Marketing Alliance and Warren English**

**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**

**Southwest Securities**

**Terry G. Dodsley**

**Wayne Umetsu**

## PROVINCIAL DIVISION PROCEEDINGS

| | |
|---|---|
| Date to be announced | **Michael Cowpland and M.C.J.C. Holdings Inc.**<br>s. 122<br>Ms. M. Sopinka in attendance for staff.<br>Ottawa |
| Jan 29/2001 - Jun 22/2001 | **John Bernard Felderhof**<br>Mssrs. J. Naster and I. Smith for staff.<br>Courtroom TBA, Provincial Offences Court<br>Old City Hall, Toronto |
| May 4, 2001 1:30 p.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>s. 122<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>s. 122<br>Ms. K. Manarin in attendance for staff.<br>Courtroom C, Provincial Offences Court<br>Old City Hall, Toronto |

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

### 1.1.2 Commission Approval - TSE By-law No. 703

**NOTICE OF COMMISSION APPROVAL
THE TORONTO STOCK EXCHANGE
BY-LAW NO. 703 INTRODUCTION OF TIME PRIORITY**

On April 23, 2001, the Commission approved Toronto Stock Exchange By-law No. 703 Introduction of Time Priority ("By-law No. 703"). By-law No. 703 changes the current Equal-by-Member based allocation to time priority. A copy and description of By-law No. 703 was published on December 17, 1999 at (1999) 22 OSCB 8261. One comment letter was received. The TSE's summary of the comment letter and the response of the TSE is set out below:

The comment period for By-law No. 703 relating to time priority has now expired. The TSE received one comment letter advocating that the TSE move to strict time priority, with no order having priority of execution over other orders previously entered in the TSE Book at its price. In practice, this would mean that crosses would not have priority at a price and Registered Traders would not be able to trade under their participation feature, which allows them the option of trading with 40% of incoming orders that are no larger than the size of the Minimum Guaranteed Fill for the stock.

The TSE does not believe that it is necessary to address the crossing issue at this time, recognizing that the CSA will deal with this issue through the framework rules to be adopted in conjunction with the ATS regime. If the CSA does not ultimately adopt the cross interference rule proposed last year, dealers will move their crossing activity from the TSE to ATSs. Mandating cross interference will not have achieved the desired goal. If the CSA adopts a cross interference rule, the TSE will of course have to change its allocation algorithm to comply.

The participation feature is a form of compensation for the Registered Trader and is an incentive to agree to assume the obligations of making markets. Without it, it would be difficult to attract Registered Traders and the quality of the markets would be impaired. Because it is an incentive, any change to the participation feature would have to be made in the context of an overall review of the system, including obligations and benefits. It cannot be made in isolation.

### 1.1.3 Correction for BioCapital Biotechnology et al.

**NOTICE OF CORRECTION RE: REASONS FOR DECISION - BIOCAPITAL BIOTECHNOLOGY AND HEALTHCARE FUND AND BIOCAPITAL MUTUAL FUND MANAGEMENT INC.**

The Commission published in the April 27, 2001 issue of the OSC Bulletin the Reasons for Decision for BioCapital et al. References to some sections of the Act were incorrect.

The correct final document is published in Chapter 3 of this OSC Bulletin.

### 1.1.4 Assignment of Certain Powers and duties of the Ontario Securities Commission

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

**AND**

**IN THE MATTER OF**
**THE ASSIGNMENT OF CERTAIN POWERS AND DUTIES OF THE ONTARIO SECURITIES COMMISSION**

**Amendment of Assignment**
**(Subsection 6(3))**

**WHEREAS:**

1. On April 12, 1999, pursuant to subsection 6(3) of the Act, the Ontario Securities Commission ("the Commission") issued an assignment (the "April Assignment") assigning certain of its powers and duties under the Act to each "Director" as that term is defined in subsection 1(1) of the Act, acting individually;

2. On September 7, 1999 and on February 15, 2000, pursuant to subsection 6(3) of the Act, the Commission amended the April Assignment (the April Assignment as so amended being referred to as the "Assignment");

3. Paragraph 2 of the Assignment provides, in part, that:

   Pursuant to subsection 6(3) of the Act, the Commission assigns to each Director, acting individually, the powers and duties vested in or imposed upon the Commission by:

   ....

   (k) paragraph 2 of subsection 127(1) of the Act and subsections 127(2), (3), (5), (7), (8) and (9) of the Act, but only in respect of trading in securities of a reporting issuer (a "Defaulting Reporting Issuer") that has failed to file an annual report in accordance with the requirements of subsection 81(2) of the Act or financial statements, auditor's reports thereon or interim financial statements required to be filed under Part XVIII of the Act, including, without limitation, the powers of the Commission to make one or more of the following:

      (i) an order that all trading in securities of the Defaulting Reporting Issuer cease, either permanently, or for such period as is specified in the order; and

      (ii) an order (a "Management and Insider Cease Trade Order") that trading in securities of the Defaulting Reporting Issuer by persons or companies identified in the Management and Insider Cease Trade Order as Defaulting Management and Other Insiders cease, either permanently, or, for such period as is specified in the Management and Other Insiders Cease Trade Order, where, for this purpose, Defaulting Management and Other Insiders means one or more persons or companies who:

      (a) are directors, officers or insiders of the Defaulting Reporting Issuer during the period the Defaulting Reporting Issuer is in default of the Financial Statement Filing Requirement; or

      (b) were directors, officers or insiders of the Defaulting Reporting Issuer during the period covered by the annual report or financial statements which are the subject of the default."

4. The Commission wishes to change the meaning of Defaulting Management and Other Insiders, so that it has the same meaning as in Commission Policy 57-603 *Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements*, which was adopted by the Commission on April 17, 2001.

**NOW THEREFORE** the Assignment is amended by deleting subclause (k)(ii) of paragraph 2 and substituting therefore the following:

(ii) an order (a "Management and Insider Cease Trade Order") that trading in securities of the Defaulting Reporting Issuer by persons or companies identified in the Management and Insider Cease Trade Order as Defaulting Management and Other Insiders cease, either permanently, or, for such period as is specified in the Management and Insider Cease Trade Order, where, for this purpose, Defaulting Management and Other Insiders has the same meaning as in Commission Policy 57-603 *Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements.*

April 27, 2001.

"Paul Moore" "Robert W. Korthals"

## 1.1.5 CSA Staff Notice 13-306

### CANADIAN SECURITIES ADMINISTRATORS' STAFF NOTICE 13-306

**Guidance for SEDAR Users**

Staff of the Canadian Securities Administrators ("staff") are issuing this notice to provide guidance to users of the System for Electronic Document Analysis and Retrieval ("SEDAR"). We cover the following areas:

- issuers' responsibility for the accuracy of profile information stored on SEDAR;

- amending a filer profile;

- removal of duplicate filer profiles;

- filing of cover letters; and

- payment of SEDAR fees.

**Issuers' Responsibility for the Accuracy of Profile Information Stored on SEDAR**

Subsection 5.1(3) of National Instrument 13-101 - *System for Electronic Document Analysis and Retrieval (SEDAR)* ("National Instrument") says that an "electronic filer shall ensure that the information contained in its filer profile is correct in all material respects and shall file an amended filer profile in electronic format within 10 days following any change in the information contained in its filer profile".

Many issuers have failed to meet this obligation. Major problems include: selecting the wrong principal regulator for filings under the mutual reliance review system; failing to provide the basis for determining the principal regulator; omitting issuer contact information such as telephone and fax numbers; and failing to provide accurate or updated information about the industry classification or current size of the issuer. Maintenance of current, complete and accurate profile information is important for processing documents filed through SEDAR. We intend to be more vigilant in our review of and requirement for current profile information, particularly in our prospectus and continuous disclosure reviews. The SEDAR II system, when implemented, will contain additional requirements to assist issuers in maintaining current profiles.

When creating a new filer profile, you should ensure that you are using the correct profile type. Section 6.3 of version 6 of the SEDAR Filer Manual explains how. For example, securities offerings and continuous disclosure documents must only be filed using an "Other Issuer" or "Mutual Fund Issuer" profile type.

The SEDAR code update on November 13, 2000 included new functionality to help filers use the most recent issuer profile. When a filing is made for an issuer, SEDAR compares the local copy of the issuer's profile to the most recent version of the issuer's profile on SEDAR. If the local copy does not match the SEDAR version, the filer is alerted by a message on SEDAR prompting the filer to refresh the local profile before proceeding with the filing.

**Amending a Filer Profile**

Section 6.4 of the Filer Manual explains when and how an issuer should amend or create a new profile. A filer cannot change a previously selected profile type. If a filer needs a different profile type, the filer must create a new profile and disclose the previous profile number under the 'Previous Issuer Information' tab.

Section 6.4 of the Filer Manual explains how to amend filer profiles in the following situations: ceasing to be a reporting issuer; change of name; amalgamation or wind up; and divestiture or spin-off.

**Removal of Duplicate Filer Profiles**

There is a large and growing number of duplicate filer profiles in SEDAR. These must be eliminated before implementation of the System for Electronic Disclosure by Insiders ("SEDI"), which will use profile information from SEDAR as the basis for electronic insider reports.

The SEDAR Working Group and CDS, the operator of SEDAR, periodically review SEDAR for duplicate filer profiles and delete them, after due process. However, we encourage issuers to identify duplicate profiles and request their deletion. Section 9.1(f) of the Filer Manual explains how. You can obtain a Duplicate Profile Deletion Request Form on www.sedar.com, under "About SEDAR".

We also regularly delete "unused" profiles. An unused profile is one for which no fees have been paid to CDS and against which no filings have been made. When a new Other Issuer or Mutual Fund Issuer profile is created, CDS sends a pro-rated invoice for the annual filing service charge for continuous disclosure to the mailing address indicated on the profile within 30 days. A reminder letter is sent after 60 days and if no response is received within 90 days, the profile is considered to be unused and is deleted. Section 6.2 of the Filer Manual explains the service charges.

**Filing of Cover Letters**

Some filers are still filing unnecessary cover letters in SEDAR. All information filed on SEDAR is stored in SEDAR and/or sedar.com. Unnecessary documents waste storage space. For example, it is not necessary to file cover letters just to list the documents included with the filing. You should file a cover letter only if it is a required document or is necessary to provide additional information about the filing.

**Payment of Fees**

Some filers continue to submit fee payments through SEDAR using incorrect fee descriptions. This can cause delays because we have to manually match the filing and fee category. The November 13, 2000 SEDAR code update included a new function, which permits users to change the font size in the fee schedules. We hope that allowing you to make the fee schedule more readable will help you find the correct fee description for your filing.

For more information please refer to the Filer Manual, available at www.sedar.com, contact a SEDAR representative, or call the CDS SEDAR helpdesk at 1-800-219-5381.

For further information please contact:

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April 30, 2001.

# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Frank Russell Canada Ltd. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - trades by pooled funds of additional units to existing unitholders holding units having an aggregate acquisition cost or net asset value of not less than the minimum amount prescribed by legislation under "private placement" exemption exempted from registration and prospectus requirement - trades by pooled funds of units to existing unitholders pursuant to automatic reinvestment of distributions by pooled funds exempted from registration and prospectus requirement - trades in units of pooled funds not subject to requirement to file reports of trade within 10 days of trades provided prescribed reports filed and fees paid within 30 days of financial year end of pooled funds.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53, 72(3), 74(1), 147.

**Rules Cited**

Ontario Securities Commission Rule 45-501 - *Exempt Distributions* (1998) 21 OSCB 6548.

Ontario Securities Commission Rule 81-501 - *Mutual Fund Reinvestment Plans* (1998) 21 OSCB 2713.

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND, 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**
**FRANK RUSSELL CANADA LIMITED**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Yukon, Northwest Territories and Nunavut (the "Jurisdictions") has received an application from Frank Russell Canada Limited (the "Applicant") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that:

(a) certain trades by investors in units ("Units") of certain classes (a "Non-Reporting Class") of open-end unit trusts (the "Funds") established and to be established by the Applicant are not subject to the registration and prospectus requirements of the Legislation of Manitoba, Ontario, New Brunswick, Newfoundland, Prince Edward Island and Yukon Territory (the "Prospectus Jurisdictions"); and

(b) trades in Units are not subject to the requirements of the Legislation of the Jurisdictions other than Manitoba relating to the filing of forms and the payment of fees within 10 days of each trade;

**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 Applicant has represented to the Decision Maker that:

(a) the Applicant is registered as an adviser in the categories of investment counsel and portfolio manager in each of the Jurisdictions other than Prince Edward Island, Northwest Territories and Nunavut and is registered as a mutual fund dealer with the Ontario Securities Commission;

(b) the Applicant has and intends to establish one or more Funds pursuant to declarations of trust for which the Applicant will act as the trustee and manager;

(c) each Fund will be a "mutual fund" as defined in the Legislation;

(d) none of the Non-Reporting Classes of the Funds currently intends to become a reporting issuer, as such term is defined in the Legislation, and the Units of the Non-Reporting Classes of the Funds will not be listed on any stock exchange;

(e) each Non-Reporting Class of a Fund will be divided into Units which will evidence the undivided interest of each investor in the assets of the Fund;

(f) Units of a Non-Reporting Class will be distributed on a continuous basis to persons (the "Unitholders") in the

Jurisdictions in reliance on the exemption (the "Private Placement Exemption") set out in the Legislation for distributors where the purchaser purchases as principal if the aggregate acquisition cost is not less than a prescribed amount (the "Prescribed Amount");

(g) the minimum initial investment in a Non-Reporting Class of a Fund by a resident of any Jurisdiction will be not less than the Prescribed Amount in that Jurisdiction;

(h) following such initial investment, it is proposed that Unitholders be able to purchase additional Units ("Subscribed Units") of a Non-Reporting Class of a Fund in increments of less than the Prescribed Amount, provided that at the time of such subsequent acquisition the investor holds Units of the Non-Reporting Class of the Fund with an aggregate acquisition cost or aggregate net asset value of at least the Prescribed Amount;

(i) each Fund proposes to distribute additional Units ("Reinvested Units") by way of automatic reinvestment of distributions to unitholders of such Fund; and

(j) Units will be non-transferable, except with the consent of the Applicant, in the limited circumstances set out in the declaration of trust of the particular Fund, but are redeemable in accordance with the procedures set out in the declaration of trust of the particular Fund;

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

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

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

(a) the registration and prospectus requirements contained in the Legislation of the Prospectus Jurisdictions shall not apply to:

(i) the issuance of Subscribed Units of a Fund to a Unitholder of that Fund provided that:

(1) the initial investment in Units of a Non-Reporting Class of that Fund was pursuant to the Private Placement Exemption;

(2) at the time of the issuance of such Subscribed Units, the Unitholder then owns Units of the Non-Reporting Class of that Fund having an aggregate acquisition cost or an aggregate net asset value of not less than the Prescribed Amount of the applicable Prospectus Jurisdiction;

(3) at the time of the issuance of such Subscribed Units, the Applicant is registered under the Legislation of Ontario as an adviser in the categories of investment counsel and portfolio manager and such registration is in good standing; and

(4) this clause (i) will cease to be in effect with respect to a Prospectus Jurisdiction 90 days after the coming into force of any legislation, regulation or rule in such Jurisdiction relating to the distribution of Subscribed Units of pooled funds;

(ii) an issuance of Reinvested Units of a Fund to a Unitholder of a Fund provided that:

(1) no sales commissions or other charge in respect of such issuance of Reinvested Units is payable; and

(2) each Unitholder who receives Reinvested Units has received, not more than 12 months before such issuance, disclosure in the annual financial statements describing (A) the details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of a Unit, (B) any right that the Unitholder has to make an election to receive cash instead of Units on the payment of the net income or net realized capital gains distributed by the Fund; (C) instructions on how the right referred to in subclause (B), if any, can be exercised, and (D) the fact that no prospectus is available for the Non-Reporting Class of the Fund as Units are offered pursuant to prospectus exemptions only;

provided that the first trade in Subscribed Units and Reinvested Units that are issued pursuant to this Decision shall be deemed to be a distribution or a primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation"), unless otherwise exempt thereunder or unless such first trade is made in the following circumstances:

(i) the applicable Fund is a reporting issuer or the equivalent under the Applicable Legislation;

(ii) if the seller of the Subscribed Units or Reinvested Units is in a special relationship (as defined in the Applicable Legislation) with the

Fund, the seller has reasonable grounds to believe that the Fund is not in default of any requirement of the Applicable Legislation;

(iii) no unusual effort is made to prepare the market or to create a demand for the Subscribed Units or Reinvested Units and no extraordinary commission or consideration is paid in respect of such trade; and

(iv) the Subscribed Units have been held for a period of at least eighteen months from the date they were acquired by the seller of the Subscribed Units or the Reinvested Units have been held for a period of at least eighteen months from the date they were acquired by the seller of the Reinvested Units;

(b) the requirements contained in the Legislation of the Jurisdictions other than Manitoba to file a report of a distribution of Units under the Private Placement Exemption or of Subscribed Units within 10 days of such trade shall not apply to such trade, provided that within 30 days after each financial year end of each Fund, such Fund:

(i) files with the applicable Decision Maker a report in respect of all trades in Units of the Non-Reporting Class of that Fund during such financial year, in the form prescribed by the applicable Legislation; and

(ii) remits to the applicable Decision Maker the fee prescribed by the applicable Legislation.

April 26, 2001.

"Stephen N. Adams" "Paul Moore"

## 2.1.2 Vintage Petroleum, Inc. - MRRS Decision

**Headnote**

MRRS for Exemptive Relief Applications – Take-over bid – Employment agreements entered into with two selling securityholders who are directors and senior officers of an offeree issuer - Decision that agreements are being made for reasons other than to increase the value of the consideration paid to the officers for their shares of the offeree issuer and agreements may be entered into despite the prohibition against collateral benefits.

**Statues Cited**

Securities Act, R.S.O. 1990, c.S5, as amended., ss. 97(2) and 104(2)(a).

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

**AND**

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

**AND**

**IN THE MATTER OF**
**VINTAGE PETROLEUM, INC., VINTAGE ACQUISITION**
**CORP. AND GENESIS EXPLORATION LTD.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan and Manitoba (the "Jurisdictions") has received an application from Vintage Petroleum, Inc. ("Vintage"), Vintage Acquisition Corp. (the "Offeror") and Genesis Exploration Ltd. ("Genesis") (collectively with Vintage and the Offeror, the "Filers") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that agreements with certain employees of Genesis who are holders of Common Shares ("Genesis Shares") of Genesis have been made for reasons other than to increase the value of the consideration paid to such employees for their Genesis Shares and may be entered into despite the provision contained in the Legislation which provides that if an offeror makes or intends to make a take-over bid, neither the offeror nor any person or company acting jointly or in concert with the offeror shall enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to the other holders of the same class of securities (the "Prohibition on Collateral Agreements");

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

Ontario Securities Commission is the principal Jurisdiction for this application;

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

1. Vintage is a corporation existing under the laws of the State of Delaware, the common stock of which is listed for trading on the New York Stock Exchange and is not a reporting issuer in any jurisdiction of Canada.

2. The Offeror is a corporation incorporated under the laws of Alberta, is an indirect wholly-owned subsidiary of Vintage and is not a reporting issuer in any jurisdiction of Canada.

3. Genesis is a corporation subject to the laws of Alberta and is a reporting issuer (or the equivalent) under the Legislation of each of Alberta, British Columbia, Ontario, Saskatchewan, Manitoba and Quebec.

4. The authorized capital of Genesis consists of an unlimited number of Genesis Shares and an unlimited number of preferred shares, issuable in series, of which 38,596,701 Genesis Shares and no preferred shares were issued and outstanding on March 30, 2001.

5. The Genesis Shares are listed and posted for trading on The Toronto Stock Exchange.

6. Pursuant to an offer to purchase dated March 30, 2001 (the "Offer"), the Offeror made a cash take-over bid for all of the 38,596,701 outstanding Genesis Shares (and an additional 3,570,919 Genesis Shares issuable upon the exercise of stock options).

7. Unless extended or withdrawn, the Offer is open for 21 days, with an expiry time of midnight (Vancouver time) on April 20, 2001.

8. The Offer is conditional upon, among other things, not less than 66⅔% of the Genesis Shares, calculated on a diluted basis, being deposited under the Offer.

9. Under the Offer, $18.25 cash is being offered for each Genesis Share, which represents a 22% premium over the closing trading price of the Genesis Shares on March 27, 2001 (the last full day on which the Genesis Shares traded prior to the public announcement of the Offer) and a 32% premium over the weighted average trading price of the Genesis Shares for the 10 trading days preceding the public announcement of the Offeror's intention to make the Offer.

10. Genesis has pre-existing employment contracts with all of its senior officers which provide for the payment of varying amounts of compensation, as may be applicable to a particular senior officer, if the officer is terminated without cause or voluntarily terminates his employment with Genesis, depending on the officer, at any time from 30 to 90 days following a change of control of Genesis. The aggregate obligation of Genesis pursuant to the foregoing agreements following a change of control and a termination is approximately $3.35 million. If the Offer is successful, a change of control will be considered to have occurred for the purposes of these pre-existing employment agreements.

11. The pre-existing employment agreements (the "Pre-Existing Agreements") between Genesis and the Executives (as defined in paragraph 12 below) permit the Executives to cease being involved with Genesis 30 days after a change in control. Under the Pre-Existing Agreements, upon a change in control, the Executives will receive 30 day's salary and the value of the 30 days' loss of benefits, a lump sum retiring allowance, and any unvested stock options become vested. The Pre-Existing Agreements do not contain any express provisions prohibiting the Executives from engaging in a business which competes with Genesis or from soliciting key employees or others away from Genesis' business.

12. Vintage believes that the two most senior officers of Genesis, Mr. David J. Wilson, President and Chief Executive Officer and Donald J. Sabo, Chairman of the Board and Senior Vice President of Genesis (together, the "Executives"), have been instrumental in building Genesis into a highly successful company.

13. At the time that the acquisition agreement dated March 27, 2001 (the "Acquisition Agreement") was being negotiated between Vintage and Genesis, Vintage requested that the Executives agree to remain employed by Genesis. Vintage wished to secure such an agreement because of the integral role of the Executives in developing Genesis' business and their substantial and valuable experience and expertise in exploring for, developing and producing oil and gas in Western Canada.

14. The Executives' role with Genesis following completion of the Offer is critical to Vintage in ensuring a successful transition of Genesis following completion of the Offer. In addition, Vintage believed that if it was able to secure the services of the Executives, the rest of the management team would be more likely to remain with Genesis following completion of the Offer.

15. Two contracts of employment (the "Employment Agreements") were agreed to among each of the Executives, Vintage and Genesis.

16. The Employment Agreements recognize the Executives' entitlements upon a change in control under the Pre-Existing Agreements and provide that each of the Executives will remain employed by Genesis for a period of one year following completion of the Offer at a salary equal to the salary to be paid to him by Genesis in the 2001 fiscal year. We understand that such terms of employment are consistent with the remuneration of those occupying comparable positions within the industry.

17. In addition, in order to encourage the Executives to remain with Genesis beyond the one year term envisioned by the Employment Agreements, Vintage has agreed to issue to each Executive 25,000 shares of Vintage common stock (the "Restricted Stock") under

the Vintage 1990 Stock Plan (the "1990 Plan"), as amended. The Restricted Stock will be issued in accordance with, and subject to the terms of, the 1990 Plan and the further terms, restrictions and conditions set forth in the Employment Agreements. The material terms of the Restricted Stock include the following:

(a) Subject to certain limited exceptions, all shares of Restricted Stock are subject to forfeiture (i.e. all of the Executive's right, title and interest in such shares ceases and such shares will be returned to Vintage with no compensation of any nature to the Executive), if the Executive's employment with Genesis is terminated for cause or if he resigns from his employment prior to the three years commencing on the date of the grant of the Restricted Stock.

(b) Certificates representing shares of Restricted Stock issued to the Executives will remain in the physical custody of Vintage (in escrow) until all restrictions are removed or expire. Certificates representing the Restricted Stock will be delivered to the Executive when such restrictions lapse.

(c) Each certificate representing shares of Restricted Stock issued to the Executives will bear a legend making appropriate reference to the terms, conditions and restrictions imposed on such shares. Any attempt by the Executive to dispose of Restricted Stock in contravention of such terms, conditions and restrictions, irrespective of whether the certificate contains such a legend, will be ineffective and any disposition purported to be effected thereby shall be void.

(d) Any shares or other securities received by the Executive as a stock dividend on, or as a result of stock splits, combinations, exchanges of shares, reorganizations, mergers, consolidations or otherwise with respect to shares of Restricted Stock shall be subject to the same terms, conditions and restrictions and bear the same legend as the Restricted Stock.

18. The Employment Agreements contemplate that a bonus may be paid to the Executives, although any bonuses will be within the discretion of Genesis. The Employment Agreements also provide for fewer holidays than the Executives would have been entitled to under the Pre-Existing Agreements and do not recognize any entitlement of the Executives under their present arrangements to stock options. Further, the Employment Agreements contain non-competition and non-solicitation provisions applicable to the Executives.

19. The Employment Agreements were negotiated on an arm's length basis, are on commercially reasonable terms, are consistent with current industry practice and Vintage's compensation arrangements for new executives and are intended to provide an incentive for the Executives to continue in the employment of Genesis for more than one year following completion of the Offer.

20. Vintage would not have entered into the Acquisition Agreement if the Executives had not entered into the Employment Agreements. Vintage believes that if it were to acquire only Genesis' assets and not the services of its key personnel, there would be a material reduction in likelihood of a successful transition of Genesis following completion of the Offer and a corresponding reduction in the value of Genesis to Vintage and its stockholders.

21. Mr. David J. Wilson holds an aggregate of 1,542,593 Genesis Shares and options to purchase 325,000 Genesis Shares and Mr. Donald J. Sabo holds an aggregate of 1,121,977 Genesis Shares and options to purchase 325,000 Genesis Shares. Neither of the Executives are related to Vintage or the Offeror.

22. The Employment Agreements were entered into for valid business reasons unrelated to the Executives' holdings of Genesis Shares and not for the purpose of conferring a collateral benefit on the Executives not enjoyed by the other holders of Genesis Shares.

**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 Employment Agreements are being made for reasons other than to increase the value of the consideration to be paid to the Executives for their Genesis Shares under the Offer, and that the Employment Agreements may be entered into notwithstanding the Prohibition on Collateral Agreements.

April 25, 2001.

"Paul M. Moore" "Robert W. Korthals"

### 2.1.3 Shiningbank Energy Income Fund - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Relief under subsection 104(2)(c) of the Act from the identical consideration requirement under subsection 97(1) of the Act to permit the payment of sale proceeds in lieu of shares of the offeror to holders of offeree shareholders resident in the United States of America.

**Applicable Ontario Statutory Provisions**

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

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

**AND**

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

**AND**

**IN THE MATTER OF**
**SHININGBANK ENERGY INCOME FUND,**
**923720 ALBERTA INC. AND IONIC ENERGY INC.**

**MRRS DECISION DOCUMENT**

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, and Ontario (the "Jurisdictions") has received an application from Shiningbank Energy Income Fund ("Shiningbank") and 923720 Alberta Inc. ("Acquireco") for a decision under the securities legislation of the Jurisdictions (the "Legislation") exempting Shiningbank and Acquireco from the requirement contained in the Legislation to offer holders of a class of securities subject to a take-over bid identical consideration (the "Identical Consideration Requirement") in connection with an offer to purchase the common shares of Ionic Energy Inc. ("Ionic");

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** Shiningbank and Acquireco have represented to the Decision Makers that:

   3.1 Shiningbank is a trust organized under the laws of the Province of Alberta;

   3.2 the head office of Shiningbank is in Calgary, Alberta;

   3.3 Shiningbank is a reporting issuer in each of the Jurisdictions;

   3.4 Shiningbank is authorized to issue up to 300,000,000 units ("Shiningbank Units");

   3.5 as of March 12, 2001, there were 19,703,712 Shiningbank Units outstanding;

   3.6 the Shiningbank Units are listed and posted for trading on The Toronto Stock Exchange (the "TSE");

   3.7 Shiningbank is not in default of any requirement under the Legislation;

   3.8 Acquireco is a corporation incorporated under the *Business Corporations Act* (Alberta);

   3.9 Acquireco is a wholly-owned subsidiary of Shiningbank;

   3.10 Ionic is a corporation incorporated under the *Business Corporations Act* (Alberta);

   3.11 the head office of Ionic is in Calgary, Alberta;

   3.12 Ionic is a reporting issuer in each of the Jurisdictions;

   3.13 the authorized capital of Ionic includes an unlimited number of common shares ("Ionic Shares");

   3.14 as of March 8, 2001, there were 24,803,843 Ionic Shares outstanding;

   3.15 the Ionic Shares are listed and posted for trading on the TSE;

   3.16 to the knowledge of Shiningbank, Ionic is not in default of any requirement under the Legislation;

   3.17 Shiningbank and Acquireco have made a take-over bid for all of the Ionic Shares currently outstanding or issuable upon the exercise of outstanding options (the "Bid");

   3.18 under the Bid, the holders of Ionic Shares may elect to receive 0.306 of a Shiningbank Unit or $5.10 in cash for each Ionic Share;

   3.19 a maximum of $45,000,000 is payable as consideration under the Bid;

   3.20 to the best information of Shiningbank, there are three registered holders of Ionic Shares (the "U.S. Shareholders") resident in the United States of America (the "United States");

   3.21 to the best information of Shiningbank, the U.S. Shareholders currently hold a total of 2,134,800 Ionic Shares, representing approximately 8.6% of the total number of outstanding Ionic Shares;

3.22 Shiningbank has reason to believe that certain of the U.S. Shareholders or persons holding Ionic Shares beneficially through the U.S. Shareholders may sell some or all of the Ionic Shares held by them prior to the expiry of the Bid;

3.23 any Shiningbank Units which might be issued under the Bid to the U.S. Shareholders will not be registered under the *Securities Act of 1933* in the United States. Accordingly, the delivery of Shiningbank Units to the U.S. Shareholders without further action by Shiningbank may constitute a violation of the laws of the United States;

3.24 Shiningbank is eligible to use the multi-jurisdictional disclosure system adopted by the United States. However, if Shiningbank delivered Shiningbank Units to the U.S. Shareholders under the Bid it would become subject to the *Investment Company Act* in the United States;

3.25 compliance with the *Investment Company Act* would require changes to Shiningbank's trust indenture and business operations and would result in significant ongoing obligations;

3.26 Shiningbank proposes to deal with any Shiningbank Units issuable to the U.S. Shareholders under the Bid in the following manner:

3.26.1 if the total number of Shiningbank Units does not exceed 2% of the currently outstanding number of Shiningbank Units, Shiningbank will deliver them to the depository for the Bid (the "Depository"). The Depository will then pool and sell the Shiningbank Units on the TSE on behalf of the U.S. Shareholders. Immediately following such sale, the Depository will provide the applicable U.S. Shareholders with their respective share of the proceeds of the sale, less any commissions and withholding taxes; or

3.26.2 if the total number of Shiningbank Units exceeds 2% of the currently outstanding number of Shiningbank Units, Shiningbank will deliver them to the Depository. The Depository will then pool and sell the Shiningbank Units through one or more investment dealers, arranged for by Shiningbank, to available purchasers on a best efforts basis. Immediately following such sale, the Depository will provide the applicable U.S. Shareholders with their respective share of the proceeds of the sale, less any commissions and withholding taxes;

3.27 any sale of Shiningbank Units described in paragraph 3.26 will be completed within five trading days of the date that Shiningbank takes up the Ionic Shares tendered by the applicable U.S. Shareholders under the Bid;

3.28 any sale of Shiningbank Units described in paragraph 3.26 will be done in a manner intended to maximize the consideration to be received from the sale by the applicable U.S. Shareholders and minimize any adverse impact of the sale on the market for the Shiningbank Units;

3.29 except to the extent that relief from the Identical Consideration Requirement is granted herein, the Bid is being made in compliance with the requirements under the Legislation concerning take-over bids;

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

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

6. **THE DECISION** of the Decision Makers under the Legislation is that, in connection with the Bid, Shiningbank and Acquireco are exempt from the Identical Consideration Requirement insofar as U.S. Shareholders who would otherwise receive Shiningbank Units under the Bid receive instead cash proceeds from the sale of those Shiningbank Units in accordance with the procedures set out in paragraph 3.26.

April 4, 2001.

"Eric T. Spink" "Thomas G. Cooke"

## 2.1.4 Paul Gordon - Settlement Agreement

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

**AND**

**IN THE MATTER
OF PAUL GORDON**

**SETTLEMENT AGREEMENT**

### I INTRODUCTION

1. By Notice of Hearing to be issued forthwith, (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") will hold a hearing to consider whether, pursuant to section 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the "Act"), in the opinion of the Commission it is in the public interest for the Commission:

   (a) to make an order that the registration of Paul Gordon be terminated or suspended or restricted for such period as the Commission may order;

   (b) to make an order that Paul Gordon cease trading in securities permanently or for such period as the Commission may order;

   (c) to make an order that Paul Gordon resign any positions he holds as a director or officer of an issuer;

   (d) to make an order to prohibit Paul Gordon from becoming or acting as a director or officer of any issuer permanently or for such period as the Commission may order;

   (e) to make an order that the Paul Gordon pay the costs of the Commission's investigation and this proceeding; and/or

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

### II JOINT SETTLEMENT RECOMMENDATION

2. The Staff of the Commission ("Staff") agree to recommend the settlement of the proceedings initiated in respect of Paul Gordon ("Gordon") by the Notice of Hearing in accordance with the terms and conditions set out below. Gordon agrees to the settlement on the basis of the facts agreed to as set out below and consents to the making of an order against him in the form attached as Schedule "A" on the basis of those facts.

3. This settlement agreement, including the attached Schedule "A", will be released to the public only if and when the settlement is approved by the Commission.

### III STATEMENT OF FACTS

#### (i) Acknowledgement

4. Staff and Gordon agree with the facts set out in this Part III.

#### (ii) Factual Background

5. Gordon is an individual who resides in Fisherville, Ontario. Gordon is registered with the Commission to sell mutual fund securities. From January 1998 to September 1999 Gordon was sponsored by CCI Capital Canada Limited ("CCI"), a mutual fund dealer, to sell mutual fund securities.

**Amber Coast Resort Corporation**

6. Amber Coast Resort Corporation ("Amber Coast") is a corporation organized pursuant to the laws of Turks and Caicos Islands.

7. Amber Coast created two offerings for its securities which relied on separate exemptions from the prospectus and registration requirements of the Act. No prospectus for Amber Coast was ever filed with or receipted by the Commission.

8. On September 1, 1998, CCI, entered into an agreement to "place" $200,000 (U.S.) worth of units of Amber Coast by September 30, 1998 and an additional $400,000 (U.S.) worth of units by November 30, 1998 in exchange for fees and use of a luxury villa.

9. Although CCI was never registered as a limited market dealer, CCI encouraged its sales representatives, including Gordon, to sell units of Amber Coast to their clients.

10. Gordon sold units of Amber Coast to two of his clients. In total, those clients invested $20,000 (U.S.) in Amber Coast.

11. CCI paid referral fees of 5% of the monies invested to Gordon by way of commission cheques.

12. As he was in the business of trading in securities, Gordon required registration to sell limited market products in order to sell units of the Amber Coast offering. Gordon was not licensed to sell limited market products thus his sales to clients constituted trading without registration.

### IV POSITION OF THE RESPONDENT

13. Gordon understood from representations made by the compliance personnel and management at CCI that he was entitled to sell units of Amber Coast to his clients. Gordon relied upon these representations.

## V CONDUCT CONTRARY TO THE PUBLIC INTEREST

14. Gordon agrees that his conduct in selling units of Amber Coast without registration contravened subsection 25(1) of the Act and was contrary to the public interest.

## VI TERMS OF SETTLEMENT

15. Gordon agrees to the following terms of settlement:

    a. pursuant to clause 1 of subsection 127(1) of the Act, the registration granted to Gordon under Ontario securities law will be suspended for a period of 21 days from the date of the Commission's Order; and

    b. pursuant to clause 6 of subsection 127(1) of the Act, Gordon will be reprimanded.

## VII STAFF COMMITMENT

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

## VIII PROCEDURE FOR APPROVAL OF SETTLEMENT

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

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

19. If this Settlement Agreement is approved by the Commission, neither of the parties to this Settlement Agreement will make any statement that is inconsistent with this Settlement Agreement.

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

    a. each of Staff and Gordon will be entitled to proceed to a hearing of the allegations in the Notice of Hearing and related Statement of Allegations unaffected by the Settlement Agreement or the settlement negotiations;

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

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

21. If, prior to the approval of this Settlement Agreement by the Commission, there are new facts or issues of substantial concern, in the view of Staff, regarding the facts set out in Part III of this Settlement Agreement, Staff will be at liberty to withdraw from this Settlement Agreement. Notice of such intention will be provided to Gordon in writing. In the event of such notice being given, the provisions of paragraph 20 in this part will apply as if this Settlement Agreement had not been approved in accordance with the procedures set out herein.

## IX DISCLOSURE OF SETTLEMENT AGREEMENT

22. Counsel for Staff or for the respondents may refer to any part or all of this agreement in the course of the hearing convened to consider this agreement. Otherwise, this agreement and its terms will be treated as confidential by all parties to the agreement until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission, except with the written consent of all parties or as may be required by law. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission. The terms of the Settlement Agreement will be treated as confidential by both parties hereto until approved by the Commission and forever if for any reason whatsoever, the Settlement Agreement is not approved by the Commission.

## X EXECUTION OF SETTLEMENT AGREEMENT

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

April 25, 2001.

SIGNED IN THE PRESENCE OF:

"Paul Gordon" "Michael Watson"

SCHEDULE "A"

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

**AND**

**IN THE MATTER**
**OF PAUL GORDON**

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

**WHEREAS** on April , 2001, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsection 127(1) of the *Securities Act* (the "Act") in respect to Paul Gordon;

**AND WHEREAS** Paul Gordon entered into a settlement agreement dated April , 2001 (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the statement of allegations of Staff of the Commission, and upon hearing submissions from Paul Gordon and from Staff of the Commission;

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

**IT IS ORDERED THAT:**

(1) the Settlement Agreement dated April , 2001, attached to this Order, is hereby approved;

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

(3) pursuant to clause 1 of subsection 127(1) of the Act, the registration granted to Gordon under Ontario securities law will be suspended for a period of 21 days from the date of the Commission's Order.

**DATED** at Toronto this day of April, 2001.

## 2.1.5 Sixty Split Corp. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted to split share company from requirement to file annual financial statements. Financial position of issuer at year-end reflected in financial statements included in prospectus filed just prior to year-end.

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am. s.80(b)(iii).

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

**AND**

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

**AND**

**IN THE MATTER OF**
**SIXTY SPLIT CORP.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, and Newfoundland (the "Jurisdictions") has received an application from Sixty Split Corp. (the "Issuer") for a decision under the securities legislation (the "Legislation") of the Jurisdictions that the Issuer be exempted from filing and distributing annual financial statements and an annual report, where applicable, for its fiscal year ended March 15, 2001, as would otherwise be required pursuant to applicable Legislation;

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

**AND WHEREAS** the Issuer has represented to the Decision Maker that:

1. The Issuer filed a final prospectus dated March 5, 2001 (the "Prospectus") with the securities regulatory authority in each of the Provinces of Canada pursuant to which a distribution of 15,000,000 class A capital shares (the "Capital Shares") and 7,500,000 class A preferred shares (the "Preferred Shares") of the Issuer was completed on March 12, 2001.

2. The Issuer was incorporated under the laws of the Province of Ontario on January 30, 2001. The fiscal

year end of the Issuer is March 15, with the first fiscal year end occurring on March 15, 2001. The final redemption of the publicly held shares of the Issuer is scheduled to occur on March 15, 2011.

3. The head office of the Issuer is in Ontario.

4. The authorized capital of the Issuer consists of an unlimited number of Capital Shares, of which 15,000,000 are issued and outstanding, an unlimited number of Preferred Shares, of which 7,500,000 are issued and outstanding, an unlimited number of class B, class C, class D and class E capital shares, issuable in series, none of which are issued and outstanding, an unlimited number of class B, class C, class D and class E preferred shares, issuable in series, none of which are issued and outstanding, and an unlimited number of class J voting shares (the "Class J Shares"), of which 100 are issued and outstanding. The attributes of the Capital Shares and the Preferred Shares are described in the Prospectus under "Description of Share Capital".

5. The Class J Shares are the only class of voting securities of the Issuer. Scotia Capital Inc. ("Scotia Capital") owns 50 of the issued and outstanding Class J Shares and Sixty Split Holdings Corp. owns the remaining issued and outstanding Class J Shares. Two employees of Scotia Capital each own 50% of the common shares of Sixty Split Holdings Corp. Scotia Capital acted as an agent for, and was the promoter of, the Issuer in respect of the offering of the Capital Shares and the Preferred Shares.

6. The principal undertaking of Issuer is the holding of a portfolio of common shares (the "Portfolio Shares") of the companies that make up the *S&P/TSE 60 Index* in order to generate distributions for the holders of Preferred Shares and to enable the holders of Capital Shares to participate in capital appreciation in the Portfolio Shares. The operations of the Issuer commenced on or about February 27, 2001 at which time it began to acquire the Portfolio Shares now held by it. The Portfolio Shares held by the Issuer will only be disposed of as described in the Prospectus.

7. The Prospectus included an audited balance sheet of the Issuer as at March 5, 2001 and an unaudited pro forma balance sheet prepared on the basis of the completion of the sale and issue of Capital Shares and Preferred Shares of the Issuer. As such, the financial position of the Issuer as at March 15, 2001 will have been substantially reflected in the pro forma financial statements contained in the Prospectus as the financial position of the Issuer is not materially different from the pro forma financial statements of the Issuer contained in the Prospectus. Furthermore, no material acquisition or disposition of shares has occurred during the period from the date the Portfolio Shares were acquired to March 15, 2001.

8. The Issuer is an inactive company, the sole purpose of which is to provide a vehicle through which different investment objectives with respect to participation in the Portfolio Shares may be satisfied. Holders of Capital Shares will be entitled on redemption to the benefits of any capital appreciation in the market price of the Portfolio Shares after payment of administrative and operating expenses of the Issuer and the fixed distributions on the Preferred Shares, and holders of Preferred Shares will be entitled to receive fixed cumulative preferential distributions on a quarterly basis equal to $0.3563 per Preferred Share.

9. The benefit to be derived by the security holders of the Issuer from receiving an annual report, where applicable, and financial statements for the fiscal year ended March 15, 2001 would be minimal in view of the extremely short period from the date of the Prospectus to its fiscal year end and given the nature of the minimal business carried on by the Issuer.

10. The expense to the Issuer of preparing, filing and sending to its security holders an annual report, where applicable and financial statements for the fiscal year ended March 15, 2001 would not be justified in view of the benefit to be derived by the security holders from receiving such statements.

11. The interim unaudited financial statements of the Issuer for the period ending September 15, 2001 and the annual audited financial statements and the annual report, where applicable, for the period ending March 15, 2002 will include the period from March 5, 2001 to March 15, 2001.

**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;

**IT IS HEREBY DECIDED** by the Decision Makers pursuant to the Legislation that the Issuer is exempted from filing and distributing an annual report, where applicable, and annual financial statements for its fiscal year ended March 15, 2001, provided that the interim unaudited financial statements of the Issuer for the period ending September 15, 2001 and the annual audited financial statements and the annual report, where applicable, for the period ending March 15, 2002 will include the period from March 5, 2001 to March 15, 2001.

April 19, 2001.

"Howard I. Weston" "Paul Moore"

### 2.1.6 Emerald Canadian Equity Fund et al. - MRRS Decision

**Headnote**

Investment by TD managed mutual funds in securities of exchange-traded funds in which TD Bank has a significant interest exempted from the self-dealing prohibitions of clauses 111(2)(c)(ii) and 111(3).

**Statutes Cited**
Securities Act (Ontario), R.S.O. 1990 c.S.5, as am., 111(2)(c) and 111(3).

**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**
**EMERALD CANADIAN EQUITY FUND, TD CANADIAN INDEX FUND, TD BALANCED FUND, TD BALANCED GROWTH FUND, TD DIVIDEND INCOME FUND, TD DIVIDEND GROWTH FUND, TD CANADIAN EQUITY FUND, TD CANADIAN BLUE CHIP EQUITY FUND, TD CANADIAN VALUE FUND, TD CANADIAN STOCK FUND, CT PRIVATE CANADIAN DIVIDEND FUND, CT PRIVATE CANADIAN EQUITY/GROWTH FUND, CT PRIVATE CANADIAN EQUITY/INCOME FUND, CT PRIVATE NORTH AMERICAN EQUITY/GROWTH FUND, CT PRIVATE NORTH AMERICAN EQUITY/INCOME FUND, EMERALD CANADIAN LARGE CAP POOLED FUND TRUST, EMERALD CANADIAN SMALL CAP POOLED FUND TRUST, EMERALD CANADIAN MID CAP POOLED FUND TRUST, EMERALD CANADIAN 300 POOLED FUND TRUST, EMERALD ENHANCED CANADIAN EQUITY POOLED FUND TRUST, EMERALD CANADIAN EQUITY 300 POOLED FUND TRUST II, EMERALD CANADIAN 300 CAPPED POOLED FUND TRUST, EMERALD CANADIAN EQUITY 299 POOLED FUND TRUST, AND EMERALD ENHANCED CANADIAN 300 POOLED FUND TRUST**
**(COLLECTIVELY, THE "FUNDS")**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland, (the "Jurisdictions") has received an application (the "Application") from TD Asset Management Inc. ("TDAM"), on behalf of the Funds, for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the provisions in the Legislation that prohibit a mutual fund from investing in or holding an investment in an issuer in which any person or company who is a substantial security holder of the management company or the distribution company of the mutual fund has a significant interest or, in Quebec, in securities that a registered person or an affiliate of a registered person owns or is underwriting (the "Applicable Requirements") shall not apply in respect of an investment by the Funds in securities issued by TD TSE 300 Index Fund or TD TSE 300 Capped Index Fund (the "ETFs");

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

**AND WHEREAS** it has been represented to the Decision Maker that:

1. Each of the Funds is a "mutual fund in Ontario", within the meaning of section 1(l) of the *Securities Act* Ontario (the "Act"), either because it is organized under the laws of Ontario or because it is a "reporting issuer", within the meaning of the Act, and the Funds which are "reporting issuers", within the meaning of the Legislation of a Jurisdiction, other than Ontario, are "mutual funds in" such Jurisdiction. The Funds which are "reporting issuers" are subject to National Instrument 81-102 ("NI 81-102").

2. TD Securities Inc. (the "Dealer"), an affiliate of TDAM, acts as an underwriter and a designated broker of the ETFs in respect of the distributions (the "Offerings") of securities of the ETFs.

3. The ETFs are mutual funds that are listed and posted for trading on the Toronto Stock Exchange and each of the Offerings by the ETFs is or will be a continuous distribution of securities of the ETFs in the Jurisdictions.

4. Each of the ETFs is a mutual fund which is a "reporting issuer" in each of the Jurisdictions and which is subject to NI 81-102.

5. The Dealer, in acting as an underwriter and a designated broker, will receive no compensation from the Funds, the ETFs or TDAM.

6. The investment by a Fund in an ETF will only be made if it is consistent with the investment objectives of the Fund and, in the view of TDAM, is in the best interests of the Fund.

7. It is anticipated by TDAM that an investment by a Fund in an ETF will be made with cash balances which the Fund holds either to fund redemptions or pending direct investment in other securities.

8. It is anticipated by TDAM that a Fund will generally invest between 0.50% and 3.00% of its net asset value in an ETF, but in no event will a Fund invest greater than 5.00% of its net asset value at the time of the investment in securities of the ETFs.

9. A Fund will not knowingly make or hold an investment in an ETF if, at the time of such investment, the Fund, alone or together with other Funds, is a substantial security holder of the ETF.

10. The investment by a Fund which is subject to NI 81-102 in an ETF will be made in compliance with all of the requirements of NI 81-102 other than section 4.1(1) of NI 81-102, in respect of which relief has been received, and in compliance with all the requirements of the Legislation other than the Applicable Requirements.

11. The investment by a Fund which is not subject to NI 81-102 in an ETF will be made in compliance with all of the requirements applicable to "mutual funds in" each Jurisdiction, other than the Applicable Requirements.

12. The Dealer, in its capacity as underwriter and as a designated broker of an ETF, may own, from time to time, more than 10% of the outstanding units of an ETF.

13. The Toronto-Dominion Bank is a substantial security holder of both the Dealer and TDAM and would be deemed to have a significant interest in the ETFs at any time when the Dealer is holding more than 10% of the outstanding units of the ETFs.

14. In the absence of this decision, pursuant to the Legislation, the Funds are prohibited from investing in or holding the securities of an ETF at any time when the Dealer holds more than 10% or, in Quebec, any of the outstanding units of the ETF.

15. The investment by a Fund in securities of an ETF represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

**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 Requirements shall not apply so as to prevent a Fund from investing in securities issued by an ETF in respect of which the Dealer has a significant interest or, in Quebec, is an owner or an underwriter;

**PROVIDED IN EACH CASE THAT:**

1. the Decision will terminate one year after the date hereof; and

2. the Decision shall only apply if at the time a Fund makes an investment in an ETF:

   (a) the investment in the ETF is consistent with the investment objective of the Fund;

   (b) the Dealer, in acting as underwriter and designated broker of the securities of the ETF, receives no compensation from the Fund, the ETF or TDAM; and

   (c) the investments by a Fund in both ETFs do not exceed 5.00% of the net asset value of the Fund.

April 24, 2001.

"Paul Moore" "Robert W. Davis"

### 2.1.7 Calpine Corporation et al. - MRRS Decision

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

**AND**

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

**AND**

**IN THE MATTER OF**
**CALPINE CORPORATION, CALPINE CANADA HOLDINGS LTD. AND ENCAL ENERGY LTD.**

**MRRS DECISION DOCUMENT**

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Newfoundland, Nova Scotia, the Yukon Territory, the Nunavut Territory and the Northwest Territories (the "Jurisdictions") has received an application from Calpine Corporation ("Calpine") and Calpine Canada Holdings Ltd. ("Calpine Canada") for a decision pursuant to the securities and corporate legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation:

   1.1 to be registered to trade in a security (the "Registration Requirement"), to file a preliminary prospectus and a prospectus and to obtain receipts therefor (the "Prospectus Requirement") shall not apply to certain trades and distributions of securities to be made in connection with an agreement to combine the businesses of Calpine and Encal Energy Ltd. ("Encal") through a plan of arrangement involving Calpine, Calpine Canada and Encal;

   1.2 for a reporting issuer or the equivalent to issue a press release and file a report with the Decision Makers upon the occurrence of a material change, file and deliver the annual report, interim and annual financial statements, information circulars and annual information forms and provide management's discussion and analysis of financial conditions and results of operations to maintain an audit committee under applicable corporate law (the "Continuous Disclosure Requirements") shall not apply to Calpine Canada provided certain conditions are met; and

   1.3 that an insider of a reporting issuer or the equivalent file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or the equivalent (the "Insider Reporting Requirements") shall not apply to insiders of Calpine Canada provided certain conditions are met;

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** Calpine and Calpine Canada have represented to the Decision Makers that:

   3.1 Calpine is a corporation organized and subsisting under the laws of the State of Delaware, with its head office in San Jose, California;

   3.2 the authorized capital stock of Calpine includes 500,000,000 shares of Calpine common stock ("Calpine Common Stock") of which 283,739,629 were issued and outstanding as of February 1, 2001;

   3.3 the Calpine Common Stock is currently listed and posted for trading on the New York Stock Exchange ("NYSE");

   3.4 Calpine is subject to the reporting requirements of the United States *Securities Exchange Act of 1934* (the "1934 Act");

   3.5 Calpine is not a reporting issuer or the equivalent in any of the Jurisdictions;

   3.6 Calpine Canada is a corporation incorporated under the *Business Corporations Act* (Alberta) (the "ABCA"), with its registered office in Calgary, Alberta;

   3.7 Calpine Canada was incorporated on February 21, 2001 and has not carried on any business to date;

   3.8 the authorized capital of Calpine Canada will consist of an unlimited number of common shares and an unlimited number of exchangeable shares (the "Exchangeable Shares");

3.9 the only securities of Calpine Canada that are issued or may be issued are common shares and Exchangeable Shares and all of the common shares are held and will continue to be held, directly or indirectly, by Calpine as long as any outstanding Exchangeable Shares are owned by any person or entity other than Calpine or any of Calpine's subsidiaries;

3.10 Calpine Canada is not a reporting issuer or equivalent in any of the Jurisdictions;

3.11 Encal is a corporation incorporated under the ABCA, with its head office in Calgary, Alberta;

3.12 the authorized capital of Encal consists of an unlimited number of common shares ("Encal Shares"), an unlimited number of Class A preferred shares issuable in series and an unlimited number of Class B preferred shares issuable in series;

3.13 109,857,279 Encal Shares and 7,294,981 options to purchase Encal Shares ("Encal Options") were issued and outstanding as of February 1, 2001;

3.14 the Encal Shares are listed and posted for trading on The Toronto Stock Exchange (the "TSE") and the NYSE;

3.15 Encal is a reporting issuer or the equivalent in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec and Nova Scotia;

3.16 Encal is not in default of any requirements of the Legislation;

3.17 Calpine and Encal have entered into an agreement which provides for the combination of the businesses of Calpine and Encal (the "Combination");

3.18 the Combination will be effected through an arrangement under section 186 of the ABCA involving Calpine, Calpine Canada and Encal (the "Arrangement");

3.19 the Arrangement is subject to approval of the holders of Encal Shares and Encal Options (the "Encal Security Holders") and the Court of Queen's Bench of Alberta;

3.20 a meeting of the Encal Security Holders (the "Encal Meeting") has been scheduled for April 18, 2001;

3.21 an information circular (the "Circular") prepared in accordance with the Legislation has been provided to the Encal Security Holders in connection with the Encal Meeting and filed with each of the Decision Makers;

3.22 the Circular contains prospectus-level disclosure concerning the Combination, the Arrangement and the businesses of Calpine and Encal;

3.23 under the terms of the Combination agreement:

3.23.1 the holders ("Encal Shareholders") of Encal Shares (other then dissenting shareholders) will receive, for each of the Encal Shares held by them, a fixed value of $12.00 per share, payable in the form of Exchangeable Shares. The number of Exchangeable Shares to be received for each Encal Share will be determined in accordance with an exchange ratio (the "Exchange Ratio") based on the weighted average trading price of the Calpine Common Stock for the ten consecutive trading days ending on the third trading day before the Encal Meeting;

3.23.2 each outstanding Encal Option will be exchanged for an option to be granted by Calpine (the "Calpine Option") to purchase a whole number of shares of Calpine Common Stock equal to the number of Encal Shares subject to such Encal Option multiplied by the Exchange Ratio at an exercise price per Calpine Common Stock equal to the exercise price per share of such Encal Option, divided by the Exchange Ratio, but expressed in U.S. dollars;

3.24 although the actual number of Exchangeable Shares to be issued pursuant to the Arrangement will depend on the trading price of the shares of Calpine Common Stock shortly before the date of the Encal Meeting, for the purposes of illustration, based on the estimated number of Encal Shares expected to be outstanding at the closing of the Combination, an assumed weighted average trading price of the shares of Calpine Common Stock for the ten consecutive trading days ending on the third trading day before the Encal Meeting of US$44.50 and an assumed average exchange rate for such ten day period of one US dollar being equal to 1.54 Canadian dollars, the Exchange Ratio would be approximately 0.18 Exchangeable Shares for each Encal Share and the former Encal Shareholders would effectively own approximately 19.7 million shares of Calpine Common Stock, or approximately 6.5% of the outstanding shares of Calpine Common Stock;

3.25 according to the share register of Calpine, as of April 6, 2001, 1.2195% of the registered holders of Calpine Common Stock had registered addresses in Canada and such shareholders held shares representing 0.00004% of the issued and outstanding shares of Calpine Common Stock;

3.26 under the terms of the Exchangeable Shares, and certain rights to be granted in connection with the Arrangement, holders of Exchangeable Shares will be able to exchange them at their option for shares of Calpine Common Stock on a one for one basis;

3.27 under the terms of the Exchangeable Shares, and certain rights to be granted in connection with the Arrangement, Calpine or Calpine Canada will be able to redeem, retract or acquire Exchangeable Shares in exchange for Calpine Common Stock in certain circumstances;

3.28 in order to ensure that the Exchangeable Shares remain the economical equivalent of Calpine Common Stock prior to their exchange, the Arrangement provides for:

3.28.1 a support agreement to be entered into between Calpine and Calpine Canada which will, among other things, restrict Calpine from declaring or paying dividends on Calpine Common Stock unless equivalent dividends are declared and paid on the Exchangeable Shares and from subdividing, consolidating or reclassifying Calpine Common Stock unless economically equivalent changes are made to the Exchangeable Shares;

3.28.2 an exchange trust agreement to be entered into between Calpine, Calpine Canada and CIBC Mellon Trust Company (the "Trustee") which will, among other things, grant to the Trustee, for the benefit of holders of Exchangeable Shares, the right to require Calpine to directly or indirectly exchange the Exchangeable Shares for Calpine Common Stock upon the occurrence of certain specified events (the "Exchange Rights");

3.28.3 the deposit by Calpine of a special voting share (the "Voting Share") with the Trustee which will effectively provide holders of Exchangeable Shares with voting rights equivalent to those attached to Calpine Common Stock;

3.29 the terms of the Arrangement, the terms of the Exchangeable Shares and the exercise of certain rights provided for in connection with the Arrangement may result in the following trades or distributions, or the equivalent, under the Legislation (collectively, the "Trades"):

3.29.1 the issuance by Calpine Canada of Exchangeable Shares to the Encal Shareholders in consideration for the Encal Shares;

3.29.2 the transfer by the Encal Shareholders of the Encal Shares in consideration for Exchangeable Shares;

3.29.3 the grant by Calpine of the Exchange Rights to the Trustee;

3.29.4 the issuance by Calpine of Calpine Common Stock to holders of Exchangeable Shares upon the exercise of the Exchange Rights;

3.29.5 the issuance by Calpine of the Voting Share to the Trustee;

3.29.6 the grant by holders of Exchangeable Shares to Calpine of certain rights to require such holders to sell the Exchangeable Shares for Calpine Common Stock (the "Call Rights");

3.29.7 the grant by Calpine to the holders of Exchangeable Shares of certain rights to require Calpine to purchase the Exchangeable Shares for Calpine Common Stock (the "Put Rights");

3.29.8 the issuance by Calpine of Calpine Common Stock to holders of Exchangeable Shares upon the exercise of the Call Rights or Put Rights;

3.29.9 the issuance by Calpine and delivery by Calpine Canada of Calpine Common Stock to holders of Exchangeable Shares upon the exchange, redemption, or retraction of the Exchangeable Shares under their terms;

3.29.10 the transfer of Exchangeable Shares by the holders thereof to Calpine or Calpine Canada in connection with the exercise of the Exchange Rights, the Call Rights or the Put Rights or upon the exchange, redemption or retraction of the Exchangeable Shares under their terms;

3.29.11 the exchange of all outstanding Encal Options for Calpine Options; and

3.29.12 the issuance of Calpine Common Stock in exercise of the Calpine Options granted on exchange of the Encal Options;

3.30 Calpine Canada has applied to have the Exchangeable Shares listed on the TSE following the Arrangement;

3.31 upon completion of the Arrangement, Calpine will be deemed to be a reporting issuer pursuant to the applicable Legislation in Quebec;

3.32 upon the completion of the Arrangement, Calpine Canada will be deemed to be a reporting issuer or the equivalent pursuant to the applicable Legislation in Alberta, British Columbia, Saskatchewan, Ontario, Quebec and Nova Scotia. Calpine Canada will not, and does not intend to become, a reporting issuer or the equivalent in any other Jurisdiction;

3.33 the Circular discloses that Calpine and Calpine Canada have applied for relief from the Registration Requirement and Prospectus Requirement, the Continuous Disclosure Requirements and Insider Reporting Requirements for insiders of Calpine Canada. The Circular also identifies the limitations imposed on any resale of Exchangeable Shares or Calpine Common Stock and the continuous disclosure that will be provided to holders of Exchangeable Shares if the requested relief is granted;

3.34 Calpine will concurrently send to holders of Calpine Common Stock resident in the Jurisdictions all disclosure material it sends to holders of Calpine Common Stock resident in the United States pursuant to the 1934 Act;

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:

6.1 the Registration Requirement and Prospectus Requirement shall not apply to the Trades;

6.2 the first trade of Exchangeable Shares acquired under the Arrangement shall be deemed to be a distribution or a primary distribution to the public under the Legislation unless:

6.2.1 the trade is exempt from or not subject to the Prospectus Requirement under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Jurisdiction");

6.2.2 Calpine Canada is a reporting issuer or the equivalent in the Applicable Jurisdiction except Prince Edward Island and New Brunswick or, if Calpine Canada is not a reporting issuer or the equivalent in the Applicable Jurisdiction, the conditions described in paragraph 6.4 have been satisfied in the Applicable Jurisdiction;

6.2.3 if the seller is in a special relationship with Calpine Canada or Calpine, as defined in the Legislation of the Applicable Jurisdiction, the seller has reasonable grounds to believe that Calpine Canada and Calpine are not in default of any requirement of the Legislation of the Applicable Jurisdiction;

6.2.4 no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares and no extraordinary commission or consideration is paid in respect of the trade; or

6.2.5 except in Quebec, the trade is not a trade from the holdings of any person, company or combination of persons or companies holding a sufficient number of securities of Calpine, or a combination of securities of Calpine Canada and Calpine, to affect materially the control of Calpine or holds, in the absence of evidence showing that the holding of those securities does not affect materially the control of Calpine, more than 20 percent of the outstanding voting securities of Calpine (and for these purposes the Exchangeable Shares shall be considered to be voting securities of Calpine);

6.3 the first trade of Calpine Common Stock acquired upon the exercise of the Exchange Rights, the Call Rights, the Put Rights or upon the exchange, redemption or retraction of the Exchangeable Shares under their terms or acquired pursuant to the exercise of Calpine Options shall be deemed to be a distribution or a primary distribution to the public under the Legislation unless:

6.3.1 the trade is exempt from or not subject to the Prospectus Requirement under the Legislation of the Applicable Jurisdiction; or

6.3.2 the trade is made through the facilities of NYSE or a market or exchange outside of Canada on which the Calpine Common Stock may be quoted or listed for trading at the time that the trade occurs, in accordance with the rules and regulations applicable to that market or exchange;

6.4 the Continuous Disclosure Requirements shall not apply to Calpine or Calpine Canada for as long as:

6.4.1 Calpine sends to all holders of Exchangeable Shares resident in the

Jurisdictions all disclosure material furnished to holders of Calpine Common Stock resident in the United States pursuant to the 1934 Act;

6.4.2 Calpine files with each of the Decision Makers copies of all documents filed by Calpine with the United States Securities and Exchange Commission under the 1934 Act;

6.4.3 Calpine complies with the requirements of NYSE, or such other market or exchange on which the Calpine Common Stock may be quoted or listed, in respect of making public disclosure of material information on a timely basis and forthwith issues in the Jurisdictions and files with the Decision Makers any press release that discloses a material change in Calpine's affairs;

6.4.4 Calpine Canada has provided each recipient of Exchangeable Shares under the Arrangement pursuant to this Decision resident in the Jurisdictions with a statement indicating that, as a consequence of this Decision, Calpine Canada and its insiders will be exempt from certain disclosure requirements applicable to reporting issuers or the equivalent and insiders, and specifying those requirements Calpine Canada and its insiders have been exempted from, and identifying the disclosure that will be made in substitution therefor pursuant to this paragraph 6.4;

6.4.5 Calpine Canada is in compliance with the requirements of the Legislation to issue a press release and file a report with the Decision Makers upon the occurrence of a material change in respect of the affairs of Calpine Canada that is not also a material change in the affairs of Calpine;

6.4.6 Calpine includes in all mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise insert explaining the reason for the mailed material being solely in relation to Calpine and not to Calpine Canada, such insert to include a reference to the economic equivalency between the Exchangeable Shares and Calpine Common Stock and the right to direct voting at Calpine's Stockholders' meetings; and

6.4.7 Calpine remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of Calpine Canada;

6.5 the Insider Reporting Requirements shall not apply to any insider of Calpine Canada in respect of securities of Calpine Canada provided such insider:

6.5.1 does not receive, in the ordinary course, information as to material facts or material changes concerning Calpine before the material facts or material changes are generally disclosed;

6.5.2 is not a director or senior officer of a major subsidiary of Calpine as defined in National Instrument 55-101 ("Major Subsidiary"); and

6.5.3 is not also an insider of Calpine, excluding any director or senior officer of a subsidiary of Calpine that is not a Major Subsidiary.

April 18, 2001.

"Stephen P. Sibold" "Glenda A. Campbell"

## 2.1.8 BMO Nesbitt Burns Inc. - MRRS Decision

**Headnote**

Exemption granted to a national investment dealer from the "equity interest" disclosure and consent provisions of National Instrument 81-105 Mutual Fund Sales Practices in connection with a small equity interest to be held by two registered representatives of the dealer in a member of the organization of a mutual fund, on the condition that the applicable registered representatives comply with the disclosure and consent provisions, and, in certain circumstances, other registered representatives also comply.

**Rule Cited**

National Instrument 81-105 Mutual Fund Sales Practices.

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

**AND**

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

**AND**

**IN THE MATTER OF**
**NATIONAL INSTRUMENT NI 81-105 MUTUAL FUND SALES PRACTICES**
**(the "NATIONAL INSTRUMENT")**

**AND**

**IN THE MATTER OF**
**BMO NESBITT BURNS INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and the Northwest Territories, Yukon Territory and Nunavut Territory (the "Jurisdictions") has received an application (the "Application") from BMO Nesbitt Burns Inc. ("Nesbitt") for a decision pursuant to Section 9.1 of the National Instrument that Section 8.2(3) and 8.2(4) of the National Instrument shall not apply with respect to the acquisition and holding of an equity interest in Clarington Funds Inc. ("Clarington") by two registered representatives of Nesbitt in Alberta;

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

1. Nesbitt is registered as an investment dealer in Alberta, and is registered or may become registered in the future, as an investment dealer in all other provinces and territories of Canada. Nesbitt has, or may in the near future have, representatives at offices located in all such jurisdictions.

2. Two registered representatives of Nesbitt resident in Alberta and associated with a branch of Nesbitt in Calgary (the "Alberta Representatives") wish to acquire, in the aggregate, less than 1.00% of the outstanding shares of Clarington (the "Clarington Equity Interest"). The Alberta Representatives are not officers, directors or branch managers of Nesbitt and do not otherwise have a position of influence over other registered representatives of Nesbitt.

3. Clarington is a member of the organization (as that term is defined in the National Instrument) of the Clarington group of mutual funds (the "Clarington Funds"). The Clarington Funds are sold in all provinces and territories of Canada under a simplified prospectus.

4. No registered representative of Nesbitt holds units of Clarington or has an equity interest (as defined in the National Instrument) of any other member of the organization of the Clarington Funds. Upon completion of the proposed transactions the Alberta Representatives will hold shares of Clarington, but will not have an equity interest in any other member of the organization of the Clarington Funds.

5. Subsections 8.2(1) and (2) of the National Instrument require the Clarington Funds to disclose the Clarington Equity Interest held by the Alberta Representatives in its next renewal simplified prospectus. The current simplified prospectus contains disclosure which complies with the requirements of the National Instrument and Clarington will ensure that the disclosure also appears in any future simplified prospectuses for the Clarington Funds, subject to any changes as may be required by any of the securities regulatory authorities as part of the prospectus review process.

6. Subsection 8.2(3) of the National Instrument would require each registered representative of Nesbitt in all applicable jurisdictions of Canada to give those clients who wish to acquire securities of the Clarington Funds a disclosure statement outlining each Alberta Representative's Clarington Equity Interest. Subsection 8.2(4) of the National Instrument would require each registered representative of

Nesbitt to obtain a consent from any client wishing to acquire securities of the Clarington Funds.

7. Nesbitt seeks an exemption from subsections 8.2(3) and (4) so that only the Alberta Representatives and Nesbitt itself will be required to give the required disclosure statement to clients of the Alberta Representatives who wish to acquire securities of the Clarington Funds. Similarly, only the Alberta Representatives and Nesbitt will obtain an applicable client's consent before finalizing any acquisition by the client of securities of the Clarington Funds.

8. Having regard to the size of the Clarington Equity Interest, each Alberta Representative's employment status with Nesbitt and the large number of representatives of Nesbitt located across Canada, Nesbitt submits that compliance with subsections 8.2(3) and (4) would be unduly onerous and is not necessary in order to meet the policy underpinning section 8.2.

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

**THE DECISION** of the Decision Makers pursuant to section 9.1 of the National Instrument is that Nesbitt and its registered representatives are exempt from Sections 8.2(3) and 8.2(4) of the National Instrument with respect to the Clarington Equity Interests, provided that:

(i) each Alberta Representative complies with the requirements of subsection 8.2(3) and subsection 8.2(4) of the National Instrument;

(ii) Nesbitt complies with the requirements of subsection 8.2(3) and subsection 8.2(4) of the National Instrument in connection with clients of Nesbitt who deal with each Alberta Representative; and

(iii) in the event an Alberta Representative assumes a position of authority or supervision over other registered representatives of Nesbitt, those other registered representatives and Nesbitt comply with subsection 8.2(3) and subsection 8.2(4) of the National Instrument.

April 26, 2001.

"Paul M. Moore" "Stephen N. Adams"

## 2.1.9 Benson Petroleum Ltd. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - decision deeming that a company is no longer 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 AND ONTARIO**

**AND**

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

**AND**

**IN THE MATTER OF**
**BENSON PETROLEUM LTD.**

**MRRS DECISION DOCUMENT**

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

3.1 Benson was formed under the laws of Alberta, 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;

3.2 Benson's head office is located in Calgary, Alberta;

3.3 the authorized capital of Benson consists of an unlimited number of common shares of which 25,207,104 common shares (the "Shares") are issued and outstanding;

3.4 Benson became a reporting issuer in Alberta on March 27, 1987 by virtue of having obtained a receipt for a prospectus;

3.5 by virtue of an offer to purchase made by 896543 Alberta Ltd., a wholly-owned subsidiary of Southward Energy Ltd. (collectively, "Southward") on January 16, 2001, as amended, supplemented and extended and a compulsory acquisition transaction to purchase all of the outstanding Shares of Benson not already owned by Southward, Southward is now the sole shareholder of Benson;

3.6 the Shares were delisted from The Toronto Stock Exchange on March 21, 2001

3.7 no securities of Benson are listed or quoted on any exchange or market;

3.8 Benson has no other securities, including debt securities, outstanding; and

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

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

April 26, 2001.

"Patricia M. Johnston"

## 2.1.10 Strategicnova Funds Management Inc. et al. - MRRS Decision

**Headnote**

Investment by Top Funds in securities of Underlying Funds under common management for specified purpose exempted from the reporting requirements and self-dealing prohibitions of clauses 111(2)(b), 111(3) and clauses 117(1)(a) and (d).

Percentage of one Top Fund's assets invested in Underlying Funds limited to the foreign property limit under the *Income Tax Act* (Canada) for registered plans.

**Statutes Cited**

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

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

**AND**

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

**IN THE MATTER OF**
**STRATEGICNOVA FUNDS MANAGEMENT INC.**
**STRATEGICNOVA CANADIAN TECHNOLOGY FUND**
**STRATEGICNOVA WORLDTECH FUND**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (collectively, the "Decision Makers") in each of the Provinces of Ontario, British Columbia, Alberta, Saskatchewan, Nova Scotia and Newfoundland (collectively, the "Jurisdictions") has received an application from StrategicNova Funds Management Inc. ("StrategicNova" or the "Applicant") for itself and on behalf of StrategicNova Canadian Technology Fund and StrategicNova WorldTech Fund, (each a "Top Fund" and, collectively, the "Top Funds") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the following requirements and restrictions in the Legislation (the "Requirements") shall not apply to the purchase and sale by a Top Fund of units of StrategicNova USTech Fund, StrategicNova AsiaTech Fund, StrategicNova EuroTech Fund or other StrategicNova Funds, now existing or hereafter forming part of such family of mutual funds, (individually, a "Bottom Fund" and, collectively, the "Bottom Funds"):

1. the Requirement that a mutual fund shall not knowingly make 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;

2. the Requirement that a mutual fund, its management company and its distribution company shall not knowingly hold 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

3. the Requirement that a management company file a report relating to a purchase and sale of securities between the mutual fund and any related person or company and 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** the Applicant has represented to the Decision Makers that:

1. The Applicant is a corporation established under the laws of the Province of Ontario and is the manager and trustee of the family of mutual funds trusts and mutual fund corporations together known as the "StrategicNova Funds". The head office of the Applicant is in Toronto, Ontario.

2. The Top Funds and the Bottom Funds are or will be open-end mutual fund trusts or corporations, belonging to the family of the StrategicNova Funds, established under the laws of the Province of Ontario. Each of the them is a reporting issuer in all provinces and territories of Canada. Units of the Top Funds and the Bottom Funds are qualified under a simplified prospectus and annual information form that have been filed with and accepted by the Decision Makers.

3. Each of the Top Funds and Bottom Funds is not and will not be in default of any requirements of the Legislation.

4. There is presently no separate distribution company and the Applicant, as manager of the StrategicNova Funds, is responsible for arranging for the distribution of units of such mutual funds.

5. To achieve its investment objective, each Top Fund will invest fixed percentages (the "Fixed Percentages") of its net assets (excluding cash and cash equivalents) in the securities of specified Bottom Funds, subject to a permitted deviation, due to market fluctuations, of not more than 2.5% above or below the Fixed Percentages (the "Permitted Ranges").

6. To achieve its investment objective, the StrategicNova Canadian Technology Fund will invest in the Bottom Funds an aggregate amount which is 2.5% below the amount prescribed from time to time as the maximum permitted amount capable of being made as a foreign property investment under the *Income Tax Act* (Canada) (the "ITA") for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans and similar plans, such amount not to exceed 30% of its net assets, subject to a variation to account for market fluctuations as described in representation 5. To achieve its investment objective, the StrategicNova WorldTech Fund will invest in the Bottom Funds an aggregate amount not to exceed 90% of its net assets, subject to a variation to account for market fluctuations as described in representation 5. The aggregate amount invested by each Top Fund in Bottom Funds is herein referred to as the "Permitted Aggregate Investment".

7. The simplified prospectus of the Top Funds will disclose the investment objectives, investment strategies, risks and restrictions of the Top Funds and the Bottom Funds, the Fixed Percentages, the Permitted Ranges and the Permitted Aggregate Investment.

8. The portfolios of the Top Funds will be reviewed on an ongoing basis and StrategicNova, in consultation with the portfolio manager, may change the Fixed Percentages of a Bottom Fund, remove a Bottom Fund or add a new Bottom Fund that is a StrategicNova Fund, whether now existing or hereafter forming part of such family of mutual funds.

9. It is presently anticipated that Brownstone Securities Inc., an affiliate of the Applicant and a registered securities dealer in Ontario, will act as dealer for the purchase by a Top Fund of units of a Bottom Fund. The arrangements will be such that the Top Fund is not charged any initial sales charge in connection with its purchase of units of a Bottom Fund, and the purchase of such units will be on a basis that does not give rise to any deferred sales charges payable by a Top Fund.

10. 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 Funds in the Bottom Funds have been 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 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 security holder. As a result, in the absence of this Decision the Top Funds would be required to divest themselves of any such investments.

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

13. The investment by the Top Funds in securities of the Bottom Funds 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 WHEREAS** pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Requirements shall not apply so as to prevent a Top Fund from making or holding an investment in securities of the Bottom Funds or require StrategicNova to file a report relating to the purchase or sale of such securities.

**PROVIDED IN EACH CASE THAT:**

1. the Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker which deals with the 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 Bottom Funds, the following conditions are satisfied:

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

   (b) the investment by the Top Fund in the Bottom 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 Bottom Funds, the names of the Bottom Funds, the Fixed Percentages, the Permitted Ranges within which such Fixed Percentages may vary, and the Permitted Aggregate Investment;

   (d) the investment objective of the StrategicNova WorldTech Fund discloses that this fund invests in securities of other mutual funds;

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

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

   (g) the Top Fund's holding of securities of the Bottom Funds does not deviate from the Permitted Ranges;

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

   (i) subject to condition (j), if an investment by the Top Fund in any of the Bottom 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;

   (j) if, due to the foreign property investment limitations under the ITA, the Top Fund was precluded from purchasing additional securities of the Bottom Funds in order to comply with condition (i), the Top Fund complied with condition (i) as soon as it was possible to do so in compliance with the foreign property investment limitations under the ITA;

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

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

   (m) no sales charges are payable by the Top Fund in relation to its purchase of securities of the Bottom Funds;

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

   (o) no fees or charges of any sort are paid by the Top Fund and the Bottom 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 Bottom Funds;

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

   (q) any notice provided to securityholders of a Bottom Fund as required by applicable laws or the constating documents of that Bottom Fund has been delivered by the Top Fund to its securityholders;

   (r) all of the disclosure and notice material prepared in connection with a meeting of securitytholders of the Bottom 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 Bottom Fund in accordance with their direction, and the representative of the Top Fund has not voted its holdings in the Bottom

Funds except to the extent the securityholders of the Top Fund have directed;

(s) 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 appropriate summary disclosure in respect of the Top Fund's holdings of securities of the Bottom Funds in the financial statements of the Top Fund; and

(t) to the extent that the Top Fund and the Bottom Funds do not use a combined simplified prospectus and annual information form containing disclosure about the Top Fund and the Bottom Funds, copies of the simplified prospectus and annual information form of the Bottom Funds have been provided upon request to

securityholders of the Top Fund and the right to receive these documents is disclosed in the prospectus of the Top Fund.

May 1, 2001.

"Paul Moore" "R. Stephen Paddon"

## 2.1.11 CMP 2001 Resource Limited Partnership - MRRS Decision

**Headnote**

Issuer exempted from interim financial reporting requirements for first and third quarter of each financial year. Exemption terminates upon the occurrence of a material change in the business affairs of the Issuer unless the Decision Makers are satisfied that the exemption should continue.

**Applicable Ontario Statutes**

Securities Act, R.S.O. 1990, c.S.5, as amended, ss. 6(3), s.77(1), 79, 80(b)(iii).

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

**AND**

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

**AND**

**IN THE MATTER OF**
**CMP 2001 RESOURCE LIMITED PARTNERSHIP**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of British Columbia, Alberta, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from CMP 2001 Resource Limited Partnership (the "Partnership") for a decision pursuant to the securities legislation (the "Legislation") of the Jurisdictions exempting the Partnership from the requirements of the Legislation to file with the Decision Makers and send to its securityholders (the "Limited Partners") interim financial statements for the first and third quarters of each financial year of the Partnership;

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

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

1. the Partnership is a limited partnership formed pursuant to the *Limited Partnerships Act* (Ontario) by declaration of partnership filed on February 26, 2001;

2. the head office of the Partnership is in Ontario;

3. on March 13, 2001 the Decision Makers issued a receipt for a preliminary prospectus of the Partnership (the "Preliminary Prospectus") dated March 12, 2001

with respect to the offering of units of the Partnership (collectively "Partnership Units");

4. the Partnership filed a final prospectus (the "Prospectus") on April 12, 2001 with respect to the offering of Partnership Units;

5. the Partnership was formed for the purpose of investing the proceeds from the issue and sale of the Partnership Units primarily in flow-through shares of corporations that represent to the Partnership that they are principal business corporations as defined in the *Income Tax Act* (Canada) and that they intend to incur Canadian Exploration Expense;

6. the Partnership Units have not been and will not be listed for trading on a stock exchange;

7. on or about January 16, 2003, or as soon as substantially all statutory resale restrictions on the Partnership's investments have expired, the Partnership will be liquidated and the Limited Partners will receive their *pro rata* share of the net assets of the Partnership, it being the current intention of the general partner of the Partnership to propose prior to such dissolution that the Partnership enter into an agreement with Dynamic Global Fund Corporation (the "Mutual Fund"), an open end mutual fund, whereby the assets of the Partnership would be exchanged for shares of the Mutual Fund and upon such dissolution, Limited Partners would then receive their *pro rata* share of the shares of the Mutual Fund;

8. unless a material change takes place in the business and affairs of the Partnership, the Limited Partners will obtain adequate financial information concerning the Partnership from the semi-annual financial statements and the annual report containing audited financial statements of the Partnership together with the auditors' report thereon distributed to Limited Partners;

9. given the limited range of business activities to be conducted by the Partnership and the nature of the investment of the Limited Partners in the Partnership, the provision by the Partnership of interim financial statements in respect of the first and third quarters of each financial year of the Partnership will not be of significant benefit to the Limited Partners and may impose a material financial burden on the Partnership;

10. each of the purchasers of Partnership Units will consent to the exemption requested herein by executing the subscription and power of attorney form in respect of their purchase of Partnership Units; and

11. it is disclosed in the Preliminary Prospectus and will be disclosed in the Prospectus that Dynamic CMP Funds III Management Inc., as the general partner of the Partnership, will apply for the relief granted herein;

**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:

1. the Partnership is exempted from the requirement to file with the Decision Makers interim financial statements for the first and third quarters of each financial year of the Partnership; and

2. the Partnership is exempted from the requirement to send to the Limited Partners interim financial statements for the first and third quarters of each financial year of the Partnership;

3. provided that these exemptions shall terminate upon the occurrence of a material change in the affairs of the Partnership unless the Partnership satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing.

April 27, 2001.

"Paul M. Moore" "Robert W. Korthals"

## 2.1.12 BMO Nesbitt Burns Inc. & Investors Group Inc. - MRRS Decision

**Headnote**

Section 233 of the Regulation - Certain registrants Underwriting a proposed shelf distribution of unsecured debentures and preferred shares by an issuer, exempt from clause 224(1)(b) of the Regulation where the issuer is a connected issuer, but not a related issuer, of such registrants.

**Applicable Regulations**

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

**Rules Cited**

Proposed Multi-Jurisdictional Instrument 33-105 Underwriting Conflicts (1998), 21 O.S.C.B. 781, as amended, (1999), 22 O.S.C.B. 149.

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

**AND**

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

**AND**

**IN THE MATTER OF**
**BMO NESBITT BURNS INC.**
**AND INVESTORS GROUP INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "**Decision Maker**") in each of Alberta, British Columbia, Newfoundland, Ontario and Québec (the "**Jurisdictions**") has received an application from BMO Nesbitt Burns Inc. ("**Nesbitt Burns**" or the "**Filer**") for a decision under 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 a prospectus, where the issuer is a connected 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 or to certain other Underwriters (as defined below) in connection with the establishment of a short form base shelf prospectus (the "**Prospectus**") providing for the distributions, from time to time thereunder (the "**Offerings**") of unsecured debentures and preferred shares (the "**Offered Securities**") of Investors Group Inc. ("**Issuer**");

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

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

1. The Issuer is incorporated under the laws of Canada, and is a reporting issuer in each Jurisdiction and is not in default of any requirements of the Legislation.

2. The business of the Issuer is providing financial services and products to individuals and corporations throughout Canada. The Issuer and its operating subsidiaries provide a wide range of mutual funds, insurance, guaranteed investment certificates, mortgages, securities services for clients, loans for registered investments as well as a number of other services.

3. The common shares of the Issuer are listed and posted for trading on The Toronto Stock Exchange.

4. The head office of Nesbitt Burns, the lead underwriter for each of the Offerings, is in Ontario.

5. The Issuer has filed a preliminary base shelf prospectus dated April 20, 2001 in connection with the Offerings. The Issuer is proposing to offer the Offered Securities from time to time in Canada by way of the Prospectus and supplements thereto (the "**Supplements**") in accordance with applicable securities laws, and may also offer the Offered Securities in the United States from time to time under available exemptions from the prospectus requirements of that jurisdiction.

6. It is anticipated that the Offered Securities will be offered by an underwriting syndicate comprised of Nesbitt Burns and a syndicate of underwriters which has yet to be finalized (each an "**Underwriter**", and collectively the "**Underwriters**").

7. The Underwriters and the Issuer will enter into one or more underwriting agreements in connection with the Offerings, in each case to conduct the Offerings either on a firm commitment basis or on an agency or best efforts basis.

8. Nesbitt Burns is a wholly-owned subsidiary of Bank of Montreal ("**BMO**"). The Issuer has accepted a commitment letter for a credit facility of up to $2.443 billion from BMO (the "**Facility**"). It is expected that the Facility will be funded by a syndicate of Canadian banks (each a "**Bank**", and collectively, the "**Bank Syndicate**"). The Facility will be used by the Issuer to fund a portion of the cash consideration payable in connection with its offer to acquire the common shares of Mackenzie Financial Corporation. It is intended that the proceeds of the Offerings will be used in part to repay a portion of the amount drawn under the Facility.

9. By virtue of the Facility, the Issuer may, in connection with the Offerings, be considered a connected issuer (or the equivalent) of Nesbitt Burns. As well, certain of the Underwriters, if owned or otherwise affiliated with a Bank which is a member of the Bank Syndicate (the "**Bank-Owned Underwriters**") may be in a relationship with that Bank which could result in the Issuer being considered a "connected issuer" in relation to such Bank-Owned Underwriter.

10. As part of the Offerings, the Underwriters will be underwriting and distributing the Offered Securities from time to time under the Prospectus and the Supplements. While the exact percentage of the Offered Securities to be underwritten by each Underwriter cannot be determined at this time, it expected that the percentages will be such that the Independent Underwriting Requirement would act to bar Nesbitt Burns and any other Bank-Owned Underwriter from participating in the Offerings.

11. The nature of the relationship among the Issuer, Nesbitt Burns and any Bank-Owned Underwriter will be described in each Supplement to the Prospectus in connection with the Offerings. The Supplements will contain the information specified in Appendix "C" of the draft Multi-Jurisdictional Instrument 33-105 (Underwriting Conflicts) (the "**Proposed Instrument**").

12. BMO and the Banks did not and will not participate in the decision to make the Offerings or in the determination of their terms.

13. The Underwriters will receive no benefit pursuant to the Offerings, other than payment of their underwriting fees in connection the Offerings.

14. The Issuer is not and will not be at the time of any Offering a related issuer (or the equivalent) of Nesbitt Burns or of any of the other Underwriters.

15. The Issuer is not and will not be a "specified party" at the time of each Offering as defined in the Proposed Instrument.

**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 Independent Underwriter Requirement shall not apply to the Filer or any Bank-Owned Underwriter in connection with an Offering provided the Issuer is not and will not be a related issuer, as defined in the Proposed Instrument, to the Filer or any Bank-Owned Underwriter at the time of such Offering and the Issuer is not and will not be a specified party, as defined in the Proposed Instrument, at the time of such Offering.

April 30, 2001.

"Paul M. Moore" "Robert W. Korthals"

## 2.2 Orders

### 2.2.1 Canadian Imperial Venture Corp. - ss. 83.1(1)

**Headnote**

Subsection 83.1(1) - issuer deemed to be reporting issuer in Ontario - issuer has been a reporting issuer in each of Alberta and British Columbia for more than 12 months - issuer listed and posted for trading on CDNX - continuous disclosure requirements of Alberta and British Columbia substantially similar to those of Ontario.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., ss83.1(1).

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

**AND**

**IN THE MATTER OF**
**CANADIAN IMPERIAL VENTURE CORP.**

**ORDER**
**(Subsection 83.1(1))**

**UPON** the application (the "Application") of Canadian Imperial Venture Corp. (the "Issuer") for an order pursuant to subsection 83.1(1) of the Act deeming the Issuer 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 UPON** the Issuer representing to the Commission that:

1. The issuer is a corporation incorporated under the laws of British Columbia on September 4, 1986.

2. The Issuer's head office is located in St. John's, Newfoundland.

3. The Issuer is authorized to issue 200,000,000 common shares without par value.

4. As at April 2, 2001, 64,643,614 common shares were issued and outstanding, and 18,964,213 options and warrants to purchase common shares of the Issuer were outstanding.

5. The Issuer has been a reporting issuer under the *Securities Act* (British Columbia) (the "B.C. Act") since July 2, 1987 and became a reporting issuer under the *Securities Act* (Alberta) (the "Alberta Act") on November 26, 1999 as a result of the merger of the Vancouver Stock Exchange and the Alberta Stock Exchange to form the Canadian Venture Exchange (the "CDNX").

6. The Issuer is up to date in the filing of its financial statements and other continuous disclosure documents.

7. The Issuer is not a reporting issuer in Ontario or any jurisdiction other than British Columbia and Alberta.

8. The common shares of the Issuer are listed on the CDNX and the Issuer is in compliance with all requirements of the CDNX.

9. The continuous disclosure requirements of the B.C. Act and the Alberta Act are substantially the same as the requirements under the Act.

10. The continuous disclosure materials filed by the Issuer under the B.C. Act and the Alberta Act are available on the System for Electronic Document Analysis and Retrieval.

11. Neither the Issuer nor any of its officers, directors nor, to the knowledge of the Issuer, its officers and directors, any controlling shareholders has (i) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority, (ii) entered into a settlement agreement with a Canadian securities regulatory authority or (iii) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

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

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

April 24, 2001.

"Howard I. Wetston" "Paul M. Moore"

### 2.2.2 Celestica Inc. - paragraph 80(b)(iii)

**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.

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).

**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.

National Instrument 44-102 Shelf Distributions (2000) 23 OSCB (Supp) 985.

**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 44-102 SHELF DISTRIBUTIONS (the "Shelf 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**
**CELESTICA INC.**

**ORDER AND DECISION**
**(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** Celestica Inc. (the "**Applicant**") filed a preliminary base shelf prospectus dated April 19, 2001 (the "**Preliminary Prospectus**") in accordance with the Short Form Rule and the Shelf Rule relating to the qualification of up to U.S. $2,156,773,792 of subordinate voting shares, preference shares, debt securities and warrants (the "**Offering**") and received a receipt therefor dated April 20, 2001;

**AND WHEREAS** the Applicant intends to file a (final) base shelf prospectus (the "**Prospectus**") in accordance with the Short Form Rule and the Shelf 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 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.

April 27, 2001.

"Margo Paul"

### 2.2.3 Paul Gordon - ss. 127(1)

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

**AND**

**IN THE MATTER OF**
**PAUL GORDON**

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

**WHEREAS** on April 20th, 2001, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsection 127(1) of the *Securities Act* (the "Act") in respect to Paul Gordon;

**AND WHEREAS** Paul Gordon entered into a settlement agreement dated April 25th, 2001 (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the statement of allegations of Staff of the Commission, and upon hearing submissions from Paul Gordon and from Staff of the Commission;

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

**IT IS ORDERED THAT:**

(1) the Settlement Agreement dated April 25th , 2001, attached to this Order, is hereby approved;

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

(3) pursuant to clause 1 of subsection 127(1) of the Act, the registration granted to Gordon under Ontario securities law will be suspended for a period of 21 days from the date of the Commission's Order.

April 25, 2001.

"Paul Moore" "Robert W. Davis"

"Theresa McLeod"

### 2.2.4 Maxxum Financial Services Co. et al. - ss. 59(1)

**Headnote**

Exemption from the fees otherwise due under subsection 14(1) of Schedule 1 of the Regulation to the *Securities Act* on a distribution of units made by an "underlying" fund directly (i) to a "clone" fund, (ii) to the "clone" fund's counterparties for hedging purposes and (iii) on the reinvestment of distributions on such units.

**Regulations Cited**

Regulation made under the Securities Act, R.R.O.1990, Reg. 1015, as am., Schedule 1, ss. 14(1), 14(4) and 59(1).

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

**AND**

**IN THE MATTER OF**
**MAXXUM FINANCIAL SERVICES CO.AND**
**JANUS AMERICAN EQUITY FUND**
**JANUS GLOBAL EQUITY FUND**
**JANUS AMERICAN VALUE FUND**

**ORDER**
**(Subsection 59(1) of Schedule I of the Regulation made under the above statute (the "Regulation"))**

**UPON** the application (the "Application") of Maxxum Financial Services Co. ("Maxxum Financial"), which is, or will become, the manager of the Janus RSP American Equity Fund, Janus RSP Global Equity Fund, Janus RSP American Value Fund and other similar funds established by Maxxum Financial from time to time(collectively, the "Top Funds") and the Janus American Equity Fund, Janus Global Equity Fund, Janus American Value Fund and other similar funds established by Maxxum Financial from time to time (collectively, the "Underlying Funds") to the Ontario Securities Commission (the "Commission") for an order pursuant to subsection 59(1) of Schedule I of the Regulation exempting the Underlying Funds from paying duplicate filing fees on an annual basis in respect of the distribution of units of the Underlying Funds to the Top Funds, the distribution of units of the Underlying Funds to Counterparties (defined herein) with whom the Top Funds have entered into forward contracts, and on the reinvestment of distributions on such units;

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

**AND UPON** Maxxum Financial having represented to the Commission that:

1. Maxxum Financial is a general partnership formed under the laws of Ontario and is, or will be, the manager of the Top Funds and Underlying Funds (together the "Funds").

2. The Funds are, or will be, established as open-ended mutual fund trusts under the laws of Ontario.

3. The units of the Funds are, or will be, qualified for distribution pursuant to simplified prospectuses and annual information forms filed across Canada.

4. The Top Funds' investment objective is to provide long-term investment capital growth by investing in money-market instruments, as well as forward contracts that are linked to the returns earned by the Underlying Funds, which are foreign property under the *Income Tax Act* (Canada), for which Maxxum Financial is also the manager.

5. Each of the Top Funds and Underlying Funds is or will be a reporting issuer under the securities laws of each of the provinces and territories of Canada. None of the existing Top Funds or Underlying Funds is in default of any requirements of the securities legislation, regulations or rules applicable in each of the provinces and territories of Canada.

6. A Counterparty may hedge its obligations under a forward contract by investing in units (the "Hedge Units") of the applicable Underlying Fund.

7. As part of its investment strategy, each Top Fund may purchase units of the Underlying Funds (the "Fund on Fund Investments").

8. Applicable securities regulatory approvals for the Fund on Fund Investments and the Top Funds' investment strategies have been obtained, where necessary.

9. Annually, each Top Fund will be required to pay filing fees to the Commission in respect of the distribution of its units in Ontario pursuant to section 14 of Schedule I of the Regulation and will similarly be required to pay fees based on the distribution of its units in other relevant Canadian jurisdictions pursuant to the applicable securities legislation in each of those jurisdictions.

10. Annually, each Underlying Fund is required to pay filing fees to the Commission in respect of the distribution of its units in Ontario, including units issued to the Top Funds, pursuant to section 14 of Schedule I of the Regulation and is similarly required to pay fees based on the distribution of its units in other relevant Canadian jurisdictions pursuant to the applicable securities legislation in each of those jurisdictions.

11. A duplication of filing fees pursuant to Section 14 of Schedule I of the Regulation may result when: (a) assets of a Top Fund are invested in an Underlying Fund; (b) Hedge Units are distributed; and (c) a distribution is paid by an Underlying Fund on units of the Underlying Fund held by a Top Fund or Hedge Units which are reinvested in additional units of the Underlying Fund ("Reinvested Units").

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

**IT IS ORDERED** by the Commission pursuant to subsection 59(1) of Schedule I of the Regulation that the Underlying Funds are exempt from the payment of duplicate filing fees on an annual basis pursuant to section 14 of Schedule I of the Regulation in respect of the distribution of units of the Underlying Funds to the Top Funds, the distribution of Hedge Units to Counterparties and the distribution of Reinvested Units, provided that each Underlying Fund shall include in its notice filed under subsection 14(4) of Schedule I of the Regulation a statement of the aggregate gross proceeds realized in Ontario as a result of the issuance by the Underlying Funds of: (1) units distributed to the Top Funds; (2) Hedge Units; and (3) Reinvested Units; together with a calculation of the fees that would have been payable in the absence of this order.

April 27, 2001.

"Paul Moore" "Robert Korthals"

## 2.2.5 Barrick Gold Corporation & Barrick Gold Finance Inc.- s. 147 & 80(b)(iii)

**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**
**BARRICK GOLD CORPORATION AND BARRICK GOLD FINANCE 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** Barrick Gold Corporation and Barrick Gold Finance Inc.(together, the "**Applicant**") filed a preliminary prospectus dated April 20, 2001 (the "**Preliminary Prospectus**") in accordance with the Short Form Rule relating to the qualification of Debt Securities (the "**Offering**") and received a receipt therefor dated April 20, 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 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.

April 27, 2001.

"Iva Vranic"

## 2.2.6 AT&T Canada Inc. - s. 147 & 80(b)(iii)

**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**
**AT&T CANADA 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** AT&T Canada Inc. (together, the "**Applicant**") filed a preliminary prospectus dated April 18, 2001 (the "**Preliminary Prospectus**") in accordance with the Short Form Rule relating to the qualification of 7.65% Senior Notes (the "**Offering**") and received a receipt therefor dated April 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 FURTHER 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.

April 23, 2001.

"Iva Vranic"

## 2.2.7 Agere Systems Inc. - cl. 104(2)(c)

**Headnote**

Clause 104(2)(c) - relief from the issuer bid requirements of the Act in connection employee incentive plan where the plan permits the tender of shares by employees in payment of the exercise price of options previously granted, the acquisition of shares by the company to satisfy withholding tax obligations, and the acquisition of options by the company in the event of a change in control - "employee" issuer bid exemption under the Act is not available due to the acquisition price of the securities.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., ss 95, 96, 97, 98, 100 and 104(2)(c).

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

**AND**

**IN THE MATTER OF**
**AGERE SYSTEMS INC.**

**ORDER**
**(Clause 104(2)(c))**

**UPON** the application (the "Application") of Agere Systems Inc. (the "Company") to the Ontario Securities Commission (the "Commission") for an order pursuant to clause 104(2)(c) of the Act exempting the Company from sections 95, 96, 97, 98 and 100 of the Act and the regulations made thereunder (the "Issuer Bid Requirements") with respect to certain acquisitions by the Company of Class A Shares of its own issue (the "Class A Shares"), Class B Shares of its own issue (the "Class B Shares") (the Class A Shares and the Class B Shares collectively referred to herein as the "Shares") and options pursuant to the Company's 2001 Long Term Incentive Plan (the "Plan");

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

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

1. The Company designs, develops and manufactures optoelectronic components for communications networks and integrated circuits for use in a broad range of communications and computer equipment.

2. The Company is incorporated under the laws of the State of Delaware and is registered with the Securities Exchange Commission in the United States of America under the United States *Securities Exchange Act of 1934* and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12G 3-2 made thereunder.

3. The authorized share capital of the Company consists of 5,000,000,000 Class A Shares, 5,000,000,000 Class B Shares and 250,000,000 preferred shares. As at March 28, 2001, there were 600,000,000 Class A Shares and 1,035,100,000 Class B Shares issued and outstanding.

4. The Company is not a reporting issuer under the Act and has no present intention of becoming a reporting issuer under the Act.

5. Class A Shares subject to the Plan are listed and posted for trading in the United States on the New York Stock Exchange (the "NYSE"). While Class B Shares are subject to the Plan, no awards relating to Class B Shares will be granted under the Plan until such time as the Class B Shares are listed on the NYSE or other exchange outside of Canada. There is no market in Ontario for the Shares and none is expected to develop.

6. As at March 1, 2001, there are 31 employees eligible to participate in the Plan in Ontario.

7. The Plan was established by the Company to encourage selected key employees of the Company and its affiliates to acquire a proprietary and vested interest in the growth and performance of the Company, to generate an increased incentive to contribute to the Company's future success and prosperity, and to attract and retain individuals with exceptional managerial talent.

8. The Plan is available in Ontario only to employees of subsidiaries in which the Company owns more than 50% of the voting interests and, for the purposes of this application, the term "subsidiary" shall be so construed as it applies to employees of the Company and its subsidiaries resident in Ontario.

9. The Plan is open to all employees of the Company or its subsidiaries.

10. Grants under the Plan occurred at the time of the initial public offering of the Company on March 28, 2001 (the "IPO") and will occur thereafter until the Plan expires on February 28, 2003. The Company has not, and will not, acquire any Shares from Plan Participants pending receipt of exemptive relief pursuant to the Application.

11. Participation in the Plans by employees ("Plan Participants") is voluntary and Plan Participants will not be induced to participate in the Plan by expectation of or as a condition of employment or continued employment with the Company.

12. The Plan is administered by the Corporate Governance and Compensation Committee (or any successor committee) of the Board of Directors of the Company (the "Committee").

13. The total number of Shares reserved for issuance under the Plan is 180,000,000 Shares.

14. To the best of the Company's knowledge and belief, the direct and indirect shareholders of the Company in Ontario, as at April 25, 2001, do not hold more than 10% of the outstanding Shares of the Company. If at any time during the effectiveness of the Plan the direct and indirect shareholders of the Company in Ontario hold, in aggregate, greater than 10% of the total number of issued and outstanding Shares, the Company will apply to the Commission for an order with respect to further trades to and by the Plan Participants in Ontario in respect of Shares acquired under the Plan.

15. Plan Participants resident in Ontario who acquire any awards under the Plan will be provided with all disclosure material relating to the Company which is provided to holders of awards (as described herein) resident in the United States.

16. The Committee, at its discretion, may grant an award to a Plan Participant. An award may consist of (i) employee stock options ("Options" or individually, an "Option"), (ii) currently or on a deferred basis, interest or dividends or interest or dividend equivalents with respect to the number of Shares covered by an award under the Plan, (iii) other awards payable in Shares, other securities of the Company, cash or other property as may be determined by the Committee, (iv) awards of restricted stock ("Restricted Stock"), or (v) performance based awards ("Performance Awards") (all of the above awards collectively referred to herein as "Awards"). Awards may be granted for no consideration, for such minimum consideration as is required by applicable law or for such other consideration as the Committee may determine.

17. The exercise price per Share under the Options granted to Ontario residents shall not be less than the fair market value of a Share on the date of the grant of Options. Under the Plan, fair market value is equal to the average of the high and low sales price of a Share as reported on the NYSE on the date of determination of fair market value, or if no sales are reported on the NYSE for that date, the comparable average sales price for the last previous day for which sales were reported on the NYSE, unless the date for which the fair market value is being determined is the date of the final prospectus relating to the IPO, in which case fair market value shall mean the "price to the public" or equivalent set forth on the cover page for the final prospectus relating to the IPO (the "Fair Market Value").

18. The term of each Option shall be fixed by the Committee in its sole discretion; provided that no Incentive Stock Option (defined as an Option that meets the requirements of Section 422 of the United States Internal Revenue Code) shall be exercisable after the expiration of ten years from the date the Option is granted.

19. The Plan provides that the exercise of Options and the payment of the exercise price (the "Exercise Price") in order to acquire Shares of the Company may be effected pursuant to the payment of cash, the surrender of Shares to the Company or other consideration at the Fair Market Value on the exercise date equal to the total Option price, or, by combination of cash, Shares or other consideration.

20. Awards of Restricted Stock ("Restricted Stock Award") may be issued hereunder to Plan Participants either alone or in addition to other Awards granted under the Plan. The provisions of Restricted Stock Awards need not be the same with respect to each recipient. Any Restricted Stock Award issued hereunder may be evidenced in such manner as the Committee in its sole discretion shall deem appropriate, including, without limitation, book-entry registration or issuance of a stock certificate or certificates. In the event any stock certificate is issued in respect of a Restricted Stock Award, such certificate shall be registered in the name of the Plan Participant, and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Award. Except as otherwise determined by the Committee, upon termination of employment for any reason during the restriction period, any portion of a Restricted Stock Award still subject to restriction shall be forfeited by the Plan Participant and reacquired by the Company.

21. Performance Awards in the form of performance units or performance shares may be issued to Plan Participants either alone or in addition to other Awards granted under the Plan. The performance criteria to be achieved during any performance period and the length of the performance period shall be determined by the Committee upon the grant of each Performance Award or at any time thereafter. Except as otherwise provided, Performance Awards will be distributed only after the end of the relevant performance period (that period, established by the Committee at the time any Performance Award is granted or at any time thereafter, during which any performance goals specified by the Committee with respect to such Award are to be measured). Performance Awards may be paid in cash, Shares, other property or any combination thereof, in the sole discretion of the Committee at the time of payment. The performance levels to be achieved for each performance period and the amount of the award to be distributed shall be conclusively determined by the Committee. Performance Awards may be paid in a lump sum or in installments following the close of the performance period.

22. The Company is authorized to withhold from any Award granted or payment due under the Plan the amount of withholding taxes due in respect of an Award or payment under the Plan and to take such other action as may be necessary in the opinion of the Company to satisfy all obligations for the payment of such taxes. The Committee shall be authorized to establish procedures for election by Plan Participants to satisfy such withholding taxes by delivery of, or directing the Company to retain, Shares. The number of Shares withheld by the Company will be based upon the Fair Market Value of such Shares on the date of acquisition.

23. During the 60-day period from and after a "change in control" of the Company (as defined in the Plan), a Plan Participant holding an Option may be permitted by the Committee to elect to surrender all or part of the Option to the Company and to receive a cash amount from the Company equal to the amount by which the "change in control price" (as defined in the Plan) exceeds the exercise price of the Option multiplied by the number of shares granted under the Option (the "Spread").

24. The Company has engaged the services of PaineWebber Incorporated, which is a corporation registered to trade in securities under applicable legislation in the United States but is not a registrant under the Act, to act as record-keeper for the Plan, maintain restricted stock accounts and administer stock option exercises in which the Shares issued under the Plan are to be held by each Plan Participant.

25. Pursuant to the Plan, the acquisition of Shares and/or Options by the Company in certain circumstances from Plan Participants may constitute an "issuer bid" as defined under the Act. The terms of the Plan permit Plan Participants to tender Shares to the Company (i) to satisfy the Exercise Price for Options granted, and (ii) to satisfy government withholding tax obligations. The Plan also permits the tendering of Options in exchange for the Spread in the event of a change in control of the Company. The issuer bid exemptions contained in the Act may not be available for such acquisitions, since certain acquisitions may occur at a price that exceeds the "market price", as that term is defined in the Regulations to the Act.

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

**IT IS ORDERED** pursuant to clause 104(2)(c) of the Act that the acquisitions by the Company of Shares and Options from Plan Participants are exempt from the Issuer Bid Requirements, provided that such acquisitions are made in accordance with the terms of the Plan.

April 27, 2001.

"Paul M. Moore" "Robert W. Korthals"

### 2.2.8 Refco Futures (Canada) Ltd. - s. 21.1(4)

**Headnote**

Section 4.1 of OSC Rule 31-505 - relief from the Suitability Requirements, as reflected in paragraph 1.5(1)(b) of OSC Rule 31-505, subject to certain terms and conditions.

Subsection 21.1(4) of the Act - decision that the IDA Suitability Requirements do not apply to the Filer, subject to certain terms and conditions.

**Statutes Cited**

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

**Rules Cited**

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

IDA Regulations Cited

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

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

**AND**

**IN THE MATTER OF**
**REFCO FUTURES (CANADA) LTD.**

**ORDER**
**(Section 21.1(4) of the Act and**
**Section 4.1 of Rule 31-505)**

**UPON** the application of Refco Futures (Canada) Ltd. (the "Filer") to the Ontario Securities Commission (the "Commission") regarding the operation of a separate internal division, "Refco Securities Direct" (the "Discount Securities Division"), for:

(a) a decision pursuant to Section 4.1 of Ontario Securities Commission Rule 31-505 – Conditions of Registration ("Rule 31-505") that the requirements of Section 1.5(1)(b) of Rule 31-505 requiring the Discount Securities Division and its respective registered salespersons, partners, officers and directors (the "Registered Representatives") to make inquiries of each client of the Discount Securities Division as are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to determine (a) the general investment needs and objectives of the client; and (b) the suitability of a proposed purchase or sale of a security for the client (such requirements, the "Suitability Requirements") do not apply to the Discount Securities Division and its Registered Representatives; and

(b) a decision under Section 21.1(4) of the Act that the requirements of the Investment Dealers Association of Canada (the "IDA"), in particular IDA Regulation 1300.1(b), 1800.5(b) and 1900.4, requiring the Discount Securities Division and its Registered Representatives to make inquiries of each client of the Discount Securities Division as are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to determine (a) the general investment needs and objectives of the client; and (b) the suitability of a proposed purchase or sale of a security for the client (such requirements, the "IDA Suitability Requirements") do not apply to the Discount Securities Division and its Registered Representatives;

**AND UPON** the Filer and the Discount Securities Division having represented to the Commission that:

1. the Filer is a corporation incorporated under the *Canada Business Corporations Act*;

2. the Filer has constituted two new internal operating divisions, namely, (a) the "Refco Futures Direct" Division, an online execution service for futures and options on futures, and (b) the Discount Securities Division, an online execution service for securities and securities options (collectively, the "Divisions"). The Divisions are not separate legal entities, but will operate as distinct internal operating divisions within the Filer;

3. the head office of the Filer is located in Ontario, and the Filer also maintains offices and has executive officers and Registered Representatives in Ontario, and has Registered Representatives for securities and futures who are resident in each of Ontario, British Columbia, Alberta and Quebec;

4. the Filer is registered under the applicable securities and futures legislation in each of the Provinces of Ontario, Alberta, Quebec and British Columbia as an investment dealer and as a futures commission merchant, is a member of the IDA, and is a participating organization, approved participant or member, as the case may be, of The Toronto Stock Exchange, the Bourse de Montréal Inc. and the Canadian Venture Exchange Inc.;

5. the Divisions will operate independently, using separate letterhead, accounts, account documentation and Registered Representatives;

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

7. Refco Futures Direct and Refco Securities Direct are trade names of the Filer, registered in each of the Provinces of Ontario, Alberta, Quebec and British Columbia;

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

9. clients who request the Discount Securities Division or its Registered Representatives to provide advice or recommendations or a determination as to suitability will be referred to Registered Representatives of the "full-service" division of the Filer or to another "full-service" dealer. The "full-service" division of the Filer carries on business as a "full-service" investment dealer and futures commission merchant and as such, provides specific or tailored investment advice and recommendations to its clients regarding trades executed by the Filer. The Divisions operate independently from the "full service" division of the Filer and from each other, using separate letterhead, accounts, account documentation and Registered Representatives;

10. the Discount Securities Division does not and will not compensate its Registered Representatives on the basis of transactional values, but rather on a system of salaries and bonuses based on performance;

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

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

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

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

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

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

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

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

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

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

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

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

18. each verbal acceptance of a client or prospective client of the Discount Securities Division constituting a Client Acknowledgement or Prospective Client Acknowledgement shall kept by the Discount Securities Division in a written special record (the "Verbal Receipts") indicating such acknowledgement of the client and the relevant particulars of same;

19. each client of the full-service division of the Filer who wishes to transfer his or her account or accounts to the Discount Securities Division of the Filer will be treated, in all respects, as a prospective client of the Discount Securities Division for which such clients will be advised of the terms of and required to provide a Prospective Client Acknowledgement;

20. the Filer and the Discount Securities Division have adopted policies and procedures to ensure:

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

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

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

21. the Filer and the Discount Securities Division have adopted policies and procedures to ensure that:

(a) the Discount Securities Division will operate separately from any other division of the Filer,

(b) Registered Representatives of the Discount Securities Division are clearly employed by the Discount Securities Division and will not handle the business or clients of any other division of the Filer, and

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

**AND UPON** the Commission being satisfied that it would not be prejudicial to the public interest to make the order (the "Decision");

**THE DECISION** of the Director under Section 4.1 of Rule 31-505 is that the Suitability Requirements contained in Section 1.5(1)(b) of Rule 31-505 shall not apply to the Discount Securities Division and its Registered Representatives so long as:

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

2. clients who request the Discount Securities Division or its Registered Representatives to provide advice or recommendations or advice as to suitability are referred to a registered dealer or adviser that provides those services;

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

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

5. each client of the Discount Securities Division is advised of the Decision of the Commission and requested to make a Client Acknowledgement or transfer his or her account to a dealer who provides advice if the client does not wish to make a Client Acknowledgement;

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

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

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

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

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

11. the Discount Securities Division accurately identifies and distinguishes client accounts for which a Client Acknowledgement or Prospective Client Acknowledgement (including Verbal Receipts) has been provided and client accounts for which no Client Acknowledgement has been provided;

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

(a) the Discount Securities Division continues to operate separately from any other division of the Filer;

(b) Registered Representatives of the Discount Securities Division are clearly employed by the Discount Securities Division and do not handle the business or clients of any other division of the Filer; and

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

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

April 6, 2001.

"William R. Gazzard"

**THE DECISION** of the Commission pursuant to Section 21.1(4) of the Act is that the IDA Suitability Requirements do not apply to the Discount Securities Division and its Registered Representatives so long as:

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

2. clients who request the Discount Securities Division or its Registered Representatives to provide advice or recommendations or advice as to suitability are referred to a registered dealer or adviser that provides those services;

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

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

5. each client of the Discount Securities Division is advised of the Decision of the Commission and requested to make a Client Acknowledgement or transfer his or her account to a dealer who provides advice if the client does not wish to make a Client Acknowledgement;

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

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

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

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

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

11. the Discount Securities Division accurately identifies and distinguishes client accounts for which a Client Acknowledgement or Prospective Client Acknowledgement (including Verbal Receipts) has been provided and client accounts for which no Client Acknowledgement has been provided;

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

    (a) the Discount Securities Division continues to operate separately from any other division of the Filer;

    (b) Registered Representatives of the Discount Securities Division are clearly employed by the Discount Securities Division and do not handle the business or clients of any other division of the Filer; and

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

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

April 6, 2001.

"Howard I. Wetston" "Derek Brown"

### 2.2.9 Refco Futures (Canada) Ltd. - s. 16(4) & 80 of CFA

**Headnote**

Section 80 of the Commodity Futures Act (Ontario) (the "CFA") - relief from the Suitability Requirements, as reflected in Subsections 28(1)(b) and 28(2) of the Regulation made under the CFA, subject to certain terms and conditions.

Subsection 16(4) of the CFA - decision that the IDA Suitability Requirements do not apply to the Filer, subject to certain terms and conditions.

**Statutes Cited**

Commodity Futures Act, R.S.O. 1990. c. C20., as amended, ss. 16(4), 80.

**Regulations Cited**

Regulation made under the Commodity Futures Act, R.R.O. 1990, Regulation 90, as am., ss. 28(1)(b), 28(2).

**IDA Regulations Cited**

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

**IN THE MATTER OF**
**THE COMMODITY FUTURES ACT, R.S.O. 1990, C.C.20, AS AMENDED (THE "ACT")**

**AND**

**IN THE MATTER OF**
**REFCO FUTURES (CANADA) LTD.**

**ORDER**
**(Sections 16(4) and 80 of the Act)**

**UPON** the application of Refco Futures (Canada) Ltd. (the "Filer") to the Ontario Securities Commission (the "Commission") regarding the operation of a separate internal division, "Refco Futures Direct" (the "Discount Futures Division"), for:

(a) an order pursuant to Section 80 of the Act that the requirements of Sections 28(1)(b) and 28(2) of the Regulation to the Act requiring the Discount Futures Division and its registered salespersons, partners, officers and directors (the "Registered Representatives") to make inquiries of each client of the Discount Futures Division as are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to determine (a) the general investment needs and objectives of the client; and (b) the suitability of a proposed purchase or sale of a future for the client (such requirements, the "Suitability Requirements") do not apply to the Discount Futures Division and its Registered Representatives; and

(b) a decision under Section 16(4) of the Act that the requirements of the Investment Dealers Association of Canada (the "IDA"), in particular IDA Regulation 1300.1(b) and 1800.5(b), requiring the Discount Futures Division and its Registered Representatives to make inquiries of each client of the Discount Futures Division as are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to determine (a) the general investment needs and objectives of the client; and (b) the suitability of a proposed purchase or sale of a future for the client (such requirements, the "IDA Suitability Requirements") do not apply to the Discount Futures Division and its Registered Representatives;

**AND UPON** the Filer and the Discount Futures Division having represented to the Commission that:

1. the Filer is a corporation incorporated under the *Canada Business Corporations Act*;

2. the Filer has constituted two new internal operating divisions, namely, (a) the Discount Futures Division, an online execution service for futures and options on futures, and (b) the "Refco Securities Direct" division, an online execution service for securities and securities options (collectively, the "Divisions"). The Divisions are not separate legal entities, but will operate as distinct internal operating divisions within the Filer;

3. the head office of the Filer is located in Ontario, and the Filer also maintains offices and has executive officers and Registered Representatives in Ontario, and has Registered Representatives for securities and futures who are resident in each of Ontario, British Columbia, Alberta and Quebec;

4. the Filer is registered under the applicable securities and futures legislation in each of the Provinces of Ontario, Alberta, Quebec and British Columbia as an investment dealer and as a futures commission merchant, is a member of the IDA, and is a participating organization, approved participant or member, as the case may be, of The Toronto Stock Exchange, the Bourse de Montréal Inc. and the Canadian Venture Exchange Inc.;

5. the Divisions will operate independently, using separate letterhead, accounts, account documentation and Registered Representatives;

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

7. Refco Futures Direct and Refco Securities Direct are trade names of the Filer, registered in each of the Provinces of Ontario, Alberta, Quebec and British Columbia;

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

9. clients who request the Discount Futures Division or its Registered Representatives to provide advice or recommendations or a determination as to suitability will be referred to Registered Representatives of the "full-service" division of the Filer or to another "full-service" dealer. The "full-service" division of the Filer carries on business as a "full-service" investment dealer and futures commission merchant and as such, provides specific or tailored investment advice and recommendations to its clients regarding trades executed by the Filer. The Divisions operate independently from the "full service" division of the Filer and from each other, using separate letterhead, accounts, account documentation and Registered Representatives;

10. the Discount Futures Division do not and will not compensate their Respective Registered Representatives on the basis of transactional values, but rather on a system of salaries and bonuses based on performance;

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

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

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

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

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

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

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

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

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

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

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

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

18. each verbal acceptance of a client or prospective client of the Discount Futures Division constituting a Client Acknowledgement or Prospective Client Acknowledgement shall kept by the Discount Futures Division in a written special record (the "Verbal Receipts") indicating such acknowledgement of the client and the relevant particulars of same;

19. each client of the full-service division of the Filer who wishes to transfer his or her account or accounts to the Discount Futures Division of the Filer will be treated, in all respects, as a prospective client of the Discount Futures Division for which such clients will be advised of the terms of and required to provide a Prospective Client Acknowledgement;

20. the Filer and the Discount Futures Division have adopted policies and procedures to ensure:

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

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

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

21. the Filer and the Discount Futures Division have adopted policies and procedures to ensure that:

(a) the Discount Futures Division will operate separately from any other division of the Filer,

(b) Registered Representatives of the Discount Futures Division are clearly employed by the Discount Futures Division and will not handle the business or clients of any other division of the Filer, and

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

**AND UPON** the Commission being satisfied that it would not be prejudicial to the public interest to make the order (the "Decision");

**IT IS ORDERED** under Section 80 of the Act that the Suitability Requirements contained in Sections 28(1)(b) and 28(2) of the Regulation to the Act shall not apply to the Discount Futures Division and its Registered Representatives so long as:

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

2. clients who request the Discount Futures Division or its Registered Representatives to provide advice or recommendations or advice as to suitability are referred to a registered commodity futures merchant that provides those services;

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

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

5. each client of the Discount Futures Division is advised of the Decision of the Commission and requested to make a Client Acknowledgement or transfer his or her account to a commodity futures merchant who provides advice if the client does not wish to make a Client Acknowledgement;

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

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

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

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

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

11. the Discount Futures Division accurately identifies and distinguishes client accounts for which a Client Acknowledgement or Prospective Client Acknowledgement (including Verbal Receipts) has been provided and client accounts for which no Client Acknowledgement has been provided;

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

(a) the Discount Futures Division continues to operate separately from any other division of the Filer;

(b) Registered Representatives of the Discount Futures Division are clearly employed by the Discount Futures Division and do not handle the business or clients of any other division of the Filer; and

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

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

April 6, 2001.

"Howard I. Wetston" "Derek Brown"

**THE DECISION** of the Commission pursuant to Section 16(4) of the Act is that the IDA Suitability Requirements do not apply to the Discount Futures Division and its Registered Representatives so long as:

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

2. clients who request the Discount Futures Division or its Registered Representatives to provide advice or recommendations or advice as to suitability are referred to a registered commodity futures merchant that provides those services;

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

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

5. each client of the Discount Futures Division is advised of the Decision of the Commission and requested to make a Client Acknowledgement or transfer his or her account to a commodity futures merchant who provides advice if the client does not wish to make a Client Acknowledgement;

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

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

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

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

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

11. the Discount Futures Division accurately identifies and distinguishes client accounts for which a Client Acknowledgement or Prospective Client Acknowledgement (including Verbal Receipts) has been provided and client accounts for which no Client Acknowledgement has been provided;

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

    (a) the Discount Futures Division continues to operate separately from any other division of the Filer;

    (b) Registered Representatives of the Discount Futures Division are clearly employed by the Discount Futures Division and do not handle the business or clients of any other division of the Filer; and

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

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

April 6, 2001.

"Howard I. Wetston" "Derek Brown"

### 2.2.10 Friedberg Mercantile Group - s. 21.1(4)

**Headnote**

Section 4.1 of OSC Rule 31-505 - relief from the Suitability Requirements, as reflected in paragraph 1.5(1)(b) of OSC Rule 31-505, subject to certain terms and conditions.

Subsection 21.1(4) of the Act - decision that the IDA Suitability Requirements do not apply to the Filer, subject to certain terms and conditions.

**Statutes Cited**

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

**Rules Cited**

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

**IDA Regulations Cited**

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

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

**AND**

**IN THE MATTER OF**
**FRIEDBERG MERCANTILE GROUP**

**ORDER**
**(Section 21.1(4) of the Act and**
**Section 4.1 of Rule 31-505)**

**UPON** the application of Friedberg Mercantile Group (the "Filer") to the Ontario Securities Commission (the "Commission") regarding the operation of a separate internal division, "FMG'S E-TRADERS" (the "Discount Division"), for:

(a) a decision pursuant to Section 4.1 of Ontario Securities Commission Rule 31-505 – Conditions of Registration ("Rule 31-505") that the requirements of Section 1.5(1)(b) of Rule 31-505 requiring the Discount Division and its registered salespersons, partners, officers and directors (the "Registered Representatives") to make inquiries of each client of the Discount Division as are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to determine (a) the general investment needs and objectives of the client; and (b) the suitability of proposed purchase or sale of a security for the client (such requirements, the "Suitability Requirements") do not apply to the Discount Division and its Registered Representatives; and

(b) a decision under Section 21.1(4) of the Act that the requirements of the Investment Dealers Association of Canada (the "IDA"), in particular IDA Regulation 1300.1(b), 1800.5(b) and 1900.4, requiring the Discount Division and its Registered Representatives to make inquiries of each client of the Discount Division as are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to determine (a) the general investment needs and objectives of the client and (b) the suitability of a proposed purchase or sale of a security for the client (such requirements, the "IDA Suitability Requirements") do not apply to the Discount Division and its Registered Representatives;

**AND UPON** the Filer and the Discount Division having represented to the Commission that:

1. the Filer is a general partnership established under the *Partnerships Act* (Ontario) and comprised of two partners, namely, A.D. Friedberg Inc., the managing partner of the Filer, and Friedco Securities Limited;

2. the Filer is registered under applicable securities and futures legislation in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, the Yukon Territory, Nunavut and the Northwest Territories (the "Jurisdictions") as an investment dealer and as a futures commission merchant, or their equivalent. The Filer is a participating organization, approved participant or member, as the case may be, of The Toronto Stock Exchange, the Bourse de Montréal Inc., the Canadian Venture Exchange Inc. and the Winnipeg Commodity Exchange, and is a member in good standing with the IDA.

3. the Filer has constituted a new internal operating division, namely, the Discount Division, a discount execution service for securities, securities options, futures and options on futures. The Discount Division is not a separate legal entity, but will operate as a distinct internal operating division within the Filer;

4. the Filer maintains offices and has executive officers and Registered Representatives in Ontario and has Registered Representatives for securities and futures who are authorized for trading in each Jurisdiction;

5. the Discount Division will operate independently, using separate letterhead, accounts, account documentation and Registered Representatives;

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

7. "FMG's E-TRADERS" is a trade name of the Filer which has been registered in the Province of Ontario;

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

9. clients who request the Discount Division or its Registered Representatives to provide advice or recommendations or a determination as to suitability will be referred to Registered Representatives of the "full-service" division of the Filer or to another "full-service" dealer. The "full-service" division of the Filer carries on business as a "full-service" investment dealer and futures commission merchant and as such, provides specific or tailored investment advice and recommendations to its clients regarding trades executed by the Filer. The Discount Division operates independently from the "full service" division of the Filer using separate letterhead, accounts, account documentation and Registered Representatives;

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

11. each client of the Discount Division will be advised of the Order of the Commission and requested to acknowledge that:

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

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

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

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

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

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

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

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

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

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

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

18. each client of the full-service division of the Filer who wishes to transfer his or her account or accounts to the Discount Division of the Filer will be treated, in all respects, as a prospective client of the Discount Division (the "Existing Prospective Clients") for which such clients will be advised of the terms of and required to provide a Prospective Client Acknowledgement;

19. each verbal acceptance of an Existing Prospective Client of the Discount Division constituting a Prospective Client Acknowledgement will be kept by the Discount Division in a written special record (the "Verbal Receipts") indicating such acknowledgement of the client and the relevant particulars of same;

20. the Filer and the Discount Division will have adopted policies and procedures to ensure:

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

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

    (c) for any client of the Discount Division who does not provide a Client Acknowledgement and chooses to exercise the client's Account

Transfer Option, the Discount Division will transfer the client's account in an expeditious manner and at no cost to the client;

21. the Filer and the Discount Division have adopted policies and procedures to ensure that:

    (a) the Discount Division will operate separately from any other division of the Filer,

    (b) Registered Representatives of the Discount Division are clearly employed by the Discount Division and do not handle the business or clients of any other division of the Filer, and

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

**AND UPON** the Commission being satisfied that it would not be prejudicial to the public interest to make the order (the "Order");

**THE DECISION** of the Director under Section 4.1 of Rule 31-505 is that the Suitability Requirements contained in Section 1.5(1)(b) of Rule 31-505 shall not apply to the Discount Division and its Registered Representatives so long as:

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

2. clients who request the Discount Division or its Registered Representatives to provide advice or recommendations or advice as to suitability are referred to a registered dealer or adviser that provides those services;

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

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

5. each client of the Discount Division is advised of the Order of the Commission and requested to make a Client Acknowledgement or transfer his or her account to the "full service" division of the Filer or to another dealer who provides advice if the client does not make a Client Acknowledgement;

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

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

8. each prospective client of the Discount Division is advised of the Order of the Commission and required to make a Prospective Client Acknowledgement prior to the Discount Division or its Registered Representatives servicing such prospective client;

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

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

11. the Discount Division accurately identifies and distinguishes client accounts for which a Client Acknowledgement or Prospective Client Acknowledgement (including a Verbal Receipt) has been provided and client accounts for which no Client Acknowledgement has been provided;

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

    (a) the Discount Division continues to operate separately from any other division of the Filer;

    (b) Registered Representatives of the Discount Division are clearly employed by the Discount Division and do not handle the business or clients of any other division of the Filer; and

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

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

April 6, 2001.

"William R. Gazzard"

**THE DECISION** of the Commission pursuant to Section 21.1(4) of the Act is that the IDA Suitability Requirements do not apply to the Discount Division and its Registered Representatives so long as:

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

2. clients who request the Discount Division or its Registered Representatives to provide advice or recommendations or advice as to suitability are referred to a registered dealer or adviser that provides those services;

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

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

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

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

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

8. each prospective client of the Discount Division is advised of the Order of the Commission and required to make a Prospective Client Acknowledgement prior to the Discount Division or its Registered Representatives servicing such prospective client;

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

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

11. the Discount Division accurately identifies and distinguishes client accounts for which a Client Acknowledgement or Prospective Client Acknowledgement (including a Verbal Receipt) has been provided and client accounts for which no Client Acknowledgement has been provided;

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

    (a) the Discount Division continues to operate separately from any other division of the Filer;

    (b) Registered Representatives of the Discount Division are clearly employed by the Discount Division and do not handle the business or clients of any other division of the Filer; and

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

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

April 6, 2001.

"Howard I. Wetston" "Derek Brown"

### 2.2.11 Friedberg Mercantile Group - s. 16(4) & 80 of CFA

**Headnote**

Section 80 of the Commodity Futures Act (Ontario) (the "CFA") - relief from the Suitability Requirements, as reflected in Subsections 28(1)(b) and 28(2) of the Regulation made under the CFA, subject to certain terms and conditions.

Subsection 16(4) of the CFA - decision that the IDA Suitability Requirements do not apply to the Filer, subject to certain terms and conditions.

**Statutes Cited**

Commodity Futures Act, R.S.O. 1990. c. C20., as amended, ss. 16(4), 80.

**Regulations Cited**

Regulation made under the Commodity Futures Act, R.R.O. 1990, Regulation 90, as am., ss. 28(1)(b), 28(2).

**IDA Regulations Cited**

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

**IN THE MATTER OF**
**THE COMMODITY FUTURES ACT, R.S.O. 1990, C.C.20, AS AMENDED (THE "ACT")**

**AND**

**IN THE MATTER OF**
**FRIEDBERG MERCANTILE GROUP**

**ORDER**
**(Sections 16(4) and 80 of the Act)**

**UPON** the application of Friedberg Mercantile Group (the "Filer") to the Ontario Securities Commission (the "Commission") regarding the operation of a separate internal division, "FMG'S E-TRADERS" (the "Discount Division"), for:

(a) an order pursuant to Section 80 of the Act that the requirements of Sections 28(1)(b) and 28(2) of the Regulation to the Act requiring the Discount Division and its registered salespersons, partners, officers and directors (the "Registered Representatives") to make inquiries of each client of the Discount Division as are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account to determine (a) the general investment needs and objectives of the client; and (b) the suitability of proposed purchase or sale of a future for the client (such requirements, the "Suitability Requirements") do not apply to the Discount Division and its Registered Representatives; and

(b) a decision under Section 16(4) of the Act that the requirements of the Investment Dealers Association of Canada (the "IDA"), in particular IDA Regulation 1300.1(b) and 1800.5(b), requiring the Discount Division and its Registered Representatives to make inquiries of each client of the Discount Division as are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to determine (a) the general investment needs and objectives of the client and (b) the suitability of a proposed purchase or sale of a future for the client (such requirements, the "IDA Suitability Requirements") do not apply to the Discount Division and its Registered Representatives;

**AND UPON** the Filer and the Discount Division having represented to the Commission that:

1. the Filer is a general partnership established under the *Partnerships Act* (Ontario) and comprised of two partners, namely, A.D. Friedberg Inc., the managing partner of the Filer, and Friedco Securities Limited;

2. the Filer is registered under applicable securities and futures legislation in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, the Yukon Territory, Nunavut and the Northwest Territories (the "Jurisdictions") as an investment dealer and as a futures commission merchant, or their equivalent. The Filer is a participating organization, approved participant or member, as the case may be, of The Toronto Stock Exchange, the Bourse de Montréal Inc., the Canadian Venture Exchange Inc. and the Winnipeg Commodity Exchange, and is a member in good standing with the IDA;

3. the Filer has constituted a new internal operating division, namely, the Discount Division, a discount execution service for securities, securities options, futures and options on futures. The Discount Division is not a separate legal entity, but will operate as a distinct internal operating division within the Filer;

4. the Filer maintains offices and has executive officers and Registered Representatives in Ontario and has Registered Representatives for securities and futures who are authorized for trading in each Jurisdiction;

5. the Discount Division will operate independently, using separate letterhead, accounts, account documentation and Registered Representatives;

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

7. "FMG's E-TRADERS" is a trade name of the Filer which has been registered in the Province of Ontario;

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

9. clients who request the Discount Division or its Registered Representatives to provide advice or recommendations or a determination as to suitability will be referred to Registered Representatives of the "full-service" division of the Filer or to another futures commission merchant who provides such services. The "full-service" division of the Filer carries on business as a "full-service" investment dealer and futures commission merchant and as such, provides specific or tailored investment advice and recommendations to its clients regarding trades executed by the Filer. The Discount Division operates independently from the "full service" division of the Filer using separate letterhead, accounts, account documentation and Registered Representatives;

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

11. each client of the Discount Division will be advised of the Order of the Commission and requested to acknowledge that:

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

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

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

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

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

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

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

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

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

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

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

18. each client of the full-service division of the Filer who wishes to transfer his or her account or accounts to the Discount Division of the Filer will be treated, in all respects, as a prospective client of the Discount Division (the "Existing Prospective Clients") for which such prospective clients will be advised of the terms of and required to provide a Prospective Client Acknowledgement;

19. each verbal acceptance of an Existing Prospective Client of the Discount Division constituting a Prospective Client Acknowledgement will be kept by the Discount Division in a written special record (the "Verbal Receipts") indicating such acknowledgement of the client and the relevant particulars of same;

20. the Filer and the Discount Division will have adopted policies and procedures to ensure:

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

    (b) all client accounts of the Discount Division are appropriately designated as being a client account to which a Client Acknowledgement or

Prospective Client Acknowledgement (including Verbal Receipts) has been received or being a client account to which a Client Acknowledgement has not been received, and

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

21. the Filer and the Discount Division have adopted policies and procedures to ensure that:

(a) the Discount Division continues to operate separately from any other division of the Filer,

(b) Registered Representatives of the Discount Division are clearly employed by the Discount Division and do not handle the business or clients of any other division of the Filer, and

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

**AND UPON** the Commission being satisfied that it would not be prejudicial to the public interest to make the order (the "Order");

**IT IS ORDERED** under Section 80 of the Act that the Suitability Requirements contained in Sections 28(1)(b) and 28(2) of the Regulation to the Act shall not apply to the Discount Division and its Registered Representatives so long as:

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

2. clients who request the Discount Division or its Registered Representatives to provide advice or recommendations or advice as to suitability are referred to a registered futures commission merchant that provides those services;

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

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

5. each client of the Discount Division is advised of the Order of the Commission and requested to make a Client Acknowledgement or transfer his or her account to the "full service" division of the Filer or to another futures commission merchant who provides advice if the client does not wish to make a Client Acknowledgement;

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

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

8. each prospective client of the Discount Division is advised of the Order of the Commission and required to make a Prospective Client Acknowledgement prior to the Discount Division or its Registered Representatives servicing such prospective client;

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

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

11. the Discount Division accurately identifies and distinguishes client accounts for which a Client Acknowledgement or Prospective Client Acknowledgement (including a Verbal Receipt) has been provided and client accounts for which no Client Acknowledgement has been provided;

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

(a) the Discount Division continues to operate separately from any other division of the Filer;

(b) Registered Representatives of the Discount Division are clearly employed by the Discount Division and do not handle the business or clients of any other division of the Filer; and

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

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

April 6, 2001.

"Howard I. Wetston" "Derek Brown"

**THE DECISION** of the Commission pursuant to Section 16(4) of the Act is that the IDA Suitability Requirements do not apply to the Discount Division and its Registered Representatives so long as:

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

2. clients who request the Discount Division or its Registered Representatives to provide advice or recommendations or advice as to suitability are referred to a registered futures commission merchant that provides those services;

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

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

5. each client of the Discount Division is advised of the Order of the Commission and requested to make a Client Acknowledgement or transfer his or her account to the "full service" division of the Filer or to another futures commission merchant who provides advice if the client does not wish to make a Client Acknowledgement;

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

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

8. each prospective client of the Discount Division is advised of the Order of the Commission and required to make a Prospective Client Acknowledgement prior to the Discount Division or its Registered Representatives servicing such prospective client;

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

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

11. the Discount Division accurately identifies and distinguishes client accounts for which a Client Acknowledgement or Prospective Client Acknowledgement (including a Verbal Receipt) has been provided and client accounts for which no Client Acknowledgement has been provided;

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

    (a) the Discount Division continues to operate separately from any other division of the Filer;

    (b) Registered Representatives of the Discount Division are clearly employed by the Discount Division and do not handle the business or clients of any other division of the Filer; and

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

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

April 6, 2001.

"Howard I. Wetston" "Derek Brown"

## 2.2.12 FMR Co. Inc. - ss. 38(1) of CFA

**Headnote**

Subsection 38(1) of the Commodity Futures Act (Ontario) (the "CFA") - relief from the requirements of clause 22(1)(b) of the CFA, for a period of three years, in respect of the proposed advisory services, subject to certain terms and conditions.

**Statutes Cited**

Commodity Futures Act, R.S.O. 1990. c. C20., as am., ss. 22(1)(b), 38(1).

**IN THE MATTER OF THE COMMODITY FUTURES ACT, R.S.O. 1990 c. C20 (the "CFA")**

**AND**

**IN THE MATTER OF FMR Co. Inc.**

**ORDER (Subsection 38(1))**

**UPON** the application of FMR Co. Inc. (the "Applicant") to the Ontario Securities Commission (the "Commission") for a ruling under subsection 38(1) of the CFA that the Applicant and its officers, partners and directors are not subject to the requirement of clause 22(1)(b) of the CFA;

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

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

1. The Applicant is a corporation organized under the laws of the Commonwealth of Massachusetts and is resident in United States.

2. Fidelity Investments Canada Limited ("FICL") is a corporation continued under the laws of Ontario and is resident in Ontario. FICL is currently registered with the Commission as a mutual fund dealer and an adviser in the categories of investment counsel and portfolio manager. FICL is currently registered with the Commission as an adviser in the category of commodity trading manager under the CFA.

3. FICL is proposing to offer discretionary investment management services to pension plans and other institutional investors in Canada (the "Private Clients"). FICL will carry out the investment mandate of the Private Clients through the use of pooled funds to be established by FICL from time to time (the "Funds") or segregated accounts. FICL will act as manager and trustee of the Funds.

4. The Applicant is proposing to enter into an arrangement in which FICL would act as the portfolio adviser to the Funds and Private Clients, including ancillary activities in respect of purchases and sales of commodity futures contracts or related products traded on commodity futures exchanges, and the Applicant would provide advice and assistance to FICL (the "Proposed Advisory Services"). In no case will the investment activities involving commodities futures or products traded on commodities futures exchanges constitute the primary focus or investment objective of any of the Funds or Private Clients.

5. In connection with the Proposed Advisory Services, the Applicant would enter into a written agreement with FICL outlining the duties and obligations of the Applicant.

6. FICL will assume responsibility to the Funds and the Private Clients for all advice and assistance provided by the Applicant.

7. The Applicant will only provide advice and assistance to FICL where FICL has contractually agreed with the Funds and the Private Clients to be responsible for any loss that arises out of the failure of the Applicant (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and the Private Clients, and (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and that this responsibility cannot be waived.

**AND UPON** being satisfied that it would not be prejudicial to public interest for the Commission to grant the exemptions requested on the basis of the terms and conditions proposed,

**IT IS ORDERED** pursuant to subsection 38(1) of the CFA that the Applicant, its officers, partners and directors are not subject to the requirements of clause 22(1) (b) of the CFA in respect of the Proposed Advisory Services provided that:

a. the obligations and duties of the Applicant are set out in a written agreement with FICL;

b. FICL will contractually agree with the Funds and the Private Clients to be responsible for any loss that arises out of the failure of the Applicant (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and the Private clients, and (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and that this responsibility cannot be waived;

c. FICL will remain a registrant under the CFA so long as the Proposed Advisory Services are provided by the Applicant; and

d. this order shall terminate three years from April 6, 2001.

April 6, 2001.

"Howard I. Wetston" "Paul Moore"

### 2.2.13 Fidelity Investments Money Management, Inc. - ss. 38(1) of the CFA

**Headnote**

Subsection 38(1) of the Commodity Futures Act (Ontario) (the "CFA") - relief from the requirements of clause 22(1)(b) of the CFA, for a period of three years, in respect of the proposed advisory services, subject to certain terms and conditions.

**Statutes Cited**

Commodity Futures Act, R.S.O. 1990. c. C20., as am., ss. 22(1)(b), 38(1).

**IN THE MATTER OF**
**THE COMMODITY FUTURES ACT, R.S.O. 1990 c. C20**
**(the "CFA")**

**AND**

**IN THE MATTER OF**
**FIDELITY INVESTMENTS MONEY MANAGEMENT, INC.**

**ORDER**
**(Subsection 38(1))**

**UPON** the application of Fidelity Investments Money Management, Inc. (the "Applicant") to the Ontario Securities Commission (the "Commission") for a ruling under subsection 38(1) of the CFA that the Applicant and its officers, partners and directors are not subject to the requirement of clause 22(1)(b) of the CFA;

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

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

1. The Applicant is a corporation organized under the laws of the State of New Hampshire and is resident in United States. The Applicant is currently registered under the Securities Act (Ontario) as a non-Canadian adviser in the categories of investment counsel and portfolio manager.

2. Fidelity Investments Canada Limited ("FICL") is a corporation continued under the laws of Ontario and is resident in Ontario. FICL is currently registered with the Commission as a mutual fund dealer and an adviser in the categories of investment counsel and portfolio manager. FICL is currently registered with the Commission as an adviser in the category of commodity trading manager under the CFA.

3. FICL acts as portfolio manager to certain mutual funds offered, from time to time, by FICL in Canada (the "Fidelity Funds") and the Applicant acts as sub-adviser to FICL in respect of certain of the Fidelity Funds. FICL is responsible for the investment advice provided by the Applicant in respect of the Fidelity Funds. The Commission granted relief similar to that granted herein to the Applicant in respect of the Fidelity Funds in an order dated October 20, 2000.

4. FICL is now proposing to offer discretionary investment management services to pension plans and other institutional investors in Canada (the "Private Clients"). FICL will carry out the investment mandate of the Private Clients through the use of pooled funds to be established by FICL from time to time (the "Funds") or segregated accounts. FICL will act as manager and trustee of the Funds.

5. The Applicant is proposing to enter into an arrangement in which FICL would act as the portfolio adviser to the Funds and Private Clients, including ancillary activities in respect of purchases and sales of commodity futures contracts or related products traded on commodity futures exchanges, and the Applicant would provide advice and assistance to FICL (the "Proposed Advisory Services"). In no case will the investment activities involving commodities futures or products traded on commodities futures exchanges constitute the primary focus or investment objective of any of the Funds or Private Clients.

6. In connection with the Proposed Advisory Services, the Applicant would enter into a written agreement with FICL outlining the duties and obligations of the Applicant.

7. FICL will assume responsibility to the Funds and the Private Clients for all advice and assistance provided by the Applicant.

8. The Applicant will only provide advice and assistance to FICL where FICL has contractually agreed with the Funds and the Private Clients to be responsible for any loss that arises out of the failure of the Applicant (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and the Private Clients, and (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and that this responsibility cannot be waived.

**AND UPON** being satisfied that it would not be prejudicial to public interest for the Commission to grant the exemptions requested on the basis of the terms and conditions proposed,

**IT IS ORDERED** pursuant to subsection 38(1) of the CFA that the Applicant, its officers, partners and directors are not subject to the requirements of clause 22(1) (b) of the CFA in respect of the Proposed Advisory Services provided that:

a. the obligations and duties of the Applicant are set out in a written agreement with FICL;

b. FICL will contractually agree with the Funds and the Private Clients to be responsible for any loss that arises out of the failure of the Applicant (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and the Private Clients, and (ii) to exercise the degree of care, diligence

and skill that a reasonably prudent person would exercise in the circumstances and that this responsibility cannot be waived;

c. FICL will remain a registrant under the CFA so long as the Proposed Advisory Services are provided by the Applicant; and

d. this order shall terminate three years from April 6, 2001.

April 6, 2001.

"Howard I. Wetston" "Derek Brown"

## 2.2.14 Fidelity International Limited - ss. 38(1) of CFA

**Headnote**

Subsection 38(1) of the Commodity Futures Act (Ontario) (the "CFA") - relief from the requirements of clause 22(1)(b) of the CFA, for a period of three years, in respect of the proposed advisory services, subject to certain terms and conditions.

**Statutes Cited**

Commodity Futures Act, R.S.O. 1990. c. C20., as am., ss. 22(1)(b), 38(1).

**IN THE MATTER OF**
**THE COMMODITY FUTURES ACT, R.S.O. 1990 c. C20**
**(the "CFA")**

**AND**

**IN THE MATTER OF**
**FIDELITY INTERNATIONAL LIMITED**

**ORDER**
**(Subsection 38(1))**

**UPON** the application of Fidelity International Limited (the "Applicant") to the Ontario Securities Commission (the "Commission") for a ruling under subsection 38(1) of the CFA that the Applicant and its officers, partners and directors are not subject to the requirement of clause 22(1)(b) of the CFA;

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

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

1. The Applicant is a corporation organized under the laws of Bermuda and is resident in Bermuda.

2. Fidelity Investments Canada Limited ("FICL") is a corporation continued under the laws of Ontario and is resident in Ontario. FICL is currently registered with the Commission as a mutual fund dealer and an adviser in the categories of investment counsel and portfolio manager. FICL is currently registered with the Commission as an adviser in the category of commodity trading manager under the CFA.

3. FICL acts as portfolio manager to certain mutual funds offered, from time to time, by FICL in Canada (the "Fidelity Funds") and the Applicant acts as sub-adviser to FICL in respect of certain of the Fidelity Funds. FICL is responsible for the investment advice provided by the Applicant in respect of the Fidelity Funds. The Commission granted relief similar to that granted herein to the Applicant in respect of the Fidelity Funds in an order dated October 20, 2000.

4. FICL is now proposing to offer discretionary investment management services to pension plans and other institutional investors in Canada (the "Private Clients").

FICL will carry out the investment mandate of the Private Clients through the use of pooled funds to be established by FICL from time to time (the "Funds") or segregated accounts. FICL will act as manager and trustee of the Funds.

5. The Applicant is proposing to enter into an arrangement in which FICL would act as the portfolio adviser to certain of the Funds and Private Clients, including ancillary activities in respect of purchases and sales of commodity futures contracts or related products traded on commodity futures exchanges, and the Applicant would provide advice and assistance to FICL (the "Proposed Advisory Services"). In no case will the investment activities involving commodities futures or products traded on commodities futures exchanges constitute the primary focus or investment objective of any of the Funds or Private Clients.

6. In connection with the Proposed Advisory Services, the Applicant would enter into a written agreement with FICL outlining the duties and obligations of the Applicant.

7. FICL will assume responsibility to the Funds and the Private Clients for all advice and assistance provided by the Applicant.

8. The Applicant will only provide advice and assistance to FICL where FICL has contractually agreed with the Funds and the Private Clients to be responsible for any loss that arises out of the failure of the Applicant (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and the Private Clients, and (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and that this responsibility cannot be waived.

**AND UPON** being satisfied that it would not be prejudicial to public interest for the Commission to grant the exemptions requested on the basis of the terms and conditions proposed,

**IT IS ORDERED** pursuant to subsection 38(1) of the CFA that the Applicant, its officers, partners and directors are not subject to the requirements of clause 22(1) (b) of the CFA in respect of the Proposed Advisory Services provided that:

a. the obligations and duties of the Applicant are set out in a written agreement with FICL;

b. FICL will contractually agree with the Funds and the Private Clients to be responsible for any loss that arises out of the failure of the Applicant (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds and the Private Clients, and (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and that this responsibility cannot be waived;

c. FICL will remain a registrant under the CFA so long as the Proposed Advisory Services are provided by the Applicant; and

d. this order shall terminate three years from April 6, 2001.

April 6, 2001.

"Howard I. Wetston" "Paul Moore"

## 2.2.15 CFG Commodity Management, Inc. & Trilogy Capital Management LLC - ss. 38(1) of CFA

**Headnote**

Subsection 38(1) of the Commodity Futures Act (Ontario) (the "CFA") - relief from the requirements of clause 22(1)(b) of the CFA, for a period of three years, in respect of the proposed advisory services, subject to certain terms and conditions.

**Statutes Cited**

Commodity Futures Act, R.S.O. 1990. c. C20., as am., ss. 22(1)(b), 38(1).

**IN THE MATTER OF THE COMMODITY FUTURES ACT, R.S.O. 1990 c. 20**

**AND**

**IN THE MATTER OF CFG COMMODITY MANAGEMENT, INC. and TRILOGY CAPITAL MANAGEMENT LLC**

**ORDER (Subsection 38(1))**

**UPON** the application of CFG Commodity Management Ltd. ("CFG") and Trilogy Capital Management LLC ("Trilogy") (jointly the "Applicants") to the Ontario Securities Commission (the "Commission") for a ruling under subsection 38(1) of the Commodity Futures Act, R.S.O. 1990, c.20 (the "CFA") that the Applicants and its officers, partners and directors are not subject to the requirement of paragraph 22(1)(b) of the CFA;

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

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

1. CFG is a corporation organized under the laws of the Province of Manitoba and is resident in Manitoba. CFG does not have an address in Ontario.

2. CFG is the General Partner of the BFI Commodity Fund Limited Partnership (the "Fund"), a Manitoba limited partnership intending to offer Limited Partnership Units in Ontario pursuant to a prospectus which has been filed in British Columbia, Manitoba, Ontario and Nova Scotia, with Manitoba as its principal jurisdiction pursuant to National Policy 43-201. The Fund does not have an address in Ontario. The Fund intends to hold a portfolio of commodities acquired through commodities futures exchanges in the United States so as to follow a recognized commodities index, the Barclay Futures Index.

3. CFG is currently registered under The Commodity Futures Act of Manitoba (the "CFA (Manitoba)") as an Advisor restricted to providing advice to the Fund and is entitled in that regard to provide discretionary portfolio management services to the Fund. CFG will provide all such advice outside Ontario.

4. Trilogy is incorporated under the laws of Delaware and is resident in New Jersey. Trilogy is a registered commodity pool operator and commodity trading advisor registered with the Commodity Futures Trading Commission under the U.S. Commodity Exchange Act, is a member of the National Futures Association and is a registered investment advisor under the United States Investment Advisors Act of 1940, which permits Trilogy to advise in respect of future and forward contracts and options on futures and forward contracts in the United States. All advice given by Trilogy will be given outside Ontario. The obligations and duties of Trilogy are set out in a written agreement between CFG and Trilogy.

5. CFG has entered into an investment sub-advisory agreement with Trilogy, whereby CFG is to act as the portfolio adviser to the Fund and Trilogy is to act as the sub-adviser to CFG, in respect of purchases and sales of commodity futures contracts traded on commodity futures exchanges in the United States and cleared through acceptable clearing corporations (collectively the "Proposed Advisory Services"), all as disclosed in the Prospectus.

6. CFG has contractually agreed with the Fund to be responsible for any loss that arises out of the failure of Trilogy to (i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Fund and (ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (the "Standard of Care") and that this responsibility cannot be waived.

7. Trilogy will only provide advice to CFG in connection with the Fund, the offering documents for which disclose (i) that CFG is responsible for any loss that arises out of the failure of Trilogy to meet the Standard of Care in providing advice to the Fund, (ii) the difficulty in enforcing legal rights against Trilogy and (iii) that all or substantially all of Trilogy's assets are situated outside of Canada.

8. Both CFG and Trilogy would be exempt from registration under the mutual reliance principles of OSC Rule 35-502, were CFG registered as an adviser under The Securities Act (Manitoba) and were compliance under the Securities Act required, rather than CFG being registered under the CFA (Manitoba) and compliance with the CFA required.

**AND UPON** being satisfied that it would not be prejudicial to public interest for the Commission to grant the exemptions requested on the basis of the terms and conditions proposed,

**IT IS ORDERED** pursuant to subsection 38(1) that the Applicants, their officers, partners and directors are not subject to the requirements of paragraph 22(1) (b) of the CFA in respect of the Proposed Advisory Services provided that:

(a) the obligations and duties of Trilogy remain as set out in the written agreement with CFG;

(b) all advice is given outside Ontario and each of CFG, the Fund and Trilogy continues not to have an address in Ontario;

(c) CFG contractually agrees with the Fund to be responsible for any loss to the fund that arises out of the failure of Trilogy to meet the Standard of Care in providing advice to the fund and that this responsibility cannot be waived;

(d) the prospectus for the fund discloses that CFG is responsible for any loss that arises out of the failure of Trilogy to meet the Standard of Care in providing advice to the Fund, discloses that there may be difficulty enforcing any legal rights against Trilogy because it is resident outside Canada and discloses that all or a substantial portion of Trilogy's assets are situated outside Canada;

(e) CFG remains a registrant under the CFA (Manitoba), in a category which permits CFG to provide discretionary management services, so long as the Proposed Advisory Services are provided by CFG and Trilogy; and

(f) this order shall terminate three years from March 30, 2001.

March 30, 2001

"J.A. Geller" "K.D. Adams"

## 2.3 Rulings

### 2.3.1 Genesys S.A. & Astound Incorporated - ss. 74(1)

**Headnote**

Application for relief from the registration and prospectus requirements in respect of certain trades made in connection with a merger involving a Canadian reporting issuer and a French company.

Continuous Disclosure - reporting issuer exempted from continuous disclosure in respect of exchangeable shares subject to certain conditions.

Insider Reporting - reporting issuer exempted from insider reporting requirements subject to certain conditions.

AIF and MD&A - waiver granted to Canadian reporting issuer from requirement to deliver AIF and MD&A.

**Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., 25, 53, 72(5), 74(1), 75, 77, 78, 79, 80(b)(iii), 81, 85, 86, 88(2), 107, 108, 109 and 121(2).

**Regulations Cited**

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

**Rules Cited**

Rule 45-501 - Exempt Distributions
Rule 51-501 - AIF and MD&A
Rule 72-501 - Prospectus Exemption for First Trade Over a Market Outside Ontario.

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

**AND**

**IN THE MATTER OF**
**GENESYS S.A. AND**
**ASTOUND INCORPORATED**

**RULING**
**(Subsection 74(1), clause 80(b)(iii) and paragraph 121(2)(a)(ii) of the Act, and section 5.1 of Rule 51-501)**

**UPON** the application of GENESYS S.A. ("GENESYS"), GENESYS ACQUIRECO (an indirect wholly-owned subsidiary of GENESYS), GENESYS CALLCO (an indirect wholly-owned subsidiary of GENESYS) and ASTOUND Incorporated ("ASTOUND") (collectively, the "Applicant") to the Ontario Securities Commission (the "Commission") for:

(a) a ruling pursuant to Section 74(1) of the Act that certain trades of securities in connection with the proposed merger (the "Merger") of GENESYS and ASTOUND, to be effected by way of a plan of arrangement (the "Arrangement") under Section 182 of the *Business Corporations Act* (Ontario), shall be exempt from the requirements of Sections 25 and 53 of the Act to be registered to trade in a security (the "Registration Requirements") and to file a preliminary prospectus and a prospectus and receive receipts therefor prior to distributing a security (the "Prospectus Requirements");

(b) an order pursuant to subsection 80(b)(iii) of the Act and section 5.1 of Rule 51-501 *AIF and MD&A* ("Rule 51-501") that ASTOUND be exempt from the requirements of Sections 75, 77, 78, 79 and 81(2) and Rule 51-501 of the Act to issue a press release and file a report regarding material changes (the "Material Change Reporting Requirements"), to file and deliver interim and annual financial statements (the "Financial Statement Requirements"), to file information circulars (the "Proxy Requirements") and to file annual information forms (including management's discussion and analysis of the financial condition and results of operation of ASTOUND (the "AIF Requirements"));

(c) an order pursuant to Section 121(2)(a)(ii) of the Act that the requirements contained in Sections 107, 108 and 109 of the Act for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer (the "Insider Reporting Requirement") shall not apply to insiders of ASTOUND;

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

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

1. GENESYS is a public company in France, the shares of which are listed on the *Nouveau Marché* of Euronext Paris (the Paris Bourse).

2. GENESYS is currently subject to the reporting requirements of the Commission des Opérations de Bourse ("COB") and the *Nouveau Marché* of Euronext Paris and is not a reporting issuer under the Act or under the securities legislation of any province or territory of Canada. GENESYS has filed a registration statement on Form F-4 for filing with the Securities and Exchange Commission, and such registration statement was declared effective under the *Securities Exchange Act of 1934* (United States) (the "U.S. Securities Exchange Act") on February 12, 2001.

3. As at December 18, 2000, GENESYS' authorized capital consisted of 12,842,109 shares (the "GENESYS Shares") of nominal value of EURO 4.57 each, of which

9,342,381 GENESYS Shares were issued and outstanding.

4. GENESYS ACQUIRECO will be an indirect wholly-owned subsidiary of GENESYS. It will be incorporated under the *Business Corporations Act* (Nova Scotia) for the purpose of implementing the Arrangement. GENESYS ACQUIRECO's only material assets upon completion of the Arrangement will be the issued and outstanding common shares in the capital of ASTOUND (the "ASTOUND Common Shares"), the issued and outstanding Class A preferred shares in the capital of ASTOUND (the "Class A Preferred Shares") and the issued and outstanding Class C shares in the capital of ASTOUND (the "Class C Shares").

5. The authorized capital of GENESYS ACQUIRECO will consist of an unlimited number of common shares and an unlimited number of Class A, Class B, Class C and Class D preferred shares. Upon completion of the Arrangement, all of the issued and outstanding common shares and preferred shares of GENESYS ACQUIRECO will be held directly or indirectly by GENESYS.

6. GENESYS CALLCO will be an indirect wholly-owned subsidiary of GENESYS. It will be incorporated under the *Business Corporations Act* (Nova Scotia) for the purpose of implementing the Arrangement. GENESYS CALLCO will hold the various call rights related to the non-voting exchangeable shares to be created in the capital of ASTOUND under the Arrangement (the "Exchangeable Shares").

7. The authorized capital of GENESYS CALLCO will consist of an unlimited number of common shares and an unlimited number of Class A, Class B, Class C and Class D preferred shares. Upon completion of the Arrangement, all of the issued and outstanding common shares and preferred shares of GENESYS CALLCO will be held directly or indirectly by GENESYS.

8. ASTOUND is a reporting issuer in Ontario and not in any other province or territory of Canada. Its shares are not listed or quoted on any stock market, traded on any automated quotation system or traded on any formal over-the-counter trading system. The ASTOUND Common Shares were previously traded over-the-counter on the Canadian Dealing Network, but have not done so since January 7, 1999 and have not otherwise been traded on any organized market.

9. ASTOUND's authorized capital consists of an unlimited number of ASTOUND Common Shares, an unlimited number of Series A preferred shares (the "ASTOUND Preferred Shares") and an unlimited number of ASTOUND Class B Preferred Shares. As at December 18, 2000, there were 17,399,324 ASTOUND Common Shares and 1,260,000 ASTOUND Preferred Shares and no Class B Preferred Shares (the "Class B Preferred Shares") issued and outstanding. As at December 18, 2000, options to acquire no more than 2,386,403 ASTOUND Common Shares were granted and outstanding under the ASTOUND Stock Option Plan (the "ASTOUND Options"), share purchase warrants to acquire 3,884,442 ASTOUND Common Shares, exercise price $1.00 per ASTOUND Common Share, were granted and outstanding (the "ASTOUND Warrants"), rights to acquire 1,137,500 ASTOUND Common Shares each exercisable for no additional consideration, were granted and outstanding (the "ASTOUND Special Warrants") and rights to acquire 1,307,375 ASTOUND Warrants, each exercisable for no additional consideration, were granted and outstanding (the "ASTOUND Overlying Warrants") (holders of ASTOUND Common Shares, ASTOUND Preferred Shares, ASTOUND Options, ASTOUND Special Warrants, ASTOUND Warrants and ASTOUND Overlying Warrants, collectively, the "ASTOUND Securityholders").

10. On September 8, 2000, pursuant to the terms of a convertible promissory note purchase agreement, ASTOUND issued to GENESYS a convertible promissory note in the principal amount of $2,500,000 due on September 8, 2005 (the "First Note"). On November 30, 2000, pursuant to the terms of the convertible note purchase agreement, ASTOUND issued to GENESYS a second convertible promissory note in the principal amount of $2,499,000 due on November 30, 2005 (the "Second Note"). Subject to certain conditions, the First Note and the Second Note are convertible into Class B Preferred Shares at the option of GENESYS. The conversion price is $2.91 per share, subject to certain anti-dilution adjustments.

11. On December 18, 2000, GENESYS and ASTOUND entered into a merger agreement (the "Merger Agreement"). The Merger will be effected by way of the Arrangement, pursuant to which GENESYS, through GENESYS ACQUIRECO and its affiliates, will own all of the ASTOUND Common Shares, Class A Preferred Shares, Class C Shares, the First Note and the Second Note.

12. Under the Arrangement, the authorized share capital of ASTOUND shall be reorganized as follows: (i) by creating, as a class of shares in the capital of ASTOUND, an unlimited number of Exchangeable Shares; (ii) by eliminating, as a class of shares in the capital of ASTOUND, the preferred shares issuable in series and eliminating, as a series thereof, the ASTOUND Preferred Shares; (iii) by creating, as a class of shares in the capital of ASTOUND, an unlimited number of Class A Preferred Shares; (iv) by creating, as a class of shares in the capital of ASTOUND, an unlimited number of Class C Shares; and (v) by providing that a holder of a fractional ASTOUND Common Share will be entitled, following the effective date of the Arrangement (the "Effective Date"), to exercise voting rights and to receive dividends in respect of such fractional ASTOUND Common Share, so that immediately after such reorganization the authorized share capital of ASTOUND shall consist of an unlimited number of Exchangeable Shares, an unlimited number of Class A Preferred Shares, an unlimited number of Class B Preferred Shares, an unlimited number of Class C Shares, an unlimited number of ASTOUND Common Shares which entitle

the holder of a fractional common share to exercise voting rights and to receive dividends in respect thereof.

13. Under the Arrangement, each ASTOUND Common Share and each ASTOUND Preferred Share including those issued under the Arrangement pursuant to the exercise and deemed exercise of ASTOUND Special Warrants, ASTOUND Warrants and ASTOUND Overlying Warrants (other than those held by holders of ASTOUND Common Shares, ASTOUND Special Warrants and ASTOUND Preferred Shares who exercise their right of dissent and ASTOUND Common Shares and ASTOUND Preferred Shares, if any, held by GENESYS or any affiliate thereof), will be changed into:

    (a) a number of fully paid and non-assessable Exchangeable Shares based on an exchange ratio (the "Exchangeable Share Ratio");

    (b) a number of fully paid and non-assessable Class A Preferred Shares based on an exchange ratio (the "Preferred Share Ratio"); and

    (c) a number of Class C Shares equal to the number of Class A Preferred Shares received under (b) above.

14. Each Exchangeable Share will be retractable by the holder at any time for one GENESYS Share. The Exchangeable Shares will be redeemable on a one for one basis for GENESYS Shares at ASTOUND's option on or after the tenth anniversary of the Effective Date or earlier in certain circumstances, including if fewer than 10% of the total number of Exchangeable Shares issued pursuant to the Arrangement are held by non-GENESYS entities and outstanding. Assuming that all the Exchangeable Shares were exchanged into GENESYS Shares, the resultant GENESYS Shares would constitute, in the aggregate, less than 10% of the aggregate outstanding GENESYS Shares.

15. Under the Arrangement, GENESYS ACQUIRECO will purchase from the holders of Class A Preferred Shares, all of the issued and outstanding Class A Preferred Shares, in consideration of a cash purchase price per share (the "Class A Purchase Price").

16. Under the Arrangement, GENESYS ACQUIRECO will purchase from the holders of Class C Shares all of the issued and outstanding Class C Shares, in consideration for a cash purchase price per share (the "Class C Purchase Price").

17. Under the Arrangement, each ASTOUND Option outstanding on the third Business Day prior to the Effective Time will cease to be exercisable to acquire ASTOUND Common Shares and will be assumed by GENESYS ACQUIRECO and exchanged for an option (a "Replacement Option") to purchase a number of GENESYS Shares equal to the product of the number of ASTOUND Common Shares that were issuable upon exercise of such option immediately prior to the Effective Time multiplied by an exchange ratio (the "Options Exchange Ratio").

18. Under the Arrangement, (a) each ASTOUND Overlying Warrant shall be exercised and shall be deemed to be exercised and the underlying share purchase warrant shall be issued with respect thereto; (b) each outstanding ASTOUND Warrant with respect to which the holder has delivered to and deposited with ASTOUND (i) a notice of exercise, and (ii) cash in an amount equal to the exercise price, prior to the date that is three Business Days preceding the Effective Date, shall be exercised and shall be deemed to have been exercised and shall thereby be changed into one ASTOUND Common Share, and each other ASTOUND Warrant shall be cancelled and forfeited with no compensation or consideration to the holder; and (c) each outstanding ASTOUND Special Warrant shall be exercised and shall be deemed to be exercised and one ASTOUND Common Share shall be issued with respect thereto.

19. Subject to the terms of an interim order (the "Interim Order") to be sought from the Superior Court of Justice (Ontario) (the "Court"), it is anticipated that the required approval of ASTOUND Securityholders shall be obtained at a meeting (the "Meeting") by the approval of (a) not less than 66 2/3% of the votes cast by the holders of the ASTOUND Common Shares, ASTOUND Options, ASTOUND Overlying Warrants, ASTOUND Special Warrants and ASTOUND Warrants and (b) not less than 66 2/3% of the votes cast by holders of ASTOUND Preferred Shares, voting separately as a class; for such purposes each holder of ASTOUND Common Shares will be entitled to one vote for each ASTOUND Common Share or ASTOUND Preferred Share held and each holder of ASTOUND Options, ASTOUND Overlying Warrants, ASTOUND Special Warrants and ASTOUND Warrants will be entitled to one vote for each ASTOUND Common Share such holder would have received on a valid exercise of such holder's ASTOUND Options, ASTOUND Overlying Warrants, ASTOUND Special Warrants and ASTOUND Warrants, as applicable.

20. In connection with the Arrangement, ASTOUND will send to the ASTOUND Securityholders a management proxy circular (the "Circular"). The Circular will contain disclosure of the business and affairs of each of GENESYS and ASTOUND and of the particulars of the Arrangement. The disclosure provided with respect to GENESYS will be substantially identical to the disclosure provided in a registration statement on Form F-4 filed on a confidential basis (the "F-4 Filing") with the Securities and Exchange Commission ("SEC") by GENESYS with respect to a significant pending merger between GENESYS and Vialog Corporation.

21. In connection with the Arrangement, GENESYS, GENESYS CALLCO, ASTOUND and a trustee will enter into an exchange trust agreement (the "Exchange Trust Agreement") and GENESYS, GENESYS CALLCO and ASTOUND will enter into a support agreement (the "Support Agreement"). These two agreements, together with the rights, privileges, restrictions and conditions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), result in the economic attributes of the Exchangeable Shares being

substantially equivalent in all material respects to the economic attributes of the GENESYS Shares (without taking into account tax effects). However, the holders of Exchangeable Shares will not be provided with voting rights at the GENESYS level unless and until they exchange their Exchangeable Shares for GENESYS Shares.

22. Pursuant to the Exchange Trust Agreement, GENESYS CALLCO will grant to a trustee (the "Trustee") for the benefit of holders (other than GENESYS and its affiliates) of the Exchangeable Shares (the "Beneficiaries") the right to require GENESYS CALLCO to purchase from any Beneficiary all or any part of the Exchangeable Shares held by such Beneficiary upon the occurrence and during the continuance of an insolvency event involving ASTOUND. Under the Exchange Trust Agreement, the Trustee also holds for the benefit of the Beneficiaries the obligation of GENESYS CALLCO to effect an automatic exchange of Exchangeable Shares for GENESYS Shares in the case of an insolvency or liquidation event affecting GENESYS. In addition, GENESYS will covenant to, among other things, cause to be fulfilled all of the obligations of GENESYS CALLCO under the Exchange Trust Agreement.

23. The Support Agreement will restrict GENESYS from declaring or paying dividends on the GENESYS Shares unless equivalent dividends are declared and paid on the Exchangeable Shares. In addition, pursuant to the Support Agreement, GENESYS may not make any changes to the GENESYS Shares (e.g., subdivision, consolidation or reclassification) unless the same or economically equivalent changes are simultaneously made to, or in the rights of the holders of, the Exchangeable Shares.

24. The steps under the Arrangement, the creation and exercise of rights provided for in the Exchangeable Share Provisions, the Exchange Trust Agreement and the Support Agreement and the subsequent sales of Exchangeable Shares and/or GENESYS Shares by the holders of Exchangeable Shares involve or may involve a number of trades of securities, including trades related to the issuance of Exchangeable Shares, Class A Preferred Shares and Class C Shares pursuant to the Arrangement or upon the issuance of GENESYS Shares in exchange for Exchangeable Shares, the first trades of Exchangeable Shares received under the Arrangement, and the first trades of GENESYS Shares received upon the retraction or redemption of Exchangeable Shares, in connection with the liquidation, dissolution or winding-up of ASTOUND or upon the exercise of the Liquidation Call Right, the Retraction Call Right, the Redemption Call Right, the Exchange Rights or the Automatic Exchange Rights, or upon the exercise of the Replacement Options. To the extent that there are no exemptions from sections 25 and 53 of the Act for such trades (the "Trades"), and to the extent there would be particular disclosure, reporting, filing or fee payment obligations with respect to such Trades under available exemptions from sections 25 and 53 of the Act, exemptive relief is required.

25. The fundamental investment decision to be made by an ASTOUND Securityholder is made at the time of the Arrangement, when such holder votes in respect of the Arrangement. As a result of this decision, a holder (other than a holder who exercises its right of dissent) receives Exchangeable Shares and cash in exchange for its ASTOUND Common Shares, ASTOUND Special Warrants and ASTOUND Preferred Shares. The Exchangeable Shares may, at the holder's option, be retracted for GENESYS Shares. As the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be the economic equivalent (without taking into account tax effects) in all material respects (absent voting rights) of the GENESYS Shares, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision at the time of the Arrangement. That investment decision will be made on the basis of the Circular, which will contain detailed disclosure of the business and affairs of each of GENESYS and ASTOUND and of the particulars of the Arrangement.

26. As a result of the economic equivalency in all material respects between the Exchangeable Shares and the GENESYS Shares (without taking into account tax effects and absent voting rights), holders of Exchangeable Shares will, in effect, have a non-voting equity interest in GENESYS, rather than ASTOUND, as dividend and dissolution entitlements will be determined by reference to the financial performance and condition of GENSYS, not ASTOUND.

**AND UPON** the Commission being satisfied that the test contained in the Act that provides the Commission with the jurisdiction to make the following decision has been met;

**THE DECISION** of the Commission is that:

1. Pursuant to Section 74(1) of the Act, section 25 and 53 of the Act shall not apply to the Trades provided that the first trade in Exchangeable Shares or GENESYS Shares acquired pursuant to this ruling is made in compliance with:

   (a) subsection 72(5) of the Act and subsection 2.18(3) of Rule 45-501 *Exempt Distributions* as if the Exchangeable Shares or GENESYS Shares had been acquired pursuant to an exemption referred to in subsection 72(5) of the Act (the Commission hereby confirming that the filing of the Circular with the Commission at the time of mailing the Circular to ASTOUND Security holders constitutes disclosure to the Commission of the exempt trade); or

   (b) Rule 72-501 *Prospectus Exemption for First Trade Over a Market Outside Ontario* as if the Exchangeable Shares were restricted securities as defined in the Rule and the GENESYS Shares were underlying restricted securities as defined in that Rule.

2. Pursuant to Section 80(b)(iii) of the Act, the Material Change Reporting Requirements, Financial Statement

Requirements and Proxy Requirements shall not apply to ASTOUND and pursuant to Section 121(2)(a)(ii) of the Act, Insider Reporting Requirements shall not apply to an insider of ASTOUND who is an insider only by virtue of being a director or senior officer of ASTOUND or a subsidiary of ASTOUND or to transactions in Exchangeable Shares by GENESYS ACQUIRECO and GENESYS CALLCO, for so long as:

(a) GENESYS sends to all holders of Exchangeable Shares resident in Ontario all disclosure material furnished to holders of GENESYS Shares or American Depositary Shares representing GENESYS Shares resident in the United States, including, without limitation, copies of its annual financial statements, interim financial statements and notices prepared in connection with GENESYS' shareholder meetings;

(b) GENESYS files with the Commission copies of all documents required to be filed by it with the U.S. Securities and Exchange Commission under the U.S. Securities Exchange Act as amended, including without limitation, copies of any Form 20-F, Form 6-K and notices prepared in connection with GENESYS' shareholder meetings;

(c) GENESYS complies with the requirements of the *Nouveau Marché* of Euronext Paris and French securities law in respect of making public disclosure of material information on a timely basis and forthwith issues in Ontario and files with the Commission any press release that discloses a material change in GENESYS' affairs;

(d) the Circular includes a statement that, as a consequence of this order, ASTOUND and its insiders will be exempt from certain disclosure requirements applicable to reporting issuers and its insiders in Ontario, and specifies those requirements ASTOUND and its insiders have been exempted from, and identifies the disclosure that will be made in substitution therefor;

(e) ASTOUND complies with the requirements of Section 75 of the Act in respect of material changes in the affairs of ASTOUND that would be material to holders of Exchangeable Shares but would not be material to holders of GENESYS Shares;

(f) GENESYS includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to GENESYS and not in relation to ASTOUND, such statement to include a reference to the economic equivalency (without taking into account tax effects) between the Exchangeable Shares and the GENESYS Shares;

(g) GENESYS remains the direct or indirect beneficial owner of all the issued and outstanding ASTOUND Common Shares;

(h) ASTOUND does not, at any time after the closing date of the Arrangement, issue any securities to the public other than the Exchangeable Shares; and

(i) GENESYS' annual audited financial statements are reconciled to or prepared in accordance with U.S. GAAP in its Form 20-F or equivalent documents and, if effected by way of a reconciliation, such reconciliation is audited.

March 16th, 2001.

"J. A. Geller" "Robert W. Davis"

**THE DECISION** of the Director is that the AIF Requirements shall not apply to ASTOUND for so long as the conditions set out in paragraph 2 of the operative portion of the above decision of the Commission are satisfied.

March 16, 2001.

"Iva Vranic"

# Chapter 3

# Reasons: Decisions, Orders and Rulings

## 3.1.1 BioCapital Biotechnology et al.

**Headnote**

Facts

This was a hearing and review by the Commission under section 8 of the Securities Act of a decision of the Director under section 9.1 of National Policy 12-102 and section 19.1 of National Instrument 81-102 opting out of the MRRS and refusing an application for an exemption from the 10% concentration limit set out in section 2.1 of National Instrument 81-102. The purpose of the reorganization was to unlock value (the units of the partnership were trading at a discount from net asset value). The reorganization would consist of the transfer of the public company investments of the partnership to a new open-end mutual fund for units of the mutual fund which would then be distributed to the partners. This would be followed by a going private transaction in which the partner holding approximately 80% of the units of the partnership would acquire the balance of the units of the partnership for cash and units of the mutual fund. After completion of these transactions, the mutual fund investment in one of the public companies would constitute approximately 20% of the net asset value of the mutual fund. The sale into the market of a sufficient number of shares of the company by the mutual fund in a short period of time could reasonably be expected to depress the market price for the company's shares to the detriment of all holders of the shares, including the mutual fund, and would result in the mutual fund receiving a depressed value for the shares sold into the market. It was a condition of the transactions that a prospectus for the mutual fund units be qualified in all provinces of Canada. The applicants requested an exemption from the 10% concentration limit for a period of 180 days to give them time to arrange for a private placement or other manner of disposing of sufficient shares to bring the investment under the 10% threshold. Quebec was selected as the principle jurisdiction. Quebec and all the other jurisdictions in Canada granted the request for the exemption. The Director opted out of the MRRS and refused to grant the exemption.

Issues

1. In considering the application and in opting out of the MRRS, what weight, if any, should have been given by the Director under section 19.1 of the National Instrument 81-102 and section 9.1 of National Policy 12-102, and should be given by the Commission under section 8 of the Act, to the decisions of the principle jurisdiction and the other non-principle jurisdictions under the MRRS?

2. Who has the onus of establishing the public interest under the application?

3. Whose interest, in this case, should be considered in determining the public interest?

Decision

The Commission granted the application for the exemption and decided that Ontario should opt back into the MRRS provided the Director was satisfied with the risk disclosure in the prospectus.

Reasons

The Commission determined that while the Director and the Commission each had an unfettered discretion to decide the matter, in view of the fundamental principle of harmonization and co-operation provided for in clause 5 of section 2.1 of the Act and in National Policy 12-102, they should give serious consideration to the fact that the other jurisdictions had granted the relief requested and that failure of Ontario to grant the relief would prevent the transactions from proceeding. The efficiency of the Canadian capital markets and the integration of the Ontario capital markets with the Canadian capital markets were factors to be taken into account, not only in devising national policies and instruments, but also in the administration of the rules and policies. The Commission determined that the onus was on the applicants to establish that an exception from the applicable rules would not be contrary to the public interest. The Commission decided that in determining the public interest for such purpose it was legitimate to look at the interest of the partners, the interest of the shareholders of the public company, the interest of the holders of units in the mutual fund, and the interest of future investors relying on the prospectus.

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

**AND**

**IN THE MATTER OF**
**THE EXEMPTION APPLICATION FILED BY**
**BIOCAPITAL BIOTECHNOLOGY AND HEALTHCARE FUND**
**AND BIOCAPITAL MUTUAL FUND MANAGEMENT INC.**
**CONCERNING NATIONAL INSTRUMENT 81-102**
**SUBSECTION 2.1(1)**

| | | | |
|---|---|---|---|
| Hearing: | April 2, 2001 | | |
| Panel: | Paul M. Moore, Q.C. | - | Chair |
| | John A. Geller, Q.C. | - | Commissioner |
| | R. Stephen Paddon, Q.C. | - | Commissioner |
| Counsel: | Melissa Kennedy<br>Paul Dempsey<br>Chantal Mainville | - | For the Staff of the Ontario Securities Commission |
| | Lisa Davis<br>Eric Levy | - | For the Respondent |

**REASONS FOR DECISION**

**Hearing and Review**

This was a hearing and review by the Ontario Securities Commission under subsection 8(2) of the Securities Act (the "Act") of a decision of the Director refusing under section 19.1 of National Instrument 81-102 an application (the "Application") by the Applicants for an exemption for 180 days from the 10% concentration limit set out in subsection 2.1(1) of National Instrument 81-102, and opting out of the Mutual Reliance Review System ("MRRS") under section 9.1 of National Policy 12-201. This hearing and review was requested by BioCapital Biotechnology and Healthcare Fund (the "Mutual Fund") and BioCapital Mutual Fund Management Inc. (the "Applicants").

**Issues**

The issues in this hearing and review are:

1. In considering the Application, and in opting out of the MRRS, what weight, if any, should have been given by the Director under section 19.1 of National Instrument 81-102 and section 9.1 of National Policy 12-102, and should be given by the Commission under section 8 of the Act, to the decisions of the principal jurisdiction and the other non-principal jurisdictions under the MRRS?

2. Who has the onus in establishing the public interest under the Application?

3. Whose interest, in this case, should be considered in determining the public interest?

**Decision**

The Commission decided that the Application should be granted, and that Ontario should opt back into the MRRS, provided the Director was satisfied that the final prospectus adequately disclosed the risk to investors as a result of granting the exemption.

**Facts**

The following are the facts in this hearing and review:

(i) Background

BioCapital Investments Limited Partnership (the "Partnership") is a closed-end investment fund established under the laws of the Province of Quebec pursuant to a limited partnership agreement entered into on May 8, 1997. The units of the Partnership are held as to approximately 80% by the Fonds de Solidarité des travailleurs du Quebec ("Fonds de Solidarité"). A small percentage of the units are held by residents of Ontario. The units of the Partnership are listed on The Toronto Stock Exchange. They have been trading at a discount from the net value of the assets of the Partnership. In accordance with the Partnership's distribution policy, net income of the Partnership for the 2000 fiscal year generally would be distributed on or before March 31, 2001.

(ii) Reorganization

The general partner proposed a reorganization ("Reorganization") as a strategy for unlocking unitholder value, to create liquidity, and to allow a distribution of net income in respect of its 2000 fiscal year of the Partnership by distributing units of a new mutual fund formed for this purpose.

The Reorganization itself would consist of the transfer to the Mutual Fund of public company securities in the portfolio of the Partnership together with all of the cash held by the Partnership with certain exceptions in exchange for units in the Mutual Fund. The Partnership would then distribute these units to its limited partners.

(iii) Going Private Transaction

The Fonds de Solidarité agreed to support the Reorganization in return for a going private transaction (the "Going Private Transaction") whereby each limited partner, other than the Fonds de Solidarité, would be required to sell to the Fonds de Solidarité, and the Fonds de Solidarité would be required to purchase, the Partnership units not held by it payable as to 50% in cash and as to 50% in units of the Mutual Fund immediately following the completion of the Reorganization.

(iv) Prospectus

A preliminary simplified prospectus and a preliminary annual information form both dated February 19, 2001 were filed in all provinces of Canada for the purpose of qualifying units of the Mutual Fund for distribution.

The Reorganization, the Going Private Transaction and related arrangements were all made conditional upon the issue of a receipt for the final prospectus and the completion of the transactions by a certain date (originally March 31, 2001 but subsequently extended to a date shortly after the date of this hearing and review). The Fonds de Solidarité is not prepared to proceed with the transactions if the final prospectus is not receipted in Ontario.

(v) Stakeholder Approvals

The Reorganization and the Going Private Transaction must be approved by at least 2/3 of the votes cast by the partners at a meeting or meetings. The board of directors of the general partner established an independent committee (the "Independent Committee") to review the fairness of the transactions. The Independent Committee unanimously determined that the transactions are fair, from a financial point of view, to the partners of the Partnership other than the general partner and the Fonds de Solidarité and unanimously recommended to the board of directors of the general partner that the board of directors submit the transactions to the partners for approval with a recommendation to the partners that they vote in favour of the transactions. The Independent Committee received an independent valuation from PricewaterhouseCoopers LLP ("PWC") in connection with the transactions. In addition, the independent committee received a fairness opinion from PWC in respect of the transactions.

(vi) Mutual Fund

The Mutual Fund is a newly established open-end mutual fund trust with redeemable units. It will be managed by BioCapital Mutual Fund Management Inc. ("Manager"), a wholly owned subsidiary of BioCapital Management Group Inc., controlled by the same shareholders as the general partner of the Partnership. The Manager will receive an annual management fee based on the average daily net asset value of the Mutual Fund. Investment objectives and strategy of the Mutual Fund will be consistent with those of the Partnership except that the portfolio of the Partnership will consist primarily of securities of public companies in the bio- technology and health care industries. The investment manager is also a wholly-owned subsidiary of BioCapital Management Group Inc.

(vii) Problem

It was anticipated that the transfer of public company investments of the Partnership to the Mutual Fund would result in two of the investments exceeding the 10% concentration limit rule in subsection 2.1(1) of National Instrument 81-102. At the date of the Application the shares of ConjuChem Inc. ("ConjuChem") held by the Partnership represented approximately 22.06% of what would be the net asset value of the Mutual Fund and the shares of another investment held by the Partnership represented approximately 12.09% of what would be the net assets of the Mutual Fund. At the date of this hearing and review, by reason of dispositions, only the investment in ConjuChem still exceeded the 10% limit. To reduce its holdings in ConjuChem to below 10% of its net asset value, the Mutual Fund would be required to sell a significant number of ConjuChem shares. Expressions of interest to purchase a portion of the ConjuChem shares had recently been received by the Partnership but the Independent Committee did not approve the offer price. In view of the very light trading volumes in ConjuChem, it was reasonable to conclude that it would be difficult for the Mutual Fund to dispose of the required number of shares in the market in a very short time-frame without affecting the market value of the shares of ConjuChem. The immediate sale by the Mutual Fund of a sufficient number of shares of ConjuChem to bring the holding of such shares to below 10% of the Mutual Fund's net asset value could reasonably be expected to have a negative impact not only on the value of the shares of ConjuChem but also on the value of the units of the Mutual Fund. Counsel for the Applicants advised that 180 days should be a sufficient length of time to enable the Mutual Fund to arrange private placements or other methods of disposing of shares of ConjuChem at above fire-sale prices to bring the value of its remaining holdings in ConjuChem below the 10% threshold.

(viii) Director's Refusal

Pursuant to section 3.2 of National Policy 12-201, Quebec was selected as the principal jurisdiction for the Application. All jurisdictions, other than Ontario, granted the exemption sought in the Application. The Director opted out of the MRRS and refused the Application. This hearing and review was brought on on an expedited basis in order to respect the purposes of streamlining, efficiency and harmonization represented in the MRRS.

Evidence

No evidence was adduced at this hearing and review by way of witnesses. However, many exhibits were filed. In addition, many factual matters were stated in argument by counsel for the Applicants. While most of the factual matter were acceptable to counsel for the Director, one set of facts was not. In particular, counsel for the Applicants submitted that the number of redemptions of Mutual Fund units that might take place during the first 180-days of the Mutual Fund would be limited for various reasons. Counsel for the Director maintained that this "evidence" put forth in argument by counsel for the Applicants was speculative.

While a hearing and review of the Director's decision by the Commission is not in the nature of a trial, it is important that any evidence adduced by counsel orally and not through witnesses be acceptable to counsel for the Director, much in the same way that the Director in making an original decision himself must be satisfied that factual matters conveyed to him are worthy of belief under the circumstances. Because this "evidence" was not acceptable to counsel for the Director, and was put in by counsel by argument and therefore without the opportunity of cross-examination or other testing on the part of counsel for the Director, the Commission decided to give no weight to such evidence. In any event, counsel for the Director maintained that the number of redemptions that were likely to occur was not relevant to the issues in this case. The Commission agrees with this submission.

Weight to be Given to Decisions of other Jurisdictions (Issue 1)

Turning to the first issue, what weight, if any should have been given by the Director under section 9.1 of National Policy 12-102 and section 19.1 of National Instrument 81-102, and should be given by the Commission under section 8 of the Act, to the decisions of the principal jurisdiction and the other non-principal jurisdictions?

It is clear that the Director and the Commission are not bound in any way by those decisions because section 9.1 of National Policy 12-102 reserves to the regulator in Ontario full discretion. Subsection 9.1(2) of the policy provides that "in opting out of the system for a particular application, a non-principal regulator is not making a decision on the merits of the application." The decision on the merits of an application (which would form the basis of an opt-out under the MRRS) would be an exercise of discretion not under National Policy 12-102, but under subsection 19.1(1) of National Instrument 81-102.

Subsection 19.1(1) of National Instrument 81-102 provides:

> the regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

Counsel for the Applicants suggested to the Commission that the mere fact that the principal jurisdiction and the other non-principal jurisdictions in Canada had granted the requested exemption based on the public interest should alone be persuasive as the reason for granting the exemption. To agree with this would amount to the substitution of the decision of the principal jurisdiction as the decision of the local jurisdiction. This is not the intent of the MRRS.

While the Director and the Commission each have unfettered discretion with respect to the Application, this does not mean that we should not give any weight to the decisions of the principal jurisdiction and the other non-principal jurisdictions once the factors relevant to determining the public interest (including those put forth and considered by the other jurisdictions under the MRRS) are considered in Ontario.

We are required to exercise our discretion in the public interest. In determining the public interest the purposes of the Act are relevant. They are set out in section 1.1 of the Act. The first purpose is to provide protection to investors from unfair, improper or fraudulent practices. The second purpose is to foster fair and efficient capital markets and confidence in capital markets.

We must not lose sight of the second purpose. The Ontario capital markets are part of the Canadian capital markets which in turn are part of the world-wide capital markets. Ontario cannot be seen to regulate its capital markets in isolation. The Partnership has unitholders in Ontario and in other provinces. One of the fundamental principles we are directed to have regard to in pursuing the purposes of the Act is set out in item 5 of section 2.1 of the Act. This requires us to have regard for the fact that "the integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes." This, in our view, involves not only the legislative aspect of designing rules but also the administrative and enforcement aspects of applying rules. Accordingly, it is in the public interest that the rules we administer be applied in a harmonious manner with the way the rules of other jurisdictions are applied in the particular circumstance, unless there is a clear and certain public policy reason for a contrary application.

Onus (Issue 2)

Counsel for the Applicants argued, and counsel for the Commission agreed, that under section 8 of the Act the Commission may decide *de novo*, and that the Applicants do not have the onus of showing that the Director was in error in making his decision. The Applicants have the same onus before the Commission that they had before the Director.

Subsection 61(1) of the Act requires the Director to issue a receipt for a prospectus unless it appears to the Director that it is not in the public interest to do so. The Director has no choice with respect to the issue of a receipt pursuant to this subsection unless the Director comes to the determination that issuing the receipt would not be in the public interest. The issuer has the benefit of the doubt under this subsection where requirements of the Act are met and it is not clear to the Director that it is not in the public interest to issue a receipt. This is consistent with the concept of fair and efficient capital markets and efficient administration of the Act allowing business to proceed without undue regulatory interference as long as there is timely, accurate and efficient disclosure of information and no unfair, improper or fraudulent practices. In our facts, of course, we are not under subsection 61(1).

Subsection 61(2) of the Act provides that the Director shall not issue a receipt for a prospectus if it appears to the Director,

among other things, that the prospectus fails to comply in any substantial respect with any of the requirements of applicable provisions. The concentration limit rule in section 2.1 of in National Instrument 81-102 falls within the rules referred to in subsection 61(2) of the Act. In this situation, it is for the Director, or the Commission under section 8 of the Act, in considering whether to grant an exemption from the requirements of the rule to conclude that it would not be contrary to the public interest to grant such an exemption. In other words, the onus is in the first instance on the Applicants.

Whose Interest is the Public Interest (Issue 3)

Counsel for the Director submitted that in considering the public interest in the case at hand, only the interest of future investors under the prospectus should be taken into account. Counsel argued that the relief requested would be required only if a receipt for the prospectus were to be issued, and for this reason only the interests of those who might purchase under the prospectus should be taken into account when considering the public interest.

Counsel for the Applicants argued that the public interest should include all those who participate in the public markets, including the partners of the Partnership, all the shareholders of ConjuChem, the holders of units of the Mutual Fund who receive their units in the Reorganization and the Going Private Transaction, as well as future investors who purchase units under the prospectus.

Although the issue of a receipt for the prospectus will likely be a consequence of granting the Application, the Application is for an exemption under National Instrument 81-102. In considering an exemption under National Instrument 81-102, we are not constrained from considering the interests of all market participants when determining the public interest.

Unitholders of the Partnership are participants in the marketplace. They have a legitimate interest in trying to unlock the value of their investment. We are not obliged to ignore the desirability of the Reorganization for investors in the Partnership.

The shareholders of ConjuChem also are participants in the marketplace. We need to consider the impact that an improvident sale of ConjuChem shares would have on them as well as on the partners of the Partnership.

Counsel for the Director argued that the 10% concentration rule limit was in the public interest. She suggested that strong reasons should exist before an exemption is granted. Counsel for the Applicants argued that counsel for the Director was suggesting that the rule was sacrosanct. She referred to exemptions that have been granted where a mutual fund has been designed to track a specified index with one or more stocks in the index being weighted above the 10% limit.

Counsel for the Applicants put in evidence a report of a speech by the Chair of the Commission in which he stated that with the introduction of a mutual fund governance regime it might be possible to relax or change some of the prudent investment rules governing mutual funds, including the concentration limit rule. While these musings of the Chair of the Commission suggest that the concentration limit rule and other prudent rules now in place may not be sacrosanct in and of themselves, we do not take the possibility of change as justification in itself for granting the exemption in this case. However, we do not regard any of the prudent investment rules of National Instrument 81-102 as sacrosanct since exemptions from them are anticipated and provided for by section 19.1 of the instrument.

Counsel for the Applicants referred us to the decision of the Director dated April 19, 2000 in *Royal Canadian Equity Fund Limited* (2000) 23 OSCB 6508, in which an exemption to exceed the concentration limit rule was granted with regard to an investment in shares of Nortel Networks Inc. The concentration limited was exceeded when shares of Nortel Networks were distributed to shareholders of BCE Inc. Counsel for the Director responded that in the case of the distribution of shares of Nortel Networks the mutual funds involved were involuntary participants unlike in the current case where the Mutual Fund is an active participant in the Reorganization which would result in the violation of the concentration limit rule. Furthermore, counsel for the Director argued, the resultant investment in the shares of Nortel Networks was extremely liquid. In the case at hand, in contrast, the investment in ConjuChem is by admission illiquid. Counsel submitted that this was a material distinguishing factor. We agree with counsel for the Director. However, under all the circumstances of this case, we do not believe, on balance, that it tips the scale to require us to deny the exemption. We believe that in the circumstances of this case involving, as it does, the Reorganization and not merely a new issue of securities, the public interest would best be served by granting the exemption.

Disclosure

Item 2 of section 2.1 of the Act requires us to have regard to the fact that the fundamental principles for achieving the purposes of the Act include requirements for timely, accurate and efficient disclosure of information. Of course, disclosure is not an absolute answer to every request for an exemption. If it were then rules such as the concentration limit rule would not be necessary. Having said this, we believe it is important that where an exemption from the concentration limit rule is granted, the resultant risks should be adequately disclosed in the prospectus.

Temporary Nature of Relief

In weighing all these factors we also have considered that the Applicants have not asked for an open-ended exemption but rather have asked for a temporary exception from the concentration limit rule. Under the circumstances we fail to see the harm to the public interest if the exemption were granted for 180 days.

Alternative Proposal by the Director

The Director suggested to the Applicants a way of accomplishing their objectives without an exemption from the concentration limit rule. The suggestion was that the Reorganization and the Going Private Transaction proceed but that the prospectus be put on hold in Ontario. This could be accomplished without the receipting of the prospectus in Ontario because of the various exemptions available in the Act. When sufficient shares of ConjuChem had been sold over time the prospectus could be receipted without an

exemption from the concentration limit rule. All this would be possible because National Instrument 81-102 would not apply to the Mutual Fund in Ontario until the Mutual Fund had received a receipt for the prospectus in Ontario.

Counsel for the Applicants stated that the alternative had been discussed with their clients and that the proposal was not acceptable from a business point of view. In particular, the Fonds de Solidarité was not prepared to proceed without the Mutual Fund having a prospectus qualified in Ontario.

We are not convinced that the Applicants were refusing the alternative suggested by the Director for any improper motive. We believe that the Director's business judgement should not be accepted as appropriate in the face of objections by the Applicants.

Conclusion

In the particular case before us, the Applicants have identified enough factors to allow us to exercise our discretion to grant the requested relief.

First, the existing investors in the Partnership have an interest in the proposed Reorganization. There was a valuation and a fairness opinion prepared. There will be a vote of investors in the Partnership on the matters. It is a condition of the Reorganization that the existing investors in addition to the Fonds de Solidarité, including those in Ontario, be in favour of the Reorganization. The Reorganization should enable them to realize value by eliminating the discount inherent in the market for their units of the Partnership.

Secondly, the principal regulator and the non-principal regulators besides Ontario have all concluded that the exemption should be granted. If Ontario refuses the relief requested, the transactions will not proceed. In considering the question of harmonization, we asked ourselves whether there is anything particular to the Ontario capital markets that is sufficiently different to the capital markets in the other provinces to justify a different result in Ontario. We have not been able to identify any particular difference which would justify a different position being taken by Ontario with respect to this Application.

Thirdly, we believe that the risks inherent in exceeding the concentration limit rule for 180 days and the fact that the ConjuChem investment is illiquid can be addressed, in the particular circumstances of this case, through adequate disclosure in the prospectus. Disclosure in itself is not a panacea justifying any exemption from an investment rule for mutual funds. However, it is a necessary and helpful ingredient where an exemption is justified. For this reason, any relief will be conditional upon the Director's being satisfied that the final prospectus contains adequate disclosure with respect to the risk inherent in the granting of the Application.

Fourthly, we note that the Applicants are not seeking a complete exemption from the concentration limit. What they are seeking is a temporary exemption for 180 days so that there will be sufficient time to sell down the investment in question in an orderly manner without facing the full consequences of a forced sale. Counsel for the Applicants advised the Commission in answer to a question that 180 days should be sufficient to realize a better value for the investment. It is in the public interest that the present investors realize as much value as possible for their existing investment.

The exercise of discretion in this particular case has not been easy. The fact the Director was influenced by the illiquidity of the ConjuChem shares and the absence of an applicable precedent formed a reasonable basis for his decision. Furthermore, we note that the Director co-operated with the Applicants to cause this hearing and review to be brought on speedily so as to preserve the ability of the Applicants to carry forward with the transactions if the matter were resolved by the Commission in their favour. This reflected a commendable desire on the part of the Director to make the MRRS work. His decision was easier knowing the Commission would be in a position to exercise its discretion *de novo* in a difficult case.

For all of the above reasons we determined to grant the Application for exemptive relief, subject to the condition that the Director be satisfied that there is adequate disclosure in the final prospectus of the risk involved in the granting of the Application.

April 25, 2001

"Paul Moore" "John A. Geller"

"R. Stephen Paddon"

# 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 |
|---|---|---|---|---|
| Talisman Mines Limited | 18 Apr 01 | - | 30 Apr 01 | - |
| Meridian Resources Inc. | 01 May 01 | 11 May 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 |
|---|---|---|---|
| 24Apr01 to 26Apr01 | 724 Solutions Inc. - Common Shares | 362,873 | 20,600 |
| 19Apr01 | 724 Solutions Inc. - Common Shares | 392,405 | 22,000 |
| 20Apr01 | Avalon Ventures Ltd. - Units | 980,000 | 1,000,000 |
| 26Apr01 | Barefoot Science Holdings Inc. - Common Shares | US$507,962 | 625,000 |
| 12Apr01 | BPI American Opportunities Fund - Units | 343,175 | 2,729 |
| 30Mar01 | BPI American Opportunities Fund - Units | 300,129 | 2,382 |
| 20Apr01 | Calpine Canada Energy Finance ULC - Senior Notes due 01May08 | 6,167,657 | US$4,000,000 |
| 18Apr01 | CC&L Money Market Fund - Units | 428,336 | 42,833 |
| 18Apr01 | CC&L Money Market Fund - Units | 159,457 | 15,945 |
| 15Mar01 | Command Post and Transfer Corporation - Common Shares | 17,511,651 | 5,837,217 |
| 11Apr01 | Consilient, Inc. - Units | 15,611,000 | 12,500,000 |
| 20Apr01 | Daedalian eSolutions Inc. - Units | 1,000,000 | 5 |
| 20Apr01 | Defiant Energy Corporation - Special Warrants | 3,393,000 | 1,534,997 |
| 04Apr01 | eSpeed, Inc. - Shares of Class A Common Stock | 11,538,328 | 341,502 |
| 20Apr01 | Excel-Tech Ltd. - Series A Preferred Shares | 16,000,004 | 3,106,797 |
| 12Apr01 | Kingwest Avenue Portfolio - Units | 251,920 | 13,024 |
| 25Apr01 | MedX Health Corp. - 10% Secured Subordinated Convertible Notes | $300,000 | $60 |
| 11Apr01 | MERIX Bioscience, Inc. - Shares of Series B Preferred Stock | US$3,346,668 | 1,901,516 |
| 11Apr01 | NCC Commercial Properties Limited - 7.65% First Mortgage Bonds | $73,626,895 | 73,626,895 |
| 11Apr01 | NCC Residential Properties Limited - 6.67% First Mortgage Bonds | $21,618,616 | $21,618,616 |
| 20Apr01 | Odyssey Resources Limited - Units | 297,340 | 1,982,267 |
| 11Apr01 | Ozz Utility Management Ltd. - Common Shares | 150,000 | 1,500,000 |
| 11Apr01 | Ozz Utility Management Ltd. - Common Shares | 150,000 | 1,500,000 |
| 05Apr05 | Q9 Networks Inc. - Class C Preference Shares | 79,481,100 | 33,117,125 |
| 20Apr01 | Rodin Communications Corporation - 12% Convertible Secured Debentures | 1,350,000 | 1,350,000 |
| 01Nov01 to 28Feb01 | SEAMARK Pooled Funds - Units | 45,515,913 | 45,515,913 |
| 09Apr01 | Shamrock Logistics, L.P. - Common Units | US$85,750 | 3,500 |
| 12Apr01 | TCT Logistics Inc. - Series A First Preferred Shares | 8,000,000 | 8,000,000 |
| 30Mar01 | Trident Global Opportunities Fund - Units | 605,262 | 5,617 |
| 30Mar01 | United Mexican States - 8.125% Global Bonds due 2019 | US$216,270 | US$243,000 |
| 17Apr01 | Workbrain Corporation - Class B Preferred Shares, Series II | 12,521,738 | 4,968,944 |
| 20Apr01 | Workbrain Corporation - Class B Preferred Shares, Series II | 6,161,490 | 2,484,472 |

## Resale of Securities - (Form 45-501f2)

| Date of Resale | Date of Orig. Purchase | Seller | Security | Price ($) | Amount |
|---|---|---|---|---|---|
| 19Apr01 to 26Apr01 | 30Apr98 | Bank of Montreal | 724 Solutions Inc. | 795,030 | 42,500 |
| 10Apr01 to 12Apr01 | 19Jul96 | CIBC Mellon In Trust for Gulf Canada Resources Limited Retirement Income Plan For Employees | Gulf Canada Resources Limited - Ordinary Shares | 1,928,311 | 219,800 |
| 16Apr01 to 20Apr01 | 19Jul96 | CIBC Mellon In Trust for Gulf Canada Resources Limited Retirement Income Plan For Employees | Gulf Canada Resources Limited - Ordinary Shares | 2,473,688 | 280,000 |

## Notice of Intention to Distribute Securities Pursuant to Subsection 7 of Section 72 - (Form 23)

| Seller | Security | Amount |
|---|---|---|
| Paros Enterprises Limited | Acktion Corporation - Common Shares | 2,000,000 |
| EuroGas Inc. | Big Horn Resources Ltd. - Common Shares | 8,000,000 |
| Boardwalk Properties Company Limited | Boardwalk Equities Inc. - Common Shares | 410,000 |
| Melnick, Larry | Champion Natural Health.com Inc. - Subordinate Voting Shares | 29,900 |
| Gestion Drab Inc. | Cossette Communication Group Inc. - Subordinate Voting Shares | 15,000 |
| Martin, Rick | Liberty Oil & Gas Ltd. - Common Shares | 79,234 |
| Magrill, Gordon | Library Information Software Corp. - Class A Shares | 2,500,000 |
| Faye, Michael R. | Spectra Inc. - Common Shares | 179,000 |
| Malion, Andrew J. | Spectra Inc. - Common Shares | 177,000 |
| Hawkins, Stanley G. | Tandem Resources Ltd. - Common Shares | 2,000,000 |
| Catherine and Maxwell Meighen Foundation, The | Third Canadian General Investment Trust Limited - Common Shares | 238,000 |
| Benedek, Andrew | Zenon Environmental Inc. - Common Shares | 1,103,780 |

## Chapter 9

# Legislation

THERE IS NO MATERIAL FOR THIS CHAPTER

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## Chapter 11

# IPOs, New Issues and Secondary Financings

**Issuer Name:**
Aberdeen SCOTS Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated May 2nd, 2001
Mutual Reliance Review System Receipt dated May 3rd, 2001
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
TD Securities Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Canaccord Capital Corporation
Yorkton Securities Inc.
Trilon Securities Corporation
**Promoter(s):**
Aberdeen Asset Managers (C.I.) Limited
**Project #352468**

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**Issuer Name:**
Cymat Corp
**Type and Date:**
Preliminary Prospectus dated April 25th, 2001
Receipt dated April 26th, 2001
**Offering Price and Description:**
$18,622,500 - 3,250,000 Common Shares issuable upon the exercise of 3,250,000 previously issued Special Warrants
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project #350206**

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**Issuer Name:**
Decoma International Inc.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated April 30th, 2001
Mutual Reliance Review System Receipt dated May 2nd, 2001
**Offering Price and Description:**
$ * - * Class A Subordinate Voting Shares @ Cdn$ * per Class A Subordinate Voting Share
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Salomon Smith Barney Canada Inc.
Scotia Capital Inc.
Griffiths McBurney & Partners
**Promoter(s):**
-
**Project #351551**

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**Issuer Name:**
Legacy Hotels Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated May 2nd, 2001
Mutual Reliance Review System Receipt dated May 2nd, 2001
**Offering Price and Description:**
$93,740,000 - 10,900,000 Units
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Scotia Capital Inc.
National Bank Financial Inc.
**Promoter(s):**
-
**Project #352209**

**Issuer Name:**
Maxim Power Corp.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Prospectus dated April 30th, 2001
Mutual Reliance Review System Receipt dated May 1st, 2001
**Offering Price and Description:**
$6,000,200 - 6,316,000 Common Shares issuable upon exercise of 6,316,000 Special Warrants
**Underwriter(s) or Distributor(s):**
FirstEnergy Capital Corp.
Haywood Securities Inc.
Griffiths McBurney & Partners
Raymond James Ltd.
**Promoter(s):**
J. Garry Worth
William Gallacher
Avenir Capital Corporation
**Project #351769**

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**Issuer Name:**
Mustang Minerals Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated April 27th, 2001
Mutual Reliance Review System Receipt dated May 2nd, 2001
**Offering Price and Description:**
500,000 Units ($350,000) @ $0.70 per Unit and 357,142 Flow-Through Common Shares ($250,000)
@ $0.70 per Flow-through Common Share and 1,642,857 Flow-Through Common Shares and 821,429
Warrants ($1,150,000) issuable upon the exercise of 1,642,857 Special Warrants
**Underwriter(s) or Distributor(s):**
Jennings Capital Inc.
**Promoter(s):**
-
**Project #351867**

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**Issuer Name:**
The Jean Coutu Group (PJC) Inc.
Principal Regulator - Quebec
**Type and Date:**
Preliminary Short Form Prospectus dated April 25th, 2001
Mutual Reliance Review System Receipt dated April 25th, 2001
**Offering Price and Description:**
$52,500,000 - 2,500,000 Class "A" Subordinate Voting Shares
**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Merrill Lynch Canada Inc.
Desjardins Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
**Promoter(s):**
-
**Project #349985**

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**Issuer Name:**
Wi-LAN Inc.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form Prospectus dated April 25th, 2001
Mutual Reliance Review System Receipt dated April 25th, 2001
**Offering Price and Description:**
$7,500,000 - 937,500 Units
**Underwriter(s) or Distributor(s):**
Research Capital Corporation
**Promoter(s):**
-
**Project #350053**

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**Issuer Name:**
Clarington RSP Global Equity Fund
Clarington RSP Global Equity Index Fund
Clarington RSP Select Global Balanced Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #2 dated April 17th, 2001 to Simplified Prospectus and Annual Information Form dated August 28th, 2000
Mutual Reliance Review System Receipt dated 26th day of April, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s) or Distributor(s):**

**Promoter(s):**
-
**Project #283531**

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**Issuer Name:**
MACKENZIE UNIVERSAL WORLD ASSET ALLOCATION FUND
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated April 18th, 2001 to Simplified Prospectus and Annual Information Form dated December 22nd, 2000
Mutual Reliance Review System Receipt dated 26th day of April, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s) or Distributor(s):**

**Promoter(s):**
-
**Project #297091**

**Issuer Name:**
CANADIAN SCHOLARSHIP TRUST PLAN-OPTIONAL PLAN
CANADIAN SCHOLARSHIP TRUST PLAN-MILLENNIUM FAMILY PLAN
CANADIAN SCHOLARSHIP TRUST PLAN-MILLENNIUM PLAN
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated April 27th, 2001
Mutual Reliance Review System Receipt dated 1st day of May, 2001
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
C.S.T. Consultants Inc.
**Promoter(s):**
CST Foundation
**Project #333522, 333510, 333545**

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**Issuer Name:**
Horizons Mondiale Hedge Fund
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated April 19th, 2001
Receipt dated 24th day of April, 2001
**Offering Price and Description:**

**Underwriter(s) or Distributor(s):**

**Promoter(s):**
-
**Project #318569**

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**Issuer Name:**
HTN Inc. (formerly Consolitech Invest Corp.)
**Type and Date:**
Final Prospectus dated April 26th, 2001
Receipt dated 30th day of April, 2001
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Sentron Capital Group Inc.
**Promoter(s):**
Millard Roth
Gary Babcock
**Project #329728**

**Issuer Name:**
IMPATICA.COM INC.
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated April 24th, 2001
Receipt dated 2nd day of May, 2001
**Offering Price and Description:**

**Underwriter(s) or Distributor(s):**

**Promoter(s):**
-
**Project #314203**

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**Issuer Name:**
Mortice Kern Systems Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated April 27th, 2001
Mutual Reliance Review System Receipt dated 30th day of April, 2001
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Yorkton Securities Inc.
TD Securities Inc.
**Promoter(s):**
-
**Project #342670**

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**Issuer Name:**
Resin Systems Inc.
Principal Regulator - Alberta
**Type and Date:**
Final Prospectus dated April 26th, 2001
Mutual Reliance Review System Receipt dated 26th day of April, 2001
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Golden Capital Securities Ltd.
**Promoter(s):**
-
**Project #336524**

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**Issuer Name:**
Solium Capital Inc.
Principal Regulator - Alberta
**Type and Date:**
Final Prospectus dated April 30th, 2001
Mutual Reliance Review System Receipt dated 1st day of May, 2001
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Canaccord Capital Corporation
**Promoter(s):**
Mark van Hees
John D. Kenny
**Project #337113**

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**Issuer Name:**
Celestica Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Shelf Prospectus dated April 30th , 2001
Mutual Reliance Review System Receipt dated 1st day of May 2001.
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project #348116**

**Issuer Name:**
Investors Group Inc.
Principal Regulator - Manitoba
**Type and Date:**
Final Short Form Shelf Prospectus dated April 27th , 2001
Mutual Reliance Review System Receipt dated 30th day of April, 2001
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project #349136**

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**Issuer Name:**
AGF RSP American Tactical Asset Allocation Fund
AGF RSP Japan Fund
AGF Canadian Stock Fund
AGF International Group Limited - AGF Global Real Estate Equity Class
AGF RSP MultiManager Fund
AGF International Group Limited - AGF Global Resources Class
AGF International Group Limited - AGF International Stock Class
AGF International Group Limited - AGF Canada Class
AGF International Group Limited - AGF Global Technology Class
AGF International Group Limited - AGF MultiManager Class
AGF Canadian Aggressive All-Cap Fund
AGF Canadian Aggressive Equity Fund
AGF Latin America Fund
AGF International Group Limited - AGF Global Health Sciences Class
AGF International Group Limited - AGF Global Financial Services Class
AGF International Group Limited - AGF Aggressive Japan Class
AGF India Fund
AGF Emerging Markets Value Fund
AGF RSP International Value Fund
AGF RSP European Growth Fund
AGF Aggressive Growth Fund
AGF Aggressive Global Stock Fund
AGF RSP American Growth Fund
AGF U.S. Short-Term High Yield Fund
AGF RSP International Equity Allocation Fund
AGF International Value Fund
AGF Canadian Dividend Fund
AGF World Balanced Fund
AGF RSP Global Bond Fund
AGF Canadian Money Market Fund
AGF Canadian High Income Fund
AGF European Asset Allocation Fund
AGF Canadian Tactical Asset Allocation Fund
AGF U.S. Income Fund
AGF Canadian Balanced Fund
AGF Global Government Bond Fund
AGF Canadian Bond Fund
AGf Canadian Resources Fund Limited
AGF International Group Limited - AGF World Equity Class
AGF International Group Limited - AGF International Short-Term Income Class
AGF International Group Limited - AGF Germany Class
AGF International Group Limited - AGF European Growth Class
AGF International Group Limited - AGF China Focus Class
AGF International Group Limited - AGF Asian Growth Class
AGF International Group Limited - AGF Japan Class
AGF International Group Limited - AGF Special U.S. Class
AGF International Group Limited - AGF American Growth Class
AGF Canadian Growth Equity Fund Limited
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated April 25th, 2001
Mutual Reliance Review System Receipt dated 26th day of April, 2001.
**Offering Price and Description:**
Series F
**Underwriter(s) or Distributor(s):**
AGF Funds Inc.
**Promoter(s):**
-
**Project #339955**

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**Issuer Name:**
Dominion Equity Resource Fund Inc.
Principal Regulator - Alberta
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated April 25th, 2001
Mutual Reliance Review System Receipt dated 26th day of April, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project #338794**

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**Issuer Name:**
The Hartford U.S. Stock Fund
The Hartford U.S. Capital Appreciation Fund
The Hartford Global Leaders Fund
The Hartford Money Market Fund
The Hartford Bond Fund
The Hartford Advisors Fund
The Hartford Canadian Stock Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus and Annual Information Form dated April 25th, 2001
Mutual Reliance Review System Receipt dated 26th day of April, 2001
**Offering Price and Description:**
Mutual Fund Securities - Net Asset Value
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project #336386**

**Issuer Name:**
FONTENEAU 2001 PROSPECTING SYNDICATE
**Type and Date:**
Prospectus Syndicate Agreement dated April 5th, 2001
Receipt dated 25th day of April, 2001
**Offering Price and Description:**

**Underwriter(s) or Distributor(s):**

**Promoter(s):**
-
**Project #324949**

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# Chapter 12

# Registrations

## 12.1.1 Securities

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| Change in Category | Murray & company Investment Services Ltd.<br>Attention: David Malcolm Tanner<br>40 University Ave.<br>Suite 502<br>Toronto ON M5J 1S3 | From:<br>Securities Dealer<br><br>To:<br>Limited Market Dealer (Conditional) | Apr 23/01 |
| Change of Name | CC&L Capital Markets Inc.<br>Attention: Philip Kenelm Gow<br>49 Front Street East<br>3rd Floor<br>Toronto ON M5E 1B3 | From:<br>Brenton Reef Investment Management Inc.<br><br>To:<br>CC&L Capital Markets Inc. | Apr 12/01 |

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# Chapter 13

# SRO Notices and Disciplinary Proceedings

## 13.1.1 IDA - Trade-By-Trade Relief from the Suitability Requirement

### INVESTMENT DEALERS ASSOCIATION OF CANADA – PROPOSED BY-LAWS TO PROVIDE Trade-by-Trade RELIEF FROM THE SUITABILITY REQUIREMENT

### I. OVERVIEW

A submission dated October 1, 1998 was filed on behalf of 10 discount broker firms (the "Submission") with the Canadian securities regulators, the Canadian stock exchanges and the Investment Dealers Association. The Submission was intended to initiate a process of regulatory change to limit the application of the suitability rule only to dealers who provide advice or recommendations to clients as to the advisability of investing in a specific issuer's securities.

After numerous discussions with the Canadian Securities Administrators (the "CSA") and IDA sub-committees examining the suitability issue, the CSA issued a Press Release (the "Press Release") on April 10th, 2000 outlining the conditions under which they were prepared to grant relief from the suitability requirement. The Press Release was intended to provide relief for discount brokers and those Member firms that created separate business units.

After the distribution of the Press Release, the IDA began preparing a submission to the CSA that proposed granting relief to full–serivce Members in addition to discount brokers. The CSA indicated that they would continue to work with the IDA to consider ways in which the discount broker relief would be available to other categories of dealers while still safeguarding the interests of investors.

#### A -- Current Rules

As a result of the suitability requirement, dealers must consider such factors as a client's age, investment objectives, risk tolerance, investment knowledge, net worth and income in order to assess whether each transaction, recommended or non-recommended, is suitable for the client. If the suitability requirement were to be removed, a client would effectively be making investment decisions on his or her own.

The actual provisions addressing the suitability requirement are currently contained in Regulation 1300.1 of the Association's Rulebook.

In most provincial and territorial securities legislative regimes the requirement also exists for dealers to know each client to the extent necessary to determine credit and reputation and must also assess each proposed transaction for consistency with each client's objectives and suitability. In many cases, securities regulators deem compliance with the Association's Regulations as sufficient to constitute compliance with statutory requirements.

#### B -- The Issue

The provincial and territorial securities legislative regimes and the provisions contained in the Association's Regulations do not distinguish between recommended and non-recommended trades. Currently (subject to the Press Release), all proposed trades, whether recommended or non-recommended, must be reviewed by a dealer or adviser for suitability.

The Association submits that the requirement to make a suitability determination is appropriate where recommendations are made by the dealer as to the appropriateness of a particular trade for their client. Where the dealer simply provides an order-execution only service for a particular transaction, without any recommendations to the client, the suitability requirement should not be applied.

#### C -- Objective

The objective of the proposed rules is that a dealer's obligation to make a suitability determination under current Regulation 1300.1 may apply only to securities that have been recommended by the dealer. Such obligation would not apply, therefore, to situations in which a dealer acts solely as an order-taker for a client on a particular transaction who, on their own initiative, executes a trade without a recommendation.

#### D -- Effect of Proposed Rules

The proposed rules will have a significant impact on the nature of competition in the industry, the current market structure and the costs of compliance of many Member firms.

The regulatory regime relating to the suitability rule has increasingly become the focus of calls for change from the investment industry, both in Canada and the United States. In both countries, the rationale for such calls has been similar - emerging regulatory and judicial trends, which recognize the lack of rationale of the suitability rule to dealers who do not give advice to their clients. In Canada, there is the additional concern of the loss of brokerage business and stock exchange activity to the United States in light of the rise of electronic trading, the generally lower broker commissions offered by the U.S. "discount brokers" and the less onerous suitability obligations imposed on American dealers.

The Association submits that, in and of itself, a move to provide relief from a suitability determination will not have a significant negative impact on the market and will in fact assist the Canadian market and Member firms participating therein by increasing their competitive ability against dealers in the United States who are not required to complete a suitability review where no recommendations are given. The imposition of the suitability requirement on Member firms who do not provide recommendations to their clients results in economic and transactional inefficiencies.

Furthermore, fairness will occur in the industry as a result of providing the same relief from suitability to full-service firms as is currently provided to discount brokers as a result of the Press Release issued by the CSA.

The proposed change in the applicability of the suitability rule will alter the current market structure in that a salesperson, provided certain safeguards are in place, will no longer have to provide a review for suitability in cases where the client is not provided with recommendations on a particular transaction. Many other factors, such as the globalization of the financial services industry, the introduction of alternative trading systems, the increased volume in the markets and the creation of technologies that reduce the need for a direct connection between a client and a broker, are changing how markets look and behave and must be considered in their entirety.

While the costs of compliance to initiate a system to address suitability issues may be significant at first, compliance costs over time will be reduced without the requirement to conduct a suitability review for each and every transaction.

## II. DETAILED ANALYSIS

### A -- Present Rules, Relevant History and Proposed Rules

Relevant History and Present Rules

The purpose and rationale for the suitability requirement has changed over time. Initially, dealers only collected credit and other information in order to protect themselves from clients who may have been unable to pay for their securities purchases. Gradually, the collection of information concerning clients and the ability of dealers to make recommendations to clients concerning specific securities gave rise to the implicit representation that a dealer had a basis for the advice offered to the client and that such advice was suitable for the client. The suitability obligation expanded within the context of the traditional relationship of trust and reliance between a client and his or her dealer. This rationale led to the creation of specific legislative requirements in Canada, which imposed "suitability" obligations on dealers and advisers.

The current suitability obligation is found in Regulation 1300.1 of the Association's Rulebook and requires that:

*Every member shall use due diligence:*

a) *to learn the essential facts relative to every customer and to every order or account accepted;*

b) *to ensure that the acceptance of any order for any account is within the bounds of good business practice; and*

c) *to ensure that recommendations made for any account are appropriate for the client and in keeping with his investment objectives.*

As a result of this suitability requirement, dealers consider such factors as a client's income, personal financial obligations, net worth, trading losses, risk tolerance, liquid assets and investment objectives to determine whether each trade, recommended or non-recommended, is suitable for the client.

Proposed Rules

The basis of the Association's proposed rules arose from input from the Association's Discount Brokers Sub-Committee and the Compliance and Legal Section's Full-Service Brokers Suitability Sub-Committee (the "Sub-Committees"). As a result of work by the Sub-Committees, a proposal was prepared which sought relief from the CSA based on a model currently in place in the United States (and other jurisdictions). That model generally provides relief from suitability on a trade-by-trade basis. In such a model, suitability obligations are only triggered when recommendations are made.

Based on this proposal and recent discussions with the CSA with respect to its views on the nature and scope of possible relief from the suitability requirement, the CSA requested a final proposal on relief from suitability requirements on a trade-by-trade basis. That final proposal includes the draft regulations outlined below. The CSA, after their review of these draft rules and supporting material, have generally indicated their support for suitability relief as outlined by the Association.

The proposed rules ensure that the needs of Member firms are met as a result of changes to the nature of the business where clients are not looking for recommendations from their salesperson, as well as to allow Members to stay competitive due to increased competition from the United States where broad exemptions from the suitability requirement exist. At the same time, the proposed rules will ensure that the investing public is continually educated, protected and informed.

The proposed rules set out that a suitability review is generally required when the Member accepts any order from a client and is recommending a particular transaction to a client.

However, when a Member provides no recommendation to a client, the Member is not required to undertake a suitability determination, *provided that the Member has received approval from the Association.* Approval is based upon the Member firm satisfying the policies and procedures outlined in the Association's proposed Policy No. 9 entitled "Minimum Requirements for Members Seeking Approval under Regulation 1300.1(e) for Suitability Relief for Trades not Recommended by the Member".

It should be noted, however, that for Members who still wish to provide a suitability review, regardless of whether recommendations have been provided, or for those Members who do not received Association approval, a suitability requirement still exists under proposed Regulation 1300.1(c).

Where a Member offers solely an order-execution only service, the proposed rules will provide that the Member or separate business unit of the Member will not be required to include in the new client application form the information currently set out in Form No. 2 of the Association's Rulebook that relates to suitability.

On the other hand, a trade-by-trade model will require a Member firm to collect that information in order that it can be

reviewed for those transactions where the client is provided with recommendations by the dealer.

Proposed Policy No. 9

In order for a Member firm to be exempt from a suitability determination the firm must either never provide advisory services to a client (i.e. a discount broker) or, for a particular transaction, not provide recommendations in that circumstance. In addition, such relief will only be provided where the Member firm applies and receives approval from the Association. Such approval is based upon the Member satisfying the documentary, procedural and systems requirements set out in proposed Policy No. 9 entitled "Minimum Requirements for Members Seeking Approval under Regulation 1300.1(e) for Suitability Relief for Trades not Recommended by the Member".

The Policy is divided into two separate sets of policies and procedures. One set is applicable to those firms that solely offer order-execution only services and the other set is applicable to those firms that offer both advisory and order-execution only services.

The first set of policies and procedures are based upon those requirements set out in the Press Release and therefore require, among other things, that the Member firm have separate letterhead, a separation of accounts, separate sales staff and separate account documentation.

The second set of policies and procedures are applicable to full-service Members offering execution-only and advisory services. The provisions are intended to ensure that appropriate safeguards are implemented in order that clients understand the differences in the types of transactions that they wish to execute, the possible risks associated with such transactions, and the client's increased responsibilities when an order-execution only transaction is requested.

Both sets ensure that at the account opening stage the Member provides disclosure to the client regarding the changes to the suitability review requirements and the new responsibilities placed upon the client.
This means that Member firms will be required to obtain from all new clients opening an account a signed acknowledgement that where the Member does not provide a recommendation the client is responsible for their own investment decisions and that the Member will not consider the suitability of the transaction. For existing accounts, the Member must also receive an acknowledgement from a client, but such acknowledgement may be acquired through the customer's signature or initials on a document, the clicking of a labeled button on an electronic account application form or a tape recording of a verbal acknowledgement made by telephone.

The Policy also imposes appropriate supervisory systems and record keeping procedures to ensure clients are not provided with recommendations where a suitability determination is not undertaken.

To provide further assurances that this situation is not occurring, the Policy contains an Appendix A that outlines procedures for the supervision of the accuracy of trade basis reporting.

While the Policy as a whole sets out the appropriate policies and procedures that Members are required to develop to ensure that issues relating to suitability are appropriately addressed, the Policy does not detail the specifics that must be contained within those policies and procedures. Rather, it outlines the areas that must be addressed. The rationale for this approach is that Member firms operate differently based upon their business structure, size of firm, nature of clientele, etc.

For example, for Members whose business consists largely of fee-based accounts or managed accounts for which they continue to assume suitability obligations for all trading, they will not have to alter their procedures for these accounts and may be able to monitor suitability in other accounts manually. However, larger firms may have to automate their periodic reviews of suitability in order to conduct this review in an effective manner.
It should be noted that with respect to additional requirements, such as those found in Policy No. 2 Minimum Standards for Retail Account Supervision, Members must still comply with appropriate documentation requirements and post-trade reviews in order to appropriately screen for violations of trading rules, insider trading, stock manipulation rules, rules relating to trades from a control block, or money laundering legislation. The removal of the suitability obligation does not remove a Member firm's obligation or ability to implement and adhere to procedures to fulfill these other obligations.

Member Regulation Notice

To assist Members in the determination of what may or may not constitute a recommendation, the Association will be releasing a Member Regulation Notice on this subject. The Notice is not intended to define all situations that may fall under the definition of "recommendation". Rather, while the Notice provides numerous examples, it emphasizes that whether a particular transaction is in fact "recommended" depends on an analysis of all the relevant facts and circumstances of the particular case.

Sales Compliance Review Program

To ensure that Member firms are in compliance with the requirements for relief from suitability, the IDA will implement a sales compliance review program specifically for these firms that have been granted approval. This review will be conducted 12 to 18 months following implementation.

After this initial review, these Members will be continually subject, as are all the Association's Members, to regular sales compliance reviews. However, these ongoing reviews will be modified to incorporate suitability-specific issues in addition to the standard review program.

**B -- Issues and Alternatives Considered**

After consultation with Member firms as to the type of the relief they wished to seek, no other alternatives were considered as it was recognized that the relief provided in the Press Release was only of assistance to discount brokerage firms but not to full-service firms. The suitability relief set out in the current proposal will be beneficial to both types of models of Member firms.

**C -- Comparison with Similar Provisions**

Many current provincial and territorial legislative regimes require a dealer or adviser to make sufficient enquiries of its customers to establish the creditworthiness and reputation of the client, as well as to ascertain the general investment needs and objectives of the client and the suitability of a proposed purchase or sale of a security for the client. The legislative regimes in most Canadian jurisdictions do not distinguish between recommended and non-recommended trades. Currently, all proposed trades whether recommended or non-recommended must be reviewed by a salesperson for suitability. However, section 161 of the *Securities* Act (Quebec) imposes a suitability obligation only on a dealer that makes a recommendation.

The securities legislation of most other provinces contain provisions analogous to those in section 1.5 of Ontario's Rule 31-505 Conditions of Registration (previously subsection 114(1) of the Regulation of the *Securities Act* (Ontario)), which states:

A person or company that is registered as a dealer or adviser and an individual that is registered as a salesperson, officer or partner of a registered dealer or as an officer or partner of a registered adviser shall make enquiries about each client of that registrant as

a) subject to section 1.6, enable the registrant to establish the identity and the creditworthiness of the client, and the reputation of the client if information known to the registrant causes doubt as to whether the client is of good reputation; and

b) subject to section 1.7, are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to ascertain the general investments needs and objectives of the client and the suitability of a proposed purchase or sale of security for the client.

C) Despite paragraph (1)(a) a registrant is not required to make enquiries as to the creditworthiness of a client if the registrant is not financing the acquisition of securities by the client.

Rule 7452 of the Montreal Exchange is substantially similar to the IDA requirements for suitability.

Several CSA jurisdictions deem a Member of a recognized SRO to be in compliance with the provincial legislation that addresses the suitability obligation if the Member complies with SRO requirements which have been approved by the regulatory authority in the jurisdiction in which the dealer operates.

In the United States, the United Kingdom and Australia a suitability requirement is not imposed on dealers where the dealer gives no advice or recommendation to investors.

In the U.K., there is no suitability obligation imposed on dealers who do not provide advice. By selecting a dealer who does not provide advice, a customer has implicitly made suitability self-determination and has implicitly indicated that he or she does not wish to pay for a suitability determination.

In Australia, dealers that do not give advice to their customers are not subject to suitability requirements.

In the United States, the suitability requirement would not apply to situations in which a dealer acts solely as an order-taker for a person who, on their own initiative, effects transactions without a recommendation from the dealer.

U.S. regulators view suitability based on function within the same account. No separate account or business unit is required. Consequently, suitability is determined on a trade-by-trade basis.

The National Association of Securities dealers' ("NASD") suitability requirement is contained in Rule 2310 which states that:

"in recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

Rule 2310 goes on to require members to make reasonable efforts to obtain certain information from each customer including the customer's financial status, tax status, investment objectives and other information considered to be reasonable in making recommendations to customers.

In addition, the NASD has issued numerous notices to members clarifying and expanding upon its Rule 2310. A member's obligation to make a suitability determination under Rule 2310 applies only to securities that have been recommended by the member. It would not apply, therefore, to situations in which a member acts solely as an order-taker for persons who, on their own initiative, effect transactions without a recommendation from a member.

NASD has further pointed out that the designation of a transaction as solicited or unsolicited by a member does not determine if a recommendation has been made.

NASD has also stated in one of its notices:
"A transaction will be considered to be recommended when the member or its associated person brings a specific security to the attention of the customer through any means including, but not limited to, direct telephone communications, the delivery of promotional material through the mail, or the transmission of electronic messages."

**D -- Public Interest Objective**

The Association believes that the proposed Regulations and Policy are in the public interest in that it will facilitate an efficient, fair and competitive secondary market. This will be accomplished by ensuring that investors receive the services they want and Member firms are able to offer services similar to those available in the United States. Furthermore, the proposed Regulations and Policy should decrease delays that currently exist in the industry through increased transactional efficiency.

In addition, the proposal will assist in the protection of the investing public and the integrity of capital markets by

providing for appropriate safeguards designed to ensure that limiting the application of the suitability requirement will not stimulate unethical conduct or lead to client confusion.

Furthermore, the removal of the suitability obligation will not eliminate a Member firm's obligation for high standards of professional conduct and other responsibilities imposed by securities legislation or other legal requirements. Dealers will continue to remain obligated to conduct appropriate record keeping, account opening and proper supervision. Dealers will also remain obligated under the "know your client rule" to learn the essential facts about each client, such as creditworthiness. In addition, Members must ensure that they act within the bounds of good business practice.

## III. COMMENTARY

### A -- Filing in Other Jurisdictions

These proposed amendments will be filed for approval in Alberta, British Columbia, Ontario and Saskatchewan and will be filed for information in Nova Scotia.

### B -- Effectiveness

The rationale for the application of a suitability rule was lost when the rule was applied to dealers who do not provide advice. Jurisdictions outside of Canada have determined that the suitability rule is not applicable to dealers where no recommendation is made. The economic inefficiencies resulting from the imposition of the suitability rule in circumstances in which it should not properly apply are further justification for regulatory change. In addition, absent regulatory change, there is the likelihood that Canadian Member firms and stock exchanges will be unable to compete effectively with their counterparts in the United States.

As a result, relief from the suitability rule as proposed will effectively address the technological developments in the industry, the changes in the nature of services available from discount and full-service brokers and the needs and demands of investors. Investors have expressed a desire to make their own investment decisions in respect of their assets, as evidenced by the growth of discount brokers in the industry today. Thus, investors are not looking for a paternalistic refusal by the dealer to process an order.

### C -- Process

The proposed Regulations and Policy were approved by the Compliance and Legal Section's Full-Service Brokers Suitability Sub-Committee and by the Chairs of the Canadian Securities Administrators. The proposal was circulated to the Compliance and Legal Section and the Retail Sales Committee.

## IV. SOURCES

References:

- IDA Regulation 1300.1
- Ontario Rule 31-505 Condition of Registration
- *Securities Act* (Quebec), section 161
- The Montreal Exchange Rule 7452
- National Association of Securities Dealers Inc., Rule 2310
- NASD Notices to Members 95-32 and 96-60
- Section 851 of the Australia Stock Exchange Business Rules
- New York Stock Exchange, Rule 405
- Proposed North American Securities Administrators Association ("NASAA") Statement of Policy (March 8, 1997)
- Discount Brokers Suitability Application, October 1, 1998, "Changes to the Application of the Suitability Rule with respect to Certain Brokers"
- SRO Working Group's Position on Retail Direct Access, August 19, 1999

## V. OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the accompanying Regulations and Policy 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 Regulations and Policy would be in the public interest. Comments are sought on the proposed Regulations and Policy. 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 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 of Compliance, Ontario Securities Commission, 20 Queen Street West, Suite 800, Toronto, Ontario, M5H 3S8.

Questions may be referred to:

Michelle Alexander
Senior Legal and Policy Counsel
Regulatory Policy
Investment Dealers Association of Canada
(416) 943-5885
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## INVESTMENT DEALERS ASSOCIATION OF CANADA

## SUITABILITY

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. Regulation 1300.1 is repealed and replaced as follows:

"1300.1.

**Identity and Creditworthiness**

a) Each Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

**Business Conduct**

b) Each Member shall use due diligence to ensure that the acceptance of any order for any account is within the bounds of good business practice.

**Suitability Generally**

c) Subject to Regulation 1300.1(e), each Member shall use due diligence to ensure that the acceptance of any order from a customer is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance.

**Suitability Determination Required When Recommendation Provided**

d) Each Member, when recommending to a customer the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance.

**Suitability Determination Not Required**

e) Each Member that has applied for and received approval from the Association pursuant to Regulation 1300.1(f), is not required to comply with Regulation 1300.1(c), when accepting orders from a customer where no recommendation is provided, to make a determination that the order is suitable for such customer.

**Association Approval**

f) The Association, in its discretion, shall only grant such approval where the Association is satisfied that the Member will comply with the policies and procedures outlined in Policy No. 9. The application for approval shall be accompanied by a copy of the policies and procedures of the Member. Following such approval, any material changes in the policies and procedures of the Member shall promptly be submitted to the Association."

2. Regulation 1300.2 is repealed and replaced as follows:

"1300.2.

a) Each Member shall designate a director, partner or officer or, in the case of a branch office, a branch manager reporting directly to the designated director, partner or officer who shall be responsible for the opening of new accounts and the supervision of account activity. Each such designated person shall be approved by the applicable District Council and, where necessary to ensure continuous supervision, the Member may appoint one or more alternates to such designated person who shall be so approved. The director, partner or officer as the case may be, shall be responsible for establishing and maintaining procedures for account supervision and such persons or, in the case of a branch office, the branch manager shall ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry. As part of this supervision each new account shall be opened pursuant to a new account form which includes, at a minimum, the information required by Form No. 2, and the designated person (other than a branch manager in the case of discretionary or managed accounts) shall prior to or promptly after the completion of any transaction specifically approve the opening of such account. In the absence or incapacity of the designated director, partner or officer or when the trading activity of the Member requires additional qualified persons in connection with the supervision of the Member's business, an alternate, if any, shall assume the authority and responsibility of such designated persons.

b) Notwithstanding Regulation 1300.2(a), a Member or separate business unit of the Member is exempt from the requirement that a new account form include, at a minimum, the information required by Form No. 2 where the Member or separate business unit of the Member does not provide recommendations to any of its customers and has received approval pursuant to Regulation 1300.1(e). In such circumstances, the Member or separate business unit of the Member shall not be required to include in the new account form the information currently set out in Form No. 2 of the Association that relates to suitability."

3. Regulation 1800.5(a) and (b) is repealed and replaced as follows:

"(a) subject to Regulation 1300.2 opening all new contracts accounts pursuant to a new account application form approved by the Association and the approval of such form for all accounts prior to the commencement of any trading activity;

(b) using due diligence to learn and remain informed of the essential facts relative to every customer

(including the customer's identity, creditworthiness and reputation) and to every order or account accepted, to ensure that the acceptance of any order for any account is within the bounds of good business practice and, subject to Regulation 1300.1(e), to use due diligence to ensure that the acceptance of any order from a customer is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance;"

4. Regulation 1900.4 is repealed and replaced as follows:

"A registered options principal of a Member designated pursuant to Regulation 1900.2 shall be responsible for establishing and maintaining procedures for account supervision and shall ensure that the handling of customers' business relating to options is in accordance with the By-laws, Regulations, Rulings and Policies including, in particular, Regulations 1300.1, 1300.2 and 1900.2(a). As part of this supervision, each new account involving trading in options shall be opened pursuant to an appropriate account application form and the registered options principal shall have, prior to the completion of the initial transaction, specifically approved the opening of such account, provided that in the case of a branch office or sub-branch office, such approval (other than in respect of discretionary or managed accounts) may be given by a branch manager unless such branch manager is not qualified for the supervision of options accounts. All procedures to carry out the provisions of the By-laws and Regulations including Regulation 1300 as it relates to options trading shall be in writing and subject to review by the Association. In the absence or incapacity of the designated registered options principal or when the trading activity of the Member requires additional qualified persons in connection with the supervision of the Member's business, an alternate, if any, shall assume the authority and responsibility of the registered options principal."

PASSED AND ENACTED BY THE Board of Directors this 11th day of April 2001, to be effective on a date to be determined by Association staff.

**POLICY NO. 9**

**Minimum Requirements for Members Seeking Approval under Regulation 1300.1(e) for Suitability Relief for Trades not Recommended by the Member**

The following Policy sets forth the documentary, procedural and systems requirements for Members to receive approval to accept orders from a customer without a suitability determination where obtain an exemption from suitability requirements on trades by customers which were not recommendation was provided by the Member.

In this Policy, "order-execution service" means the acceptance and execution of orders from customers for trades that the Member has not recommended and for which the Member takes no responsibility as to the appropriateness or suitability of the trades to the customers' financial situation, investment knowledge, investment objectives and risk tolerance.

**A. Minimum requirements for Members offering solely an order-execution service, either as the Member's only business or through a separate business unit of the Member**

1. Business Structure and Compensation

   a) The Member must operate either as a legal entity or a separate business unit which provides order-execution only services.

   b) If operated as a separate business unit of the Member, the order-execution only service must have separate letterhead, accounts, registered representatives and investment representatives and account documentation.

   c) The registered representatives and investment representatives of the Member or separate business unit of the Member shall not be compensated on the basis of transactional revenues.

2. Written Policies and Procedures

   a) The Member or separate business unit of the Member must have written policies and procedures covering all of the matters outlined in this Policy.

   b) The Member or separate business unit of the Member must have a program for communicating those policies and procedures to all its registered representatives and investment representatives and ensuring that the policies and procedures are understood and implemented.

3. Account Opening

   a) At the time an account is opened, the Member or separate business unit of the Member must make a written disclosure to the customer advising that the Member or separate business

unit of the Member will not provide any recommendations to the customer and will not be responsible for making a suitability determination of trades when accepting orders from the customer. Such disclosure shall clearly explain to the customer that the customer alone is responsible for his or her own investment decisions and that the Member will not consider the customer's financial situation, investment knowledge, investment objectives and risk tolerance when accepting orders from the customer.

b) At the time an account is opened, the Member or separate business unit of the Member must obtain an acknowledgement from the customer that the customer has received and understood the disclosure described in Paragraph 3(a). For accounts such as joint and investment club accounts having more than one direct beneficial owner, the Member must obtain an acknowledgement from all beneficial owners.

c) Prior to operating any existing accounts under the approval, the Member or separate business unit of the Member must provide the disclosure described in Paragraph 32(a) to the customer and obtain the acknowledgement described in Paragraph 3(b).

d) The acknowledgements obtained under Paragraphs 3(b) and (c) must take the form of a positive act by the customer(s), a record of which must be maintained by the Member in an accessible form. Possible forms of the acknowledgement are:

i) the customer's signature or initials on a new customer application form or similar document where the signature or initial specifically relates to the required disclosure and acknowledgement;

ii) the clicking of an appropriately labeled button on an electronic account application form, placed directly under the disclosure and acknowledgement text;

iii) the tape recording of a verbal acknowledgement made by telephone.

4. Supervision

a) The Member or separate business unit of the Member must have written procedures for the supervision of trading reasonably designed to ensure that customers are not provided with recommendations as a result of the customer having an account with the separate business unit of the Member and with another separate business unit of the Member or with the Member itself.

b) The Member or separate business unit of the Member must have written procedures and systems in place to review customer trading and accounts for those concerns listed in Policy No. 2 other than those related solely to suitability.

c) The Member or separate business unit of the Member must maintain an audit trail of supervisory reviews as required in Policy No. 2.

d) The Member or separate business unit of the Member must have sufficient supervisory resources allocated at head office and branch levels to effectively implement the supervisory procedures required under this Policy.

5. Systems and Books and Records

a) The order-entry systems and records of the Member or separate business unit of the Member must be capable of labeling all account documentation relating to customers, including monthly statements and confirmations, as "order-execution only accounts" or some variant thereof.

b) The monthly statements of a separate business unit of a Member shall not be consolidated with the account statements of any other business unit of the Member or of the Member itself.

**B. Minimum requirements for Members offering both an advisory and an order-execution only service**

1. Terminology

All references to the basis of trades in procedures, documents and reports under this Policy must use the terms "recommended" or "non-recommended". In particular, designating trades as solicited or unsolicited will not be accepted as complying with the requirements of this Policy.

2. Written Policies and Procedures

a) The Member must have written policies and procedures covering all of the matters outlined in this Policy.

b) The Member must have a program for communicating those policies and procedures to all its registered representatives and ensuring that the policies and procedures are understood and implemented.

3. Account Opening

a) At the time an account is opened, the Member must make a written disclosure to the customer advising that the Member will not be responsible for making a suitability determination when accepting an order from the customer which was not recommended by the Member or a representative of the Member. Such disclosure shall clearly explain to the customer that the customer alone is responsible for his or her own investment decisions and that the Member will not consider the customer's financial situation,

investment knowledge, investment objectives and risk tolerance when accepting orders from the customer. . Such disclosure also shall include a brief description of what does or does not constitute a recommendation[1] and instructions on how the customer can report trades which have not been accurately designated as recommended or non-recommended.

b) At the time an account is opened, the Member must obtain an acknowledgement from the customer that the customer has received and understood the disclosure described in Paragraph 3(a). For accounts such as joint and investment club accounts having more than one direct beneficial owner, the Member must obtain an acknowledgement from all beneficial owners.

c) Prior to operating any existing accounts under the approval, the Member must provide the disclosure described in Paragraph 3(a) to the customer and obtain the acknowledgement described in Paragraph 3(b).

d) The acknowledgements obtained under Paragraphs 3(b) and (c) must take the form of a positive act by the customer(s), a record of which must be maintained by the Member in an accessible form. Possible forms of the acknowledgement are:

i) the customer's signature or initials on a new customer application form or similar document where the signature or initial specifically relates to the required disclosure and acknowledgement;

ii) the clicking of an appropriately labeled button on an electronic account application form, placed directly under the disclosure and acknowledgement text;

iii) the tape recording of a verbal acknowledgement made by telephone.

4. Supervision

a) The Member must have written procedures for the supervision of trading reasonably designed to ensure that orders are marked accurately as recommended or non-recommended.

b) The Member must have written procedures for the selection of accounts to be subject to a monthly review at least equal to those currently required by Policy No. 2. The selection must not have regard to whether the trades in the account are marked as recommended or non-recommended. The account review must include a determination whether the overall composition of the customer's portfolio no longer conforms to the documented objectives and risk tolerance of the customer as a result of non-recommended trades and, when it does not, the procedures must specify the steps to be taken for dealing with the disparity.

c) The Member must maintain an audit trail of supervisory reviews as required in Policy No. 2.

d) The Member must have sufficient supervisory resources allocated at head office and branch levels to effectively implement the supervisory procedures required under this Policy.

5. Systems and Books and Records

a) The Member's order-entry systems and records must be capable of recording whether each order is being done on a recommended or non-recommended basis. If the Member permits customers to enter orders on-line for direct transmission to a trading system, the order entry system must require the customer to indicate whether the trade was recommended or non-recommended. If there is default marking, it must be "recommended."

b) The Member must disclose on the confirmation for each trade by an account whether the transaction was recommended or non-recommended.

c) The Member must disclose on the monthly statement whether each trade was executed on a recommended or non-recommended basis, but is not required to disclose on monthly statements which securities positions resulted from which type of trade.

d) The Member must maintain records of complaints or requests from customers to change the designation of a trade as recommended or non-recommended.

e) The Member must be able to generate reports enabling supervisors to supervise the accuracy of recommended/non-recommended disclosure on orders. Possible methods of meeting this requirement are included as Appendix A to this Policy.

f) The Member's systems must be able to select accounts or generate exception reports to show accounts requiring review as specified in its policies and procedures and Policy No. 2 without regard to whether the trades were marked as recommended or non-recommended.

[1] The language of this provision is currently under consideration.

## APPENDIX A

### Supervision of Accuracy of Recommended/Non-recommended Trade Basis Reporting for Member Firms Granted Approval under Regulation 1300.1(e)

Under section B.4 (a) of Policy No. 9, Members must have procedures for the supervision of trading reasonably designed to ensure the accuracy of the marking of customer orders as recommended or non-recommended. Under section B.5(e) of Policy No. 9, Members must have systems capable of generating reports which will enable supervisors to conduct such supervision.

While Members may, subject to the approval of the Association, design their own procedures and reports in compliance with the Policy, the following are examples of reports and procedures which Association staff believe would meet the requirements of the Policy.

1. Reports used in required daily trading reviews should indicate whether a trade has been designated as recommended or non-recommended.

2. Procedures should direct those reviewing reports used in daily trade supervision to look for patterns suggestive of inaccurate designation of trade basis, such as:

   a. trades by more than one customer of a registered representative in the same security on the same day being designated as non-recommended. Where such situations occur, there must be a reasonable explanation such as widespread holding or trading of the stock;

   b. trades in securities that are the subject of research reports issued or distributed by the Member, or with respect to which the Member has recently changed its research recommendation. While the issuance of a research report or general recommendation is not determinative that there has been a recommendation made to a specific customer, trades in such securities marked as non-recommended may be questioned in relation to the individual registered representative's tendency to make use of the Member's recommendations in dealings with customers;

   c. crosses between customer accounts of the same registered representative both shown as non-recommended.

3. The Member should be able to generate statistical or exception reports capable of revealing patterns of trade designation to be reviewed for possible inaccuracy, for example:

   a. percentages of trades designated as recommended and non-recommended by registered representative and branch office. Depending on the nature of the business of the registered representative or branch office, high percentages of trades designated as non-recommended may indicate inaccurate marking;

   b. percentages of trades in particular securities designated as recommended or non-recommended. High percentages of trades in some securities marked as non-recommended, such as those being recommended in the Member's research, may be indicative of inaccurate marking. Such reports may also identify frequent trades by particular offices or registered representatives in one security, which are all marked as non-recommended but occur over more than one day. As noted above, such a pattern may require further investigation by the Member but is not determinative that the trades are inaccurately marked;

   c. numbers of complaints or reports from customers that trades are inaccurately marked which show any frequency of complaints about a particular registered representative or branch office.

4. The Member's procedures should provide instructions to supervisors on the requirement to review statistical and exception reports, on steps to be taken to investigate any questionable patterns and on audit trail requirements. Audit trails should include a record of questions asked, answers given and action taken as in reviews conducted under Policy No. 2.

5. Where compliance procedures under this Policy are conducted at the branch office level, the Member should have head office review procedures sufficient to ensure that the supervisory requirements are being properly executed at the branch level.

### MEMBER FIRM WRITTEN POLICIES AND PROCEDURES

***Introduction***

The following discussion is intended to be reviewed in conjunction with draft Policy No. 9 "Minimum Requirements for Members Seeking Approval under Regulation 1300.1(e) for Suitability Relief for Trades not Recommended by the Member". That Policy sets out the appropriate policies and procedures that Members are required to develop to ensure that issues relating to suitability are appropriately addressed when Members are seeking approval for relief from suitability review requirements. The Policy does not detail the specifics that must be contained in policies and procedures that a Member is required to establish. Rather, it outlines the areas that must be addressed in those policies and procedures (i.e. account opening, supervision, systems and books and records). The rationale for this approach is that Member firms operate differently based upon their business structure, size of firm, nature of clientele, etc. For the IDA to construct detailed policies and procedures with respect to suitability for all Members would result in unnecessary or impossible restrictions placed upon some Members or a manual far too detailed to prove workable. The discussion which follows illustrates the need for Members to be able to develop their own unique policies and procedures through a description of how firm models differ, how these differing models might

approach specific suitability concerns within their procedure manuals and how the IDA ensures that the policies and procedures developed by each Member are appropriate given the nature of the business of that firm.

***Variability in Policies and Procedures***

Firm policies and procedures are reviewed when the firm applies for membership and periodically thereafter. Procedures manuals are reviewed during sales compliance reviews, but if they have been reviewed recently a full review may not be done. In some cases, a partial review is done to ensure, for example, that the policies and procedures have been updated to take into account new rules and regulations.

When a firm seeks to enter a new line of business, the relevant policies and procedures are reviewed. Some of these reviews arise out of registration applications. For example, if a firm applies to have its first portfolio manager registered, the Registration Department contacts Sales Compliance to ensure that the firm has had its policies and procedures for supervising managed accounts reviewed and approved.

Policies and procedures are unique to the firm, and depend on a number of factors, including:

- the products traded by the firm; for example, firms which do not trade options or commodities do not require policies and procedures for supervising trading in those products;
- the businesses in which the firm engages; for example, a firm which does no underwriting, other corporate finance or other business which could result in it obtaining material non-public information about issuers does not require the relevant information barrier procedures;
- the nature of the firm's clientele, if any. Some firms only do proprietary trading, and do not require procedures for the supervision of client accounts because they have no clients. Conversely, firms which do no proprietary trading do not require procedures to ensure that the firm itself does not take advantage of client orders, although it will generally require such procedures with regard to employee accounts.
- the size and structure of the firm; for example, a large multi-branch dealer requires procedures outlining what supervision is done at the branch level, what is done at the head office and how the two interact, while a small firm with only one office will have everything done at the head office level. While each firm has designated officers or directors responsible for the supervision of certain kinds of activity, in a large firm many of the daily review functions may be delegated to others while the designated officer or director handles issues raised and ensures that those to whom the functions are delegated are performing them adequately. IDA Policy No. 2 requires that the delegation of functions be in writing, outlining the duties of the person to whom the function has been delegated.
- the systems used by the firm; for example, some firms make use of standard client documents such as commission reports, client monthly statements and new account applications in order to conduct supervisory reviews, while others use computer-generated exception reports showing summaries of essential information about the client along with client trading and positions;
- the firm's record keeping practices. All firms are required to maintain an accessible audit trail of supervisory activities, including issues raised and action taken. Some firms retain copies of client documents with handwritten notes; some have logs of activity and findings; others maintain electronic review records.

***IDA Policy No. 2 – Minimum Standards for Retail Account Supervision***

Relief from suitability does not provide Members with relief from responsibilities for supervision of retail client accounts. Rather it imposes additional responsibilities related to the review of non-recommended trades.

General procedural requirements for the supervision of retail client accounts are contained in IDA Policy No. 2. This policy is currently being revised to give more flexibility to Members in designing their supervisory systems, subject to a review of the adequacy of those systems by the IDA Sales Compliance Department.

A principal concern under the current Policy No. 2 is that firms are required to conduct monthly reviews of all accounts generating more than $1,000 in commissions in a month. This is a very inadequate way to select which accounts require review, as it is not a reliable indicator of which accounts require review and has resulted in a requirement to review large numbers of accounts which should not be reviewed, while missing others that should be. $1,000 in commissions from trading in a multi-million dollar account will not generally be of much concern, while significant damage can be done to a small account trading in volatile securities but not generating $1,000 in commissions.
Under the revisions, firms which develop the proper systems can use other methods for identifying accounts requiring reviews under Policy No. 2. A simple example would be the use of a commission to equity ratio.

***Periodic Reviews for Suitability***

Similarly, relief from suitability does not provide Members with relief from periodic reviews of all accounts for suitability. Smaller Members may be able to perform this review through a periodic review of client statements in conjunction with client investment objectives.

For Members whose business consists largely of fee-based accounts or managed accounts, for which they continue to assume suitability obligations for all trading, they will not have to alter their procedures for these accounts and may be able to monitor suitability in other accounts manually.

Larger firms may have to automate their periodic reviews of suitability in order conduct this review in an effective manner. Some large firms are already designing more sophisticated methods for reviewing accounts electronically. For example, one firm will have a team of analysts who will categorize every

security held in client accounts as to its contribution to objectives such as security or principal, income or growth and its risk factors. The objectives and risk weighting for each account will be entered into the firm's computer system, and the overall composition of the account will be checked against the client's objectives and risk tolerance whenever an order is entered. Where an order would create a significant disparity between the portfolio and the client's objectives, the trade may be rejected pending further discussion with the client. In a trade-by-trade suitability environment, such a system might not reject a non-recommended trade, but would generate a requirement for an immediate update of the client's objectives or risk tolerance.

***Reviews for High Incidence of Non-Recommended Trades***

This is an additional responsibility that Members provided with relief from suitability must assume. Again, smaller Members may be able to effectively conduct such a review with the tools currently at their disposal. Other firms may require special blotters showing only non-recommended trades in order to effectively do such a review, while larger firms may be required to write special computer programs to highlight suspicious circumstances requiring further review and follow-up.

The IDA's review in each case will involve verifying that such a review has been conducted and documented, that the procedures do identify suspicious situations and that in these cases appropriate review and follow-up has occurred. Further guidance is provided in Appendix A to Policy No. 9.

***Review for High Incidence of Non-Recommended Trades in Specific Securities***

This is another additional responsibility that Members provided with relief from suitability must assume. The approach that Members will take to this will vary from Member to Member and will depend on the nature of their business. This review may focus on securities that are likely to be unsuitable for much of the Member's client base. This review may also focus on trades in securities recommended in firm research on the assumption that most such trades should be recommended. Again, smaller Members may be able to effectively conduct such a review with the tools currently at their disposal. Other firms may require special blotters showing only non-recommended trades sorted by security in order to effectively do such a review, while larger firms may be required to write special computer programs to highlight suspicious circumstances requiring further review and follow-up. Further, the frequency of such reviews may vary depending on the nature of the Member's business. Additional guidance is provided in Appendix A to Policy No. 9.

***The IDA's Responsibilities***

The key from a regulatory viewpoint is to ensure that the specific policies and procedures of a firm take into account all the necessary factors, that they are communicated to the firm's employees and that they are effectively implemented. The IDA reviews and approves firm procedures based on its knowledge of the firm's business, and then reviews their implementation through the sales compliance review process. IDA procedures will include verification that appropriate reviews have been conducted and documented, that the procedures do identify suspicious situations and that in these cases appropriate review and follow-up has occurred. IDA policies set forth the elements which must be included and the factors to be taken into consideration, but each firm's policies and procedures must then be reviewed based on its individual business and choices.

**What Constitutes a "Recommendation"? Is a Suitability Determination Required under Regulation 1300.1**

This Notice sets forth a discussion of what may or may not constitute a "recommendation" for the purposes of Regulation 1300.1.

Beyond the general suitability requirement in 1300.1(c), the Regulation was amended to provide, under clause (d), that in recommending to a customer the purchase, sale, exchange or holding of any security, a Member is required to make a determination that the recommendation is suitable for such customer based on the relevant facts and circumstances of that customer.

Regulation 1300.1(e) clarifies that where a Member does not provide a recommendation, but acts simply as an order-taker for a particular customer who, on their own initiative, effects transactions without a recommendation from the Member, the Member, if it has received approval from the Association, is not required to make a suitability determination.

**It should be recognized, however, that this Notice is not intended to define all situations that fall under the definition of "recommendation". Rather, whether a particular transaction is in fact "recommended" depends on an analysis of all the relevant facts and circumstances of the particular case. Furthermore, the determination as to whether a recommendation has been provided should be based upon whether or not a reasonable person in similar circumstances would understand that a recommendation had been made.**

In addition, the IDA does not wish to restrict the amount or type of informative documentation sent to customers by a Member as this information provides a useful service to customers and assists them in reaching investment decisions.

However, the IDA feels it is beneficial to provide some guidance on what may or may not constitute a recommendation. As stated above, Members must be cognizant that whether a suitability review is triggered (i.e. whether a recommendation has been provided to the customer) is dependant on the particulars of each individual situation. Consequently, where a Member is of the view that the transaction in question falls under one of the examples of what may not constitute a recommendation listed below, that in and of itself will not provide the Member with a "safe harbour" from a suitability determination.

Members should recognize that the following examples of what may or may not constitute a recommendation are not intended to be exhaustive and each situation must be judged on its own specific facts and circumstances.

**Examples of What May Not Constitute a Recommendation:**

1) The classification of a transaction as "recommended" does not depend on the classification of the transaction as "solicited" or "unsolicited".

2) The determination of whether a recommendation has been made does not depend on the method or medium of communication. Rather, it is the substance of the communication that should be the primary factor in determining whether recommendations have been provided.

3) With respect to a particular transaction, a Member would not be considered to provide recommendations to a customer solely by reason of the Member providing or making available to the customer or class of customers investment information[1], provided that the Member, in so doing, does not make a proposal individually tailored for the particular customer or class of customers.

4) A Member would not be considered to provide recommendations to a customer where the Member simply informs customers or prospective customers by any means of the *availability* of general categories of investment information.

5) General advertisements or general statements where there is no recommendation to the customer would not constitute a recommendation.

6) The wide distribution of research on a Website or otherwise by a Member would not constitute a recommendation.

7) The distribution of general lists of securities for sale by a Member would not constitute a recommendation.

8) Hyperlinks and portals offered by a Member to other investment-related Web pages would not constitute a recommendation.

9) If a customer sets out the parameters of the types of investment information that he or she wishes to receive, the Member, when providing that information, would not be considered to be providing recommendations.

10) A Member would not be considered to provide recommendations when the Member or a separate business unit of the Member provides "order-execution only" services for every customer. An "order-execution only" service exists when a Member or a division of the Member carries out instructions by a customer to buy or sell specific securities without providing any advisory services in relation to those securities.

**Examples of What May Constitute a Recommendation:**

1) A Member would be considered to provide recommendations to a customer where the Member provides information that is individually tailored to a specific customer or class of customers.

2) A Member would be considered to provide recommendations to a customer where the Member develops systems that would enable them to "data mine" their customers' habits and investment preferences based on past investment decisions where this information is then used to target investment-related information to those customers.

3) A Member would be considered to provide recommendations to a customer where the Member promotes a specific security to a customer.

4) A Member would be considered to provide recommendations to a customer where the Member promotes a specific trading strategy to a customer.

5) A waiver or a disclaimer given to a customer stating that the information provided by the Member does not constitute a recommendation is not a determining factor.

6) A Member would be considered to provide recommendations to a customer where the Member holds itself out as taking into account the customer's objectives and financial situation with respect to any transaction.

7) A Member that categorizes itself as a "discount broker" may still be considered to be providing recommendations depending on the facts and circumstances of the particular situation.

8) Charging a lower commission to a customer has no bearing on whether the Member would be considered to be providing recommendations.

9) A Member would be considered to provide recommendations where a customer enters an order online, pursuant to a recommendation made by the Member via the telephone.

10) Whether a transaction is classified as a "buy" or "sell" has no impact on whether the Member would be considered to be providing a recommendation.

11) The lack of the existence of a previous relationship between the Member and the customer does not imply that the Member is not providing recommendations.

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[1] For the purposes of this Member Regulation Notice, investment information means information, whether prepared by or on behalf of a Member or third party and, without limiting the generality of the foregoing, includes financial market information, news, research, opinions, charting and portfolio tracking information, asset allocation models, analyst consensus reports, stock quotes, public disclosure documents and extracts therefrom and information relating to offerings and sales materials.

Contact:

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Regulatory Policy
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Suzanne R. Barrett
Association Secretary

## 13.1.2 IDA - Trade Names

### INVESTMENT DEALERS ASSOCIATION OF CANADA – TRADE NAMES

### I. OVERVIEW

### A CURRENT RULES

Currently, the Association has no clear by-laws or regulations addressing the use of trade names. However, trade names are used within the securities industry in a number of ways. Some Members operate under names that are different from the name of the registered corporation, several businesses may share a common trade name and in some instances, salespersons use trade names associated with their own business and not with the dealer's corporate or trade name.

### 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 self-regulatory organizations.

One of the subjects discussed in the Paper concerned the use of trade names.
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 trade names.

### C EFFECT OF REVISION

The proposed by-law will be simple and effective. It will clearly set out provisions for the use of trade names that ensure compliance with the Paper and address how trade names are used within the industry.

### II. DETAILED ANALYSIS

The proposed by-law will permit the use of trade names other than the Member's legal names provided that those names are owned by the Member, an approved person of the Member or an affiliated corporation of either of them. The Association much be notified of the use of such name.

In addition, a trade name may be used by only one Member at a time, unless Members are related or affiliated or Members are involved in an introducing broker/carrying broker arrangement. This provision will allow Members to comply with the requirements with respect to By-law 35 which permit and in some cases, require, the name of both the introducing broker and carrying broker to be shown on documentation and correspondence with a client. The provision will also ensure that where for example, a discount division of a Member exists,

it is permitted to display its identifiably separate trade name on documentation as required pursuant to recent changes to the suitability regime under Regulation 1300.

A Member's legal name must be included in any contracts, account statements or confirmations.

Where an approved person is using a trade name that is not owned by the Member, the Member must consent to such use.

Trades names of an approved person may accompany, but not replace legal names and both must be displayed on materials in equal prominence.

The amendment also requires Members and approved persons to not use deceptive or misleading trade names and the Association, in its discretion, may prohibit the use of any trade name that it determines is objectionable.

### 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 1.1.7 entitled "Business Names, Styles, Etc.", which is based upon the CSA Position Paper.

### 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 of trade names. Furthermore, the proposed amendment assists in the protection of the investing public by ensuring that clients are not confused about the entity with which they are dealing.

## 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 Compliance and Legal Section Executive. Input was received from the Retail Sales Committee and the Compliance and Legal Section. 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. 1.1.7 – Business Names, Styles, Etc.

## 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 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 of Compliance, 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

## TRADE NAMES

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:

"29.7A.

**(1) Ownership of Trade Name**

All business carried on by a Member or by any person on its behalf shall be in the name of the Member or a business or trade or style name owned by the Member, an approved person in respect of the Member or an affiliated corporation of either of them.

**(2) Approval of Trade Name**

No approved person shall conduct any business in accordance with subsection (1) in a business or trade or style name that is not owned by the Member or its affiliated corporation unless the Member has given its prior written consent.

**(3) Notification of Trade Name**

Prior to the use of any business or trade or style name other than the Member's legal name, the Member shall notify the Association.

**(4) Transfer of Trade Name**

Prior to the transfer of a business or trade or style name to another Member, the Member shall notify the Association.

**(5) Single Use of Trade Name**

Except where Members are related or affiliated, no Member or approved person shall use any business or trade or style name that is used by any other Member unless the relationship with such other Member is that of an introducing broker/carrying broker arrangement, pursuant to By-law 35.

**(6) Legal Name**

The Member's full legal name shall be included in all contracts, account statements and confirmations.

**(7) Trade Name of Approved Person to Accompany Legal Name**

A business or trade or style name used by an approved person may accompany, but not replace, the full legal name of the Member on materials that are used to communicate with the public. The Member's legal name must be at least equal in size to the business or trade or style name used by the approved person.

For greater certainty, "materials" that are used to communicate with the public include, but are not limited to, the foregoing:

(a) letterhead;
(b) business cards;
(c) invoices;
(d) trade confirmations;
(e) monthly statements;
(f) websites;
(g) research reports; and
(h) advertisements.

**(8) Misleading Trade Name**

No Member or approved person shall use any business or trade or style name that is deceptive, misleading or likely to deceive or mislead the public.

**(9) Prohibition on Use of Trade Name**

The Association may prohibit a Member or approved person from using any business or trade or style name in a manner that is contrary to the provisions of this By-law or is objectionable or contrary to the public interest."

PASSED AND ENACTED BY THE Board of Directors this 11th day of April 2001, to be effective on a date to be determined by Association staff.

## 13.1.3 IDA - Amendments to By-Laws Regarding Investigatory Powers

### INVESTMENT DEALERS ASSOCIATION OF CANADA- AMENDMENTS TO BY-LAWS REGARDING INVESTIGATORY POWERS

### I. OVERVIEW

Under the current By-law 19.1, employees are among the list of persons whose conduct can be examined and investigated, however, employees cannot be compelled to produce evidence under By-law 19.5. The IDA does not have the authority to obtain evidence in the course of an examination or investigation from employees.

Under the current By-law 19.5, the documents that the persons listed in the By-law can be required to produce are limited to those that are "relevant to the matters being investigated."

#### A Current Rules

By-law 19.5 sets out the examination and investigation powers of the IDA. Two issues with respect to the examination and investigatory powers must be addressed.

(i) The parties that may be compelled to produce documents are set out in By-law 19.5 but do not include employees of a Member Firm. Whereas, By-law 19.1 provides the IDA with the authority to make examinations and investigations into the conduct or business or affairs of a list of persons, which includes employees of a member. The IDA does not have jurisdiction over employees.

(ii) The documents that the listed persons may be compelled to produce pursuant to By-law 19.5 are restricted to documents that are "relevant to the matters being investigated."

#### B The Issue

An assessment of the effectiveness of the investigation powers of the Enforcement Division was conducted in the year 2000. This assessment led to the identification of By-law 19 as being one of the areas that should be clarified.

#### C Objective

The Association believes that implementing the proposed changes will improve the efficiency and effectiveness of the investigation process.

#### D Effect of Proposed Amendment

The proposed amendments to By-law 19 will serve to improve the effectiveness of IDA enforcement investigations by ensuring that evidence can be compelled from all relevant persons and that documents necessary for prosecutions are collected without undue delays and disputes. The amendments are necessary to meet the increased expectations and demands in enforcement.

### II. DETAILED ANALYSIS

#### A Present Rules, Relevant History and Proposed Rules

**Persons Who May Be Compelled To Produce Evidence**

By-law 19.5 sets out the power of the IDA to obtain evidence in the course of an examination or investigation. The persons that are required to produce evidence are set out, however, the list fails to include an "employee" which is in fact included in By-law 19.1. Therefore, the IDA may investigate the conduct of an employee of a Member pursuant to By-law 19.1, but IDA staff do not have authority to compel the production of documents or the giving of a statement by an employee of a Member. The issue arises due to the fact that the IDA does not have jurisdiction over employees of a Member. As a result, the only means of compelling the production of evidence by employees is to require Members to ensure production of evidence by employees.

To eliminate the inconsistency between By-law 19.1 and 19.5 and to compel employees to produce evidence, it is proposed that By-law 19.1 be amended to explicitly require Members to compel employees to comply with the terms of By-law 19.

The amended By-law 19.1 (para.2) would read as follows:

19.1(para.2) "The Member shall require all employees to comply with By-law 19."

19.5 (para.1) "For the purpose of any examination or investigation pursuant to this By-law 19, a Member, registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director, officer, investor or employee of a Member, any other person approved or seeking approval or under the jurisdiction of the Association pursuant to the By-laws and Regulations may be required by the Senior Vice-President, Member Regulation, his or her staff, or any other person designated by the Board of Directors:"

Under By-law 19.5(b), certain persons can be compelled to "produce books, records and accounts relevant to the matters being investigated". This requirement for relevance has led to disputes with Members as to what documents are relevant. Enforcement staff has been experiencing an increased reliance by Members on the relevance argument, which has had the effect of slowing the enforcement process.

Consequently, the only options available to Enforcement staff at this time are:

(i) try to convince the party of the relevance of the document; or

(ii) charge the party with failing to comply with a request for production and ask a hearing panel to decide if the failure to respond is a regulatory violation.

It is proposed that By-law 19.5(b) be amended to remove the requirement that the production of documents be "relevant to the matters being investigated" and be amended to incorporate a provision similar to that of the TSE which would allow the

Association access to documents that it determines to be relevant.

The amended By-law 19.5(b) would read as follows:
19.5(b): to produce for inspection and provide copies of any books, records, accounts and documents that are in the possession or control of the Member or the person that the Association determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the Association.

**B Issues and Alternatives Considered**

A number of alternatives were considered, however, the recommended change was chosen as it is the simplest and most effective route of achieving the desired result.

**C Comparison with Similar Provisions**

**Persons Who May Be Compelled To Produce Evidence**

The IDA By-law 19.1 which deals with the IDA's authority to conduct examinations and investigations includes employees of a Member as one of the persons whose conduct, business or affairs may be examined.

**Relevance of Documents**

Subsections 11(4) and 13(3) of the *Ontario Securities Act* give the OSC the power to "examine any document" and "inspect any document" without the onus of showing that the document is "relevant" to the matters being investigated. Similarly, subsection 19(3) of the Ontario Securities Act, which sets out the requirement to provide information to the Commission, does not require documents to be "relevant".

> *11(4) Right to Examine (OSA):* " For the purposes of an investigation order under this section, a person appointed to make the investigation may examine any documents or other things, whether they are in the possession or control of the person or company in respect of which the investigation is ordered or of any person or company.
>
> *13(3) Inspection (OSA)*: A person making an investigation or examination under section 11 or 12 may, on production of the order appointing him or her, enter the business premises of any person or company named in the order during business hours and inspect any documents or other things that are used in the business of that person or company and that relate to the matters specified in the order, except those maintained by a lawyer in respect of his or her client's affairs.
>
> *19(3) Provision of information to Commission (OSA)*– Every market participant shall deliver to the Commission at such time or times as the Commission or any member, employee or agent of the Commission may require,
>
> (a) any of the books, records and documents that are required to be kept by the market participant under Ontario securities law; and
>
> (b) except where prohibited by law, any filings, reports or other communications made to any other regulatory agency whether within or outside of Ontario.

Section 7-102 of the TSE Rules deals with obligations to provide information, books, records and papers. Section 7-102 requires the persons listed to provide the documents that the Exchange determines to be relevant to a matter under review or investigation.

*7-102 Obligations to Provide Information, Books, Records and Papers:*
Upon the request of the Exchange, a Participating Organization, Approved Person, or any person seeking Exchange Approval or otherwise subject to the jurisdiction of the Exchange shall forthwith:

(a) provide any information, books, records and papers in the possession or control of the Participating Organization or the person that the Exchange determines may be relevant to a matter under review or investigation and such information, books, records and papers shall be provided in such manner and form, including electronically, as may be required by the Exchange;

(b) allow the inspection of, and permit copies to be taken of, any books, records and papers in the possession or control of the Participating Organization or the person that the Exchange determines may be relevant to a matter under review or investigation; and

(c) provide a verbal, recorded statement or testimony at a time and place specified bythe Exchange on any issues that the Exchange determines may be relevant to a matter under review or investigation in the following manner:

  (i) in the case of a person other than an individual, by the statement or testimony of any appropriate officer, director or employee, or

  (ii) in the case of an individual, by a statement or testimony in person.

**D Public Interest Objective**

The Association believes that the proposed amendments are in the public interest in that they will assist in the protection of the investing public by ensuring that the enforcement process is effective, efficient and meets increased expectations and demands.

## III. COMMENTARY

### A Filing in Other Jurisdictions

The 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

These proposed amendments are simple and effective and will improve the efficiency of investigations.

### C Process

The proposed amendments were approved by the Member Regulation Oversight Committee.

## IV. SOURCES

IDA By-laws 19.1 and 19.5
OSC s.11(4), 13(30 and 19(3)
TSE Rules s. 7-102

## V. OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the accompanying Policy 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 Policy would be in the public interest. Comments are sought on the proposed Policy. 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 Belle Kaura, 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 of Compliance, Ontario Securities Commission, 20 Queen Street West, Suite 800, Toronto, Ontario, M5H 3S8.

Questions may be referred to:

Belle Kaura, Enforcement Policy Counsel
Enforcement Division
Investment Dealers Association of Canada
(416) 943-5878
bkaura@ida.ca

## INVESTMENT DEALERS ASSOCIATION OF CANADA - HOUSEKEEPING AMENDMENTS TO BY-LAWS REGARDING INVESTIGATORY POWERS

THE BOARD OF DIRECTORS of the Investment Dealers Association hereby makes the following amendments to the By-laws, Regulations, forms and Policies of the Association:

1. By-Law 19.1 is amended by adding the following words immediately following the first paragraph:

   "The Member shall require all employees to comply with By-law 19.

2. By-Law 19.5 is amended by adding the following words immediately following the word "investor":

   "or employee".

3. By-Law 19.5(b) is amended by replacing the existing 19.5(b) with the following paragraph:

   "19.5(b): to produce for inspection and provide copies of any books, records, accounts and documents, that are in the possession or control of the Member or the person, that the Association determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the Association."

PASSED AND ENACTED BY THE Board of Directors this 11th day of April 2001, to be effective on a date to be determined by Association staff.

## 13.1.4 IDA - Housekeeping Amendment to Reg. 1500 Certificate-Conduct and Practices Handbook

### INVESTMENT DEALERS ASSOCIATION OF CANADA – HOUSEKEEPING AMENDMENT TO REGULATION 1500 CERTIFICATE-CONDUCT AND PRACTICES HANDBOOK FOR SECURITIES INDUSTRY PROFESSIONALS

### I. OVERVIEW

**A -- Current Rules**

Regulation 1500 requires that each Member obtain a certificate from every new or newly appointed registered representative (RR) investment representative (IR), partner, director or officer which states that the individual has in their possession and has read the Conduct and Practices Handbook for Securities Industry Professionals (CPH).

**B -- The Issue**

Substantial revisions were made to the CPH in the Spring of 2000 and an electronic version was created which could be put on Member's internal networks. While the intention of the current Regulation was to ensure that all registered persons remain up-to-date on the CPH, including changes reflecting new or changing regulations and issues, it's current form does not achieve this end. Furthermore, the Association has determined that the use of certificates is unnecessarily burdensome and yields little value.

The Association has therefore proposed an amendment to Regulation 1500 eliminating the need for certificates. The proposed amendment to the Regulation requires every RR, IR, partner, director or officer to keep up-to-date on changes to the CPH and Members to take reasonable steps to ensure that their registered employees have a copy of the CPH in their possession and have read it and all updates. The amendments also clarify that having access to an electronic copy of the CPH shall qualify as having possession of it.

**C – Objective**

The Proposed amendment clarifies the obligation of Members and their employees by clearly setting out that every RR, IR, partner, director or officer must have in their possession (either physically or electronically) and have read the CPH and all updates.

**D -- Effect of Proposed Rules**

The proposed amendment eliminates the need for certificates and gives Members more latitude in the methods used to ensure that approved persons keep current on changes to the CPH. It also places a direct onus on approved persons.

### II. DETAILED ANALYSIS

**A -- Present Rules, Relevant History and Proposed Policy**

As a result of substantial revisions to the CPH, questions arose regarding the interpretation of Regulation 1500. The amendment clarifies and simplifies the Regulation by eliminating the need for certificates, which in the past indicated fulfillment of the requirements and imposes a direct onus on approved persons. The revisions require Members to take reasonable steps to ensure that required individuals have a copy in their possession and have read the CPH and all updates. Each Member can implement its own system to ensure compliance, relevant to its size, structure and business. In this regard, the implementation of mandatory continuing education provides a setting in which Members are already required to ensure that their approved employees are kept current on changes in regulations.

Furthermore, in light of the increased use of technology within the industry, amendments were needed to clearly set out that having access to an electronic copy of the CPH qualifies as having possession of it.

**B -- Issues and Alternatives Considered**

An alternative to the proposed Regulation was to require every RR, IR, partner, director and officer to have a physical copy of the CPH. After discussions with the Canadian Securities Institute it was felt that this requirement may impose excessive cost on Members who employ thousands of individuals who would be required to have copies of the CPH. To reduce this burden it was decided that having access to an electronic copy of the CPH would be sufficient.

**C -- Public Interest Objective**

The proposal simplifies the process by eliminating unnecessary paper work and is designed to increase the standards of operations, business conduct and ethics on the part of individuals employed by Member firms by allowing access to the code of ethics in a reasonable and fair method. The proposal does not permit unfair discrimination among Members.

### 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 amendment is simple and effective and will not create a burden on Member firms.

**C -- Process**

This Regulation change was initiated by IDA staff and discussed with the CSI.

## IV. SOURCES

References:

- IDA Regulation 1500

## V. OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the accompanying Policy 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 Policy would be in the public interest. Comments are sought on the proposed Policy. 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 of Compliance, 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 CONDUCT AND PRACTICES HANDBOOK FOR SECURITIES INDUSTRY PROFESSIONALS

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. Regulation 1500 is repealed and replaced as follows:

(1) Every registered representative, investment representative, partner, director or officer of a Member shall have in their possession and have read the Conduct and Practices Handbook for Securities Industry Professionals, including any updates:

(2) Each Member shall:

(a) take reasonable measures to ensure that all individuals who are employed by such Member as a registered representative, investment representative, partner, director or officer have in their possession and have read the Conduct and Practices Handbook for Securities Industry Professionals including any updates; and

(b) bring to the attention and provide all updates of the Conduct and Practices Handbook for Securities Industry Professionals to all registered representatives, investment representatives, partners, directors and officers.

(3) For the purposes of Regulation 1500, having access to an electronic version of the Conduct and Practices Handbook for Securities Industry Professionals shall qualify as having possession of it.

PASSED AND ENACTED BY THE Board of Directors this 11th day of April 2001, to be effective on a date to be determined by Association staff.

## 13.1.5 IDA - Proficiency Requirements

### INVESTMENT DEALERS ASSOCIATION OF CANADA – PROFICIENCY REQUIREMENTS FOR INDUSTRY AND NON-INDUSTRY SHAREHOLDERS

### I. OVERVIEW

**A -- Current Rules**

By-law 7.1 addresses the proficiency requirements with respect to industry partners, directors and officers. The current By-law requires that not less than 40 per cent of the members of the board of directors or the partners of the Member satisfy the proficiency requirements outlined in Part I of Policy No. 6.

By-law 7.2 states that if the remaining members of the board of directors are actively engaged in the business of the Member they are also required to have satisfied the applicable proficiency requirements unless an exception is granted.

By-law 7 does not address the proficiency requirements for individuals who are not partners or directors but are actively engaged in the business of the Member and non-industry partners and directors. For both these categories of individuals, proficiency requirements will only be triggered if they beneficially own 10 per cent or more of the voting securities of the Member. As such by-law 7.1(5) and (6) have been drafted to address the above lack of clarity.

**B -- The Issue**

There is currently no policy on what the proficiency requirements are for the following individuals:

1. Non-industry partners or directors of a Member who beneficially own 10 per cent or more of the voting securities of the Member, and

2. Any individuals other than partners or directors who are actively engaged in the business of a Member and beneficially own 10 per cent or more of the voting securities of the Member.

The Association receives numerous inquires regarding the proficiency requirements with respect to the above and as such the Association has drafted by-law 7.1 (5) and 7.1(6) to address the above situation.

**C -- Objective**

By-law 7 is currently being amended in order to clarify the situations where proficiency requirements are mandatory. Where certain individuals have control over the business of a Member it is important that those individuals have the necessary understanding of the roles and responsibilities of partners, directors and officers. Based on the above philosophy it is important that non-industry partners and directors of a Member who beneficially own 10 per cent or more of the voting securities of the Member as well as individuals other than partners or directors who are actively engaged in the business of a Member and who beneficially own 10 per cent or more of the voting securities of the Member complete the proficiency requirements as set out in Part I of Policy Number 6.

**D -- Effect of Proposed Rules**

The proposed rules clarify the proficiency requirements for certain stated individuals.

### II. DETAILED ANALYSIS

**A -- Present Rules, Relevant History and Proposed Rule**

Proficiency requirements are used to ensure that individual that are actively engaged in the business of a Member or have some control over the business of a Member have the pre-requisite knowledge required to effectively deal with the business. By-law 7 as it is currently drafted does not deal with the issue of proficiency requirements in the following situations:

1. Non-industry partners or directors of a Member who beneficially own 10 per cent or more of the voting securities of the Member, and

2. Any individuals other than partners or directors who are actively engaged in the business of a Member and beneficially own 10 per cent or more of the voting securities of the Member.

The proposed By-law seeks to establish proficiency requirements for the above individuals to ensure the highest standards of excellence in the industry.

The proficiency requirements that are required under Part I of Policy Number 6 for the above stated individuals include successful completion of the Partners, Directors and Senior Officers Qualifying Examination, and for those partners, directors and officers who trade in securities, successful completion of the Canadian Securities Course or the New Entrants Course (where the person was registered or licensed with a recognized foreign self-regulatory organization prior to application with the Association).

**B -- Issues and Alternatives Considered**

No other issues and alternatives were considered.

**C -- Public Interest Objective**

The proposal is designed to ensure that those individuals that are actively engaged in the business of a Member have completed the necessary educational training that will improve the competence of Members and their Approved Persons. The proposal also promotes the protection of investors, by ensuring that individuals who are involved in the management and operations of Member firms have a good understanding of the industry and their role within it. Furthermore it promotes high standards of operations, business conduct and ethics. The proposal 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 rules 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 change is simple and effective.

### C -- Process

The proposed by-law was developed by Staff at the Association.

## IV. SOURCES

- IDA by-law 7

## V. OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the accompanying Policy 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 Policy would be in the public interest. Comments are sought on the proposed Policy. 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 of Compliance, Ontario Securities Commission, 20 Queen Street West, Suite 800, Toronto, Ontario, M5H 3S8.

Questions may be referred to:

Deborah Wise
Legal and Policy Counsel
Regulatory Policy
Investment Dealers Association of Canada
(416) 943-6994
**dwise@ida.ca**

## INVESTMENT DEALERS ASSOCIATION OF CANADA PROFICIENCY REQUIREMENTS FOR INDUSTRY AND NON-INDUSTRY SHAREHOLDERS

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 is amended by adding the following:

   "(5) Any person that is a non-industry partner or director in respect of a Member and who beneficially owns 10 per cent or more of the voting securities of the Member must comply with the qualifications described in paragraph (1)(d) for partners, directors and officers.

   (6) Any person other than a partner or director who is actively engaged in the business of a Member and who beneficially owns 10 per cent or more of the voting securities of the Member must comply with the qualifications described in paragraph (1)(d) for partners, directors and officers."

PASSED AND ENACTED BY THE Board of Directors this 11th day of April 2001, to be effective on a date to be determined by Association staff.

## 13.1.6 IDA - CDNX Tier 3 Securities

### INVESTMENT DEALERS ASSOCIATION OF CANADA – PROPOSED REGULATION AMENDMENT TO THE MARGIN REQUIREMENTS ON STOCKS AND ISSUANCE OF A MEMBER REGULATION NOTICE FOR CDNX TIER 3 SECURITIES

### I OVERVIEW

In November 1999, the Vancouver Stock Exchange and the Alberta Stock Exchange merged to form the Canadian Venture Exchange ("CDNX").

In September 2000 the CDNX invited the Canadian Dealing Network ("CDN") quoted companies and the companies that had been approved to be quoted on the CDN to list on the CDNX's newly created temporary tier, Tier 3.

Because of this merger, the margin rules for listed securities in Regulation 100 need to be updated. As part of this rule update an assessment has been made as to which securities listed on the CDNX should be eligible for margin.

### A Current Rule(s)

The current rule, Regulation 100.2(f)(i), serves two purposes.

Firstly, it allows for margin on securities such as equities, rights and warrants listed on any recognized stock exchange in Canada and the United States, on the Tokyo Stock Exchange First Section and on the stock list of the London Stock Exchange.

Secondly, it specifically denies margin on securities selling under a $1.50, securities of companies designated as Development Companies on the Vancouver Stock Exchange which have not been listed and posted for trading for a minimum of three months and securities of Junior Capital Pool Companies listed and posted for trading on the Alberta Stock Exchange.

### B The Issue(s)

The spirit of the current rule is that margin is allowed on securities listed on specific exchanges with the expectation that these securities are subject to minimum listing requirements. Tier 3 securities are listed on a recognized exchange in Canada but this temporary tier does not have minimum listing requirements. In addition, these securities have not been subject to a due diligence listing review by the CDNX. As result, from a risk perspective, it is not appropriate for these securities to be considered eligible for margin.

The other issue is to correct the references made to capital pool companies of the Vancouver Stock Exchange and the Alberta Stock Exchange that are now trading on the CDNX.

### C Objectives

The objective of the proposed regulation amendment is to update references made to exchanges involved in the 1999 merger. Moreover, the objective of the issuance of the Member Regulation Notice ("MR Notice") is to advise Member firms about the inappropriateness of granting margin to Tier 3 securities.

### D Proposed Rule Amendment and Issuance of a Member Regulation Notice – Executive Summary

The proposed amendment to Regulation 100.2(f)(i) and the issuance of the MR Notice are in response to the creation of the CDNX as well as to the listing of former CDN quoted companies on CDNX's Tier 3. In this proposed amendment, references to capital pool companies of the Vancouver Stock Exchange and the Alberta Stock Exchange that are now trading on the CDNX will be corrected.

The MR Notice will recommend to Member firms not to grant margin to CDNX's Tier 3 securities because this tier lacks minimum listing requirements.

### E Effect of Proposed Rule Amendment and Issuance of a Member Regulation Notice

**Market Structure**
The effect of this proposed amendment and MR Notice on the Canadian market structure are believed not to be material.

**Competitive Environment**

It is felt that the effect of the MR Notice will be minimal since as at December 12, 2000 only 19 of the 261 Tier 3 securities would have qualified under the current rule for a margin rate of less than 100%.

### II DETAILED ANALYSIS

### A Current Rules and Relevant History

Regulation 100.2(f)(i) stipulates that:

(i) On securities (other than bonds and debentures) including rights and warrants listed on any recognized stock exchange in Canada or the United States, on the Tokyo Stock Exchange First Section or on the stock list of the London Stock Exchange:
Long Positions - Margin Required
Securities selling at $2.00 or more - 50% of market value
Securities selling at $1.75 to $1.99 - 60% of market value
Securities selling at $1.50 to $1.74 - 80% of market value
Securities selling under $1.50, securities of companies designated as Development Companies on the Vancouver Stock Exchange which have not been listed and posted for trading for a minimum of three months and securities of Junior Capital Pool Companies listed and posted for trading on the Alberta Stock Exchange may not be carried on margin.

The spirit of the current rule is that a listed security on a recognized exchange should be eligible for margin because of the following expectations:

1. the security has met the exchange's minimum listing requirements,

2. the exchange has conducted some due diligence work on the security, and

3. the security has had a sufficient trading history if it is a more risky security.

Minimum listing requirements are the minimum financial, distribution and other standards, which must be met by applicants who wish to list on a recognized exchange. Tier 3 listing requirements include only the filing of a listing agreement and the submitting of personal information forms for each of the directors, senior officers, Control persons, Insiders, and parties conducting Investor Relations Activities. There are no assessments of minimum financial and distribution standards for this tier's securities.

## B COMPARISON WITH SIMILAR PROVISIONS

### United States

The U.S. allows margin for securities that are listed for trading on a national securities exchange as well as for securities that are designated as Nasdaq stock market securities (the Nasdaq National Market and SmallCap Market securities) except for initial public offering securities.

Meanwhile, securities on the over-the-counter bulletin board operated by the Nasdaq stock market or on the over-the-counter quotation service operated by Pink Sheets LLC are not eligible for margin.

The margin eligibility of securities in the U.S. is consistent with the spirit of the current Canadian rule because the Nasdaq stock market securities have strict initial minimum listing requirements and continued inclusion requirements while the over-the-counter bulletin board and the over-the-counter Pink Sheets securities do not have minimum listing requirements.

### United Kingdom

The U.K. allows for margin on equities traded on or under the rules of an exchange or an approved exchange (not including the AIM formerly called the Unlisted Securities Market or "USM").

The margin eligibility of securities in the U.K. is consistent with the spirit of the current Canadian rule because the U.K.'s main market for securities have strict minimum listing requirements and continued inclusion requirements while the AIM securities do not have minimum listing requirements.

The IDA's proposed amendment and MR Notice is consistent with both the U.S. and U.K. stance regarding the margin eligibility of securities.

## C PROPOSED RULE AMENDMENTS AND ISSUANCE OF A MEMBER REGULATION NOTICE – DETAILED ANALYSIS

Pursuant to CDNX's Policy 6.1 on Tier 3 Issuers, Tier 3 is a temporary tier whose securities have yet to be evaluated in determining their eligibility to meet the minimum listing requirements of the CDNX's two permanent tiers, Tier 1 and Tier 2. Tier 3 securities do not have minimum listing requirements and they have qualified for this Tier because they were either "Eligible Companies" on the Canadian Dealing Network or were approved to be quoted on it.
From a risk standpoint, it is not appropriate to extend margin to a security if it is not required to meet minimum listing requirements and therefore, no margin should be extended to the CDNX's Tier 3 securities. Because of Tier 3's temporary nature and assurance has been received that it will be eliminated within the next 18 months, it is recommended that the issuance of a MR Notice instead of a rule amendment be used.

## D Purpose(s) of Proposal (public interest objective)

According to subparagraph 14(c) of the IDA's Order of Recognition as a self-regulatory organization, the IDA shall, where requested, provide in respect of a proposed rule change "a concise statement of its nature, purposes (having regard to paragraph 13 above) and effects, including possible effects on market structure and competition". Statements have been made elsewhere as to the nature and effects of the proposals with respect to Tier 3 securities and their eligibility for margin. The purpose of this proposal is:

- To standardize industry practices where necessary or desirable for investor protection;

As a result, the proposed amendments are considered to be in the public interest.

## III COMMENTARY

It is believed that the above proposed amendment will reflect the original intention of this Rule which was to allow margin to some securities and specifically exclude other securities from being eligible for margin that do not abide by the spirit of the Rule.

## A Filing in Another Jurisdiction

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

This proposed amendment would update the rules on the margin eligibility of securities as well as make its intentions more transparent to regulators and Members.

C Process

This proposed amendment and MR Notice has been reviewed and recommended for approval by the Financial Administrators Section.

IV SOURCES

IDA Regulation 100.2(f)(i)
CDNX Policy 2.1 - Minimum Listing Requirements
CDNX Policy 6.1 - Tier 3 Issuers
SFA.r.3-80(9) - Simpler approach to PRR calculation
NYSE-IH (c)(2)(vi)(J) - All Other Securities
NYSE-IH (c)(2)(vii)(A), NYSE-IH/01 - Deductions for Exchange Listed and NASDAQ NMS Securities
NYSE Regulation T 6800.18(a) and 220.17

V OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the accompanying rule 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 rule 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 Answerd Ramcharan, Information Analyst, Regulatory Policy, 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 of Compliance, Capital Markets, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8.

Questions may be referred to:

Answerd Ramcharan
Information Analyst, Regulatory Policy
Investment Dealers Association of Canada
(416) 943-5850

## INVESTMENT DEALERS ASSOCIATION OF CANADA

### MARGIN REQUIREMENTS ON STOCKS AND ISSUANCE OF A MEMBER REGULATION NOTICE FOR CDNX TIER 3 SECURITIES

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. Regulation 100.2(f)(i) is repealed and replaced as follows:

"(f) Stocks –

(i) On securities (other than bonds and debentures) including rights and warrants listed on any recognized stock exchange in Canada or the United States, on the Tokyo Stock Exchange First Section or on the stock list of the London Stock Exchange:

Long Positions - Margin Required
Securities selling at $2.00 or more - 50% of market value
Securities selling at $1.75 to $1.99 - 60% of market value
Securities selling at $1.50 to $1.74 - 80% of market value
Securities selling under $1.50 and securities of companies designated as Capital Pool Companies, Junior Capital Pools or Venture Capital Pools on the Canadian Venture Exchange which have not been listed and posted for trading for a minimum of three months may not be carried on margin.
Short Positions - Credit Required
Securities selling at $2.00 or more - 150% of market value
Securities selling at $1.50 to $1.99 - $3.00 per share
Securities selling at $0.25 to $1.49 - 200% of market value
Securities selling at less than $0.25 - market value plus $0.25 per share

Notwithstanding the foregoing, the margin required in respect of positions (other than firm positions to which Regulation 100.12(e) applies) of warrants issued by a Canadian chartered bank which are listed on any recognized stock exchange or other listing organization referred to above and which entitle the holder to purchase securities issued by the Government of Canada or any province thereof shall be the greater of:

A. the margin otherwise required by this Regulation according to the market value of the warrant; or

B. 100% of the margin required in respect of the security to which the holder of the warrant is entitled upon exercise of the warrant; provided that in the case of a long position the amount of margin need not exceed the market value of the warrant."

PASSED AND ENACTED BY THE Board of Directors this 11th day of April 2001, to be effective on a date to be determined by Association staff.

## 13.1.7 IDA - Proposed Schedule 15 of Form 1, Account Concentration

### INVESTMENT DEALERS ASSOCIATION OF CANADA – PROPOSED SCHEDULE 15 OF FORM 1, ACCOUNT CONCENTRATION CHARGE

### I OVERVIEW

### A Introduction

The purpose of the regulatory capital rules is to ensure that investment firms are adequately capitalized to meet their obligations, including obligations to clients, on demand. As a result, the capital rules focus on the major risks an investment firm faces; namely market risk and counterparty or credit risk.

Historically, exposure to counterparty or credit risk has been minimized in the securities industry because transactions are generally executed on a "value for value"[1] basis. Cash is exchanged for securities or vice versa, and the investment firm retains as collateral, either cash or securities of equivalent value. Accordingly, the capital requirements focus on market risk and provide for fluctuating market values of securities.

However, there are necessary situations where use of the "value for value" approach is not practical. For example, an investment firm must be able to leave cash deposits at certain deposit taking institutions on an unsecured basis. Also, the lodging of securities at a custodian would not be practical if an investment firm could not enter into the arrangement with the custodian on an unsecured basis.

The need to permit investment firms to enter into deposit and custodial relationships on an unsecured basis was addressed in 1993. At that time, major revisions were made to the capital formula through the introduction of the "New Capital Formula"[2]. The "New Capital Formula" set out new definitions for:

- "acceptable institutions", a new counter-party classification (see Enclosure #1); and
- "acceptable securities locations", detailing entities considered suitable to hold securities on behalf of an investment firm (see Enclosure #2).

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1 Transactions performed on a "value for value" basis are those where the market value of the cash or securities received in by the securities dealer is equal to the market value of the cash or securities delivered out by the securities dealer.

2 Prompted by the increasing complexity of the securities business, and a desire to simplify the Canadian capital requirements, a review of the capital formula was undertaken by the securities industry in close consultation with the provincial securities commissions. The result of this review, the "New Capital Formula", was implemented on April 1, 1993.

As a result of these revisions, an investment firm can deal with entities that are "acceptable institutions" on an unsecured basis with no capital implications, as they are deemed to be sufficiently creditworthy. Similarly, an investment firm may lodge securities with entities that are "acceptable securities locations" on an unsecured basis with no capital implications as they are deemed to be suitable custodial locations.

However, with the introduction of the new "acceptable institutions" counterparty classification in 1993, no limitation was imposed on an investment firm's exposure to one or more "acceptable institutions". Also not addressed was the extent of financial and operational inter-dependency which may exist between an investment firm and other institutions within a financial conglomerate. The latter issue of financial interdependence has increasingly become a concern in recent years as the search for economies of scale by financial conglomerates has naturally led to the consolidation of asset processing, settlement and custody. If such a consolidation of activities had taken place without adequate "firewalls" in place there would have been additional exposure for self-regulatory organizations ("SROs") and the CIPF.

### B The Issue

As stated previously, under the current rules there is no limitation imposed on an investment firm's exposure to one or more "acceptable institutions". Also, until recently, the capital formula did not address the extent of financial and operational interdependency which may exist between an investment firm and other institutions within a financial conglomerate. The issue of interdependency has been addressed recently through:

- The elimination of standby subordinated debt for regulatory capital purposes; and
- The introduction of new Schedule 14, the Provider of Capital Concentration, which acts as an anti-avoidance rule.

What remains to be addressed is the development of a rule to limit an investment firm's exposure to one or more arms-length "acceptable institutions".

### C Objective

The objective of proposed Schedule 15 to Form 1, the Account Concentration Charge, is to establish limits on an investment firm's exposure to one or more arms-length counterparties. Exposures incurred in excess of these limits will trigger a capital charge to the Member firm that is representative of the increased risk due to concentration. The charge will apply to all counterparties and not just "acceptable institutions" as concentration risk may arise in dealings with any counterparty type.

### D Effect of Proposed Rules

The effect of these proposed rules could be significant in terms of:

- constraining levels of business activity that may entered into with a counterparty group; and
- cost of compliance, as most Member firms do not currently have the ability to easily aggregate counterparty group credit risk exposures across all business lines.

At this point detailed impact testing of this proposal has not been performed. We would prefer to get the approval of the securities commissions of the concepts set out in this proposal prior to performing what will be extensive and time consuming industry impact testing. This will help to limit the amount of industry impact testing performed as well as help ensure that the objectives of this concentration charge are achieved.

## II DETAILED ANALYSIS

As stated previously, the objective of proposed Schedule 15 to Form 1, the Account Concentration Charge, is to establish limits on an investment firm's exposure to one or more counterparties. However, given that exposures with "acceptable counterparties", "regulated entities" and "other counterparties" are for the most part already provided for on at least a "value for value" basis, most of the detailed analysis was performed for exposures with "acceptable institutions". As a result, the remainder of this section tends to refer almost exclusively to exposures / transactions involving "acceptable institutions".

### A Present Rules and Relevant History

The explicit assumption in the capital formula and in the margin treatment prescribed for transactions involving "acceptable institutions", is that there is no possibility of loss to Member firms dealing with such entities. Reliance is placed on the regulation of these financial institutions by recognized authorities in their respective jurisdictions as well as on the basis of the financial institution's net worth.

Popular opinion has held that large financial institutions are "too big to fail". However, recent experiences in Canada and internationally would suggest otherwise. As a result, there are credit risks being borne by investments firms, which are not addressed in the current requirements. While each investment firm will continue to be responsible to make an independent assessment of credit risk they bear in dealings with clients, there should be a regulatory requirement concerning credit risk exposure concentration.

Enclosure #3 is a risk identification chart which sets out the various types of dealings/arrangements that can occur between investment firms and "acceptable institutions", and the associated credit risk exposure to an investment firm in the event of default.

### B Issues and Approaches Considered

Three approaches have been identified that meet the objective of limiting an investment firm's exposure to one or more counterparties[3].

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[3] For each of these alternatives it is proposed that exposures to Canadian governments (federal, provincial and municipal) will be specifically excluded and will continue to be regulated by the existing requirements for dealings with "acceptable institutions". In addition, custodial relationships will continue to be regulated by the

Approach I

***Establish a "counterparty group[4]" exposure test by aggregating an investment firm's exposures to a "counterparty group" on a "market value deficiency" basis. In the case of:***

- ***Transaction exposures, such as loans, securities borrow and lend agreements and resale and repurchase agreements, the "market value deficiency" would be any excess collateral delivered to the "counterparty group" over collateral received, net of any normal margin already provided;***

- ***Security position exposures, the "market value deficiency" would be the security's market value net of any normal margin or securities concentration charge already provided***

***A capital charge would be required for any aggregated exposures in excess of a predetermined threshold (i.e. a threshold similar to the 20% of Net Allowable Assets used for the Provider of Capital Concentration Charge could be used).***

This approach is similar to that used in the United Kingdom. The advantage of this approach is that it provides a discipline in restricting an investment firm from over extending itself to any one "counterparty group". The disadvantage of this approach is that it considers credit exposures with different "counterparty groups" with different credit quality as having the same risk of loss.

Approach II

**The same as Approach I except aggregate an investment firm's exposures to a "counterparty group" on a "adjusted market value deficiency" basis.**

This approach would permit adjusting[5] security position and transaction exposures to take into account relative counterparty credit risk. As with Approach I, a capital charge would be required for any aggregated exposures in excess of a predetermined threshold. Different from Approach I would be the use of adjustment percentages, which would weight the market value deficiency exposures an investment firm has with a counterparty based on the likelihood of default.

The percentages used to adjust the market value deficiency exposures would be determined for each counterparty within the counterparty group and would be based on the credit rating of the counterparty as follows:

| Counterparty Credit Rating | Exposure Adjustment Percentage |
|---|---|
| AAA to A | 20.0% |
| Other Investment Grade | 40.0% |
| Lower or non-rated | 75.0% |
| In default | 100.0% |

The major advantage of this approach is that it takes into account relative differences in counterparty credit risk. The disadvantage is that the use of adjustment percentages will add complexity to the concentration calculation and the actual adjustment percentages used may be considered to be subjective. However, the use of credit rating based adjustment percentages will limit the amount of subjectivity in this approach.

Approach III

***Similar to Approach I except exclude inventory exposures from consideration. This approach would differentiate "issuer risk" from other forms of credit risk. Security position or "issuer risk" exposures would either be dealt with separately through the application of:***

- ***the existing "Concentration of Securities" calculation (Form 1, Schedule 9); and***

- ***a proposed new "Debt Security Concentration Charge" calculation (as detailed in Enclosure #3)***

***or not specifically considered if the assessment is made that "issuer risk" is more than adequately covered by existing margin requirements.***

The "market value deficiency" for each of the remaining transaction exposures would be aggregated in the same manner as under Approach I and a capital charge would be required for any aggregated exposures in excess of a predetermined threshold.

The validity of this approach rests on whether or not it is appropriate to address issuer risk separately from other forms of credit risk.

Issuer risk with respect to securities margined at greater than 10% is already addressed by existing Schedule 9, "Concentration of Securities". So, the only group of securities not subject to an issuer risk limit are debt securities with margin rates of less than or equal to 10% (debt securities have been specified as no other security types have margin rates that are 10% or less). A separate project to revise debt margin rates proposes, among other things, to introduce a debt security concentration charge. Enclosure #4 contains an excerpt from the discussion paper prepared for this project that sets out the details of this proposed concentration charge. So it may be appropriate to revisit this proposal to cover off any remaining issuer risk concerns and thus address separately issuer related

existing requirements for "acceptable securities locations".

4 It is proposed that a "counterparty group" will be defined to include an individual or entity and it's affiliates to limit the possible use of avoidance transactions.

5 The "market value deficiency" of a particular security position would be calculated on the same basis as under Approach I but for certain counterparties the exposure amount calculated would be adjusted to reflect lower overall risk of default.

counterparty group exposures sitting in an investment firm's securities inventory.

### C Comparison with Similar Provisions

#### (i) Rules in Other Jurisdictions - Canada

In Canada, there are similar requirements dealing with bank and trust company exposures to counterparty groups. Specifically, these institutions must stay within "Large Exposure Limits" detailed in OSFI Guideline B-2. The general rule set out in this guideline is that any exposure to a counterparty group in excess of 25% of total capital results in a capital charge. However, the guideline stresses that internal exposure limits at the institution should be set at much lower levels and that the 25% threshold should only be used on an exception basis.

Also of note, there are requirements for deposit taking institutions to risk weight security position and transaction exposures for regulatory capital purposes using logic similar to that set out in Approach II above.

#### (ii) Rules in Other Jurisdictions - United States and United Kingdom

The rules in the United States and the United Kingdom were researched to compare how these jurisdictions address the regulatory issues identified in this paper and are summarized as follows:

#### 1. United States

In the United States, there is no comparable credit risk category to "acceptable institutions". This is because all transactions with any counterparty are subject to at least a "market value deficiency" requirement, with the exception of unsecured deposit and custody arrangements with certain counterparties. As a result, there is no general counterparty concentration test in place.
Those concentration tests that are in place relate to exposures: (i) resulting from related party transactions or (ii) that are "issuer risk" in nature.

With respect to related party transactions, a 100% capital charge is imposed on any "market value deficiency" exposures with some limited exceptions such as:

(i) a cash deposit balance equal to three months of operating expenses,

(ii) security positions (proprietary interests in CD's, BA's, Commercial Paper, non-convertible debt or similar instruments issued by a parent or affiliated company) held two business days or less.

With respect to "issuer risk" exposures there are two concentration tests in place: (i) an "Undue Concentration" test; and (ii) a "Portfolio Concentration" test. The "Undue Concentration" test sets out security specific tests designed to limit the ability of an investment firm to invest substantial proportions of its capital in any one security issuance. As a result, this test is individual issuer risk specific. The "Portfolio Concentration" test sets limits in general on the amount of capital an investment dealer may invest in non-investment grade securities. As a result, this test is investment quality risk specific.

#### 2. United Kingdom

In contrast, the approach in the United Kingdom is based on the pooling of counterparty transactions that arise on both the trading and non-trading book of the investment dealer and measuring the excess concentration or exposure against the investment firm's capital base. There are no weighting or degrees of risk applied to different types of exposures. The sum of the exposures is limited to 25% of the firm's capital base. The limit is set at 20% if the exposure is with the parent or a subsidiary. Exposures in excess of the threshold are subject to a capital charge. A "large exposures requirement" ranging from 200% to 900% of the excess over the threshold applies. The percentage that applies will be determined based on what percentage of the investment firm's regulatory capital this excess represents.

Certain exposures are excluded from the exposure calculation and include, but are not limited to:

(i) asset items representing claims or exposures attributable to or guaranteed by Zone A central governments, central banks and European communities.

(ii) exposures secured by collateral in the form of securities provided those securities are not issued by the parent or a subsidiary or by the client or group in question.

These securities must be valued at market price, have a value that exceeds the exposures guaranteed and be marketable and freely tradable.

(iii) foreign exchange transactions to settle within 2 business days, and security transactions to settle within the normal settlement period.

As with the United States rules there is recognition in the United Kingdom rules that transactions between an investment firm and related companies have increased risks and restrictions or lower concentration thresholds apply.

### D Proposed Policy

***Approach II is recommended.***

The following is a summary of the proposal recommended. This proposal has been subject to SRO Capital Committee review. Before this proposal is implemented extensive testing will need to be undertaken to ensure that:

- the calculation adequately limits the ability of an investment firm to expose itself to an undue credit risk concentration with a particular counterparty group; and
- any such exposure concentration test can be complied with from an operational standpoint.

The approach recommended applies to exposures to all counterparty groups although the focus is mainly on "acceptable institutions" counterparty groups for which there are generally no

current capital requirements. For counterparty groups who are subject to the existing Provider of Capital Concentration Charge on Schedule 14, the Member need not complete this proposed new Schedule 15. Also, unsecured balances between regulated entities resulting from an introducing broker / carrying broker arrangement will not be subject to this concentration charge.

The approach makes an assessment of relative risk of counterparty default by applying an adjustment percentage to exposures a firm has to each counterparty within a counterparty group. To make this assessment, security position and transaction related exposures will be accumulated for each counterparty within a "counterparty group". The total accumulated exposure for each counterparty will then be adjusted to take into account the relative default risk of the counterparty. The adjustment percentages[6] to be used will be based on the counterparty's credit rating and the proposed percentages to be used are as follows:

| Counterparty Credit Rating | Exposure Adjustment Percentage |
|---|---|
| AAA to A | 20.0% |
| Other Investment Grade | 40.0% |
| Lower or non-rated | 75.0% |
| In default | 100.0% |

Once an adjusted total accumulated exposure is calculated for each counterparty, the exposures for all counterparties within the counterparty group will be aggregated and compared to a maximum exposure threshold of 25% of Net Allowable Assets[7].

Exposures in excess of the maximum exposure threshold will be subject to a capital charge of 100%[8] of the amount in excess if not rectified within 2 business days. Attached as Enclosure #5 is proposed Schedule 15 detailing the mechanics of this proposal.

The major advantage of this approach over Approach I is that it takes into account relative differences in counterparty credit risk. The disadvantage is that the use of adjustment percentages under the recommended approach will add complexity to the concentration calculation. It could also be argued that the adjustment percentages used are subjective, but it is believed that these percentages are less subjective than those implicit in Approach I[9]. Further, since the adjustment percentages are based on the credit rating of the counterparty the amount of subjectivity associated with this approach is limited.

When comparing the recommended approach to Approach III, the major advantage of this approach is that would only introduce one new concentration test[10]. While this seems like a relatively minor advantage it is important since rather than having to look at different types of credit risk separately, as envisioned in Approach III, the recommended approach attempts as much as possible to look at credit risk with a counterparty group on a combined basis. We believe this combined approach is preferable since one of the objectives of any test is that it be relatively easy to use from an operational standpoint.

### E Public Interest Objective

According to subparagraph 14(c) of the IDA's Order of Recognition as a self regulatory organization, the IDA shall, where requested, provide in respect of a proposed rule change, "a concise statement of its nature, purposes (having regard to paragraph 13 above) and effects, including possible effects on market structure and competition". Statements have been made elsewhere as to the nature and effect of the proposals with respect to the proposed account concentration charge requirements. The purpose of this proposal is to establish a methodology for the determination of an Account Concentration Charge so as to limit an investment firm's ability to unduly risk its regulatory capital on transactions involving one counterparty group. As a result the proposed amendments are considered to be in the public interest.

## III COMMENTARY

### A Filing in Other Jurisdictions

Approval of these proposed amendments will be sought from the Alberta, British Columbia, Ontario, Nova Scotia and Saskatchewan Securities Commissions.

### B Effectiveness

As stated previously, the purpose of this proposal is to establish a methodology for the determination of an Account Concentration Charge so as to limit an investment firm's ability

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6 The use of this adjustment percentage calculation as part of an overall concentration risk assessment is similar to the risk weighting approach used by deposit taking institutions in Canada.

7 This threshold is comparable to the threshold used in the U.K. concentration test where 25% of the firm's capital base is used as the concentration threshold for exposures with arms length counterparty groups.

8 The equivalent U.K. concentration test utilizes a capital charge ranging from 200% to 900% of the amount in excess depending on the size of the excess. The proposal does not contemplate this type of accelerated capital charge as charges of this type do not accurately reflect the risk being assumed.

9 Under Approach I the equivalent adjustment percentages that would be used would be 100% for all credit rating categories. It could be argued that this is more subjective than the adjustment percentages being proposed under Approach II since it is not realistic to assume the risk of default is the same for a AAA rated counterparty as for a B rated counterparty.

10 Under Approach III, an issuer specific test, the "Debt Security Concentration Charge" would be introduced along with an "Account Concentration Charge".

to unduly risk its regulatory capital on transactions involving one counterparty group.

The adoption of the above amendments will introduce a concentration limit beyond which exposures to a counterparty group will result in a dollar for dollar capital charge. As a result it is believed that it will be effective in limiting the occurrence of counterparty concentration situations.

### C Process

This proposal was developed by a working group of the FAS Capital Formula Subcommittee known as the "Account Concentration Working Group". This proposal has also been reviewed and recommended for approval by the FAS Capital Formula Subcommittee, the Executive Committee of the Financial Administrators Section and the Financial Administrators Section.

## IV SOURCES

Form 1 - Joint Regulatory Financial Questionnaire and Report

Joint Industry Capital Project Draft 5.4.1 dated March 12, 1993

Office of the Superintendent of Financial Institutions Canada Guideline B-2 - Large Exposure Limits

New York Stock Exchange and Securities Exchange Commission Uniform Net Capital Rule 15c3-1

United Kingdom Securities and Futures Authority, Rule 10-190, Large Exposures Requirement ("LER")
United Kingdom Financial Services Authority, The Investment Business Interim Prudential Sourcebook, June 2000, Rule 10-190, Large Exposures Requirement ("LER")

## V OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the accompanying proposed Form 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 Form amendments would be in the public interest. Comments are sought on the proposed Form 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 Richard Corner, Director, Regulatory Policy, 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 of Compliance, Capital Markets, Ontario Securities Commission, 20 Queen Street West, Suite 800, Toronto, Ontario, M5H 3S8.
Questions may be referred to:

Richard Corner,
Director, Regulatory Policy,
Investment Dealers Association of Canada
(416) 943-6908
rcorner@ida.ca

**CONCEPT PAPER ONLY - PROPOSAL STILL SUBJECT TO IMPACT TESTING**

**ENCLOSURE #1**

**"ACCEPTABLE INSTITUTIONS" DEFINITION**

To qualify as an acceptable institution, entities must qualify under one of the following categories:

"1. Government of Canada, the Bank of Canada and Provincial Governments.

2. All crown corporations, instrumentalities and agencies of the Canadian federal or provincial governments which are government guaranteed as evidenced by a written unconditional irrevocable guarantee or have a call on the consolidated revenue fund of the federal or provincial governments.

3. Canadian banks, Quebec savings banks, trust companies and loan companies licensed to do business in Canada or a province thereof. Each of the aforementioned entities must have paid up capital and surplus on the last audited balance sheet (plus such other forms of capital recognized as such in their regulatory regime as well as in this capital formula, e.g. subordinated debt) in excess of $100 million, provided acceptable financial information with respect to such entities is available for inspection.

4. Credit and central credit unions and regional caisses populaires with paid up capital and surplus (excluding appraisal credits but including general reserves) on the last audited balance sheet in excess of $100 million, provided acceptable financial information with respect to such entities is available for inspection.

5. Federal governments of Basle Accord Countries.

6. Foreign banks and trust companies subject to a satisfactory regulatory regime with paid up capital and surplus on the last audited balance sheet in excess of $150 million, provided acceptable financial information with respect to such entities is available for inspection.

7. Insurance companies licensed to do business in Canada or a province thereof with paid up capital and surplus or net worth on the last audited balance sheet in excess of $100 million, provided acceptable financial information with respect to such companies is available for inspection.

8. Canadian pension funds which are regulated either by the Office of Superintendent of Financial Institutions or a provincial pension commission, and with total net assets on the last audited balance sheet in excess of $200 million, provided that in determining net assets the liability of a fund for future pension payments shall not be included."[11]

The IDA compiles listings of foreign and domestic AIs on an annual basis as a service to Members, to ensure that the financial condition of the AI, based on the last available audited financial statements meets the criteria. These listings are not intended to be exhaustive. Member firms are responsible for the ongoing credit assessment of AI's to ensure they continue to meet the criteria.

[11] IDA Form 1, General Notes and Definitions, definition of "acceptable institutions"

**CONCEPT PAPER ONLY - PROPOSAL STILL SUBJECT TO IMPACT TESTING**

**ENCLOSURE #2**

**"ACCEPTABLE SECURITIES LOCATION" DEFINITION**

To qualify as an acceptable securities location, entities must qualify under one of the following categories:

"(d) **"acceptable securities locations"** means those entities considered suitable to hold securities on behalf of a Member, for both inventory and client positions, without capital penalty, given that the locations meet the requirements outlined in the segregation bylaws, rules or regulations of the Joint Regulatory Bodies including, but not limited to, the requirement for a written custody agreement outlining the terms upon which such securities are deposited and including provisions that no use or disposition of the securities shall be made without the prior written consent of the Member and the securities can be delivered to the Member promptly on demand. The entities are as follows:

1. Depositories

(a) Canada

The Canadian Depository for Securities Limited
West Canada Depository Trust Company
Trans Canada Options, Incorporated

(b) United States

Depository Trust Company
Pacific Securities Depository Trust Company
Midwest Securities Trust Company
Stock Clearing Corporation of Philadelphia
Options Clearing Corporation

(c) Other Foreign

Foreign securities depositories or clearing agencies incorporated or organized under the laws of the foreign country and operating a central system for handling securities or equivalent book-based entries in that country and subject to enabling legislation by a central government authority in the country of operation that provides for compliance and powers of enforcement over its Members. The SROs will maintain and regularly update a list of those foreign depositories or clearing agencies that comply with these criteria.

2. (a) Acceptable Institutions which in their normal course of business offer custodial security services; or

(b) Subsidiaries of Acceptable Institutions provided that each such subsidiary, together with the Acceptable Institution, has entered into a custodial agreement with the Member containing a legally enforceable indemnity by the Acceptable Institution in favour of the Member covering all losses, claims, damages, costs and liabilities in respect of securities and other property held for the Member and its clients at the subsidiary's location.

3. Acceptable Counterparties - with respect to security positions maintained as a book entry of securities issued by the Acceptable Counterparty and for which the Acceptable Counterparty is unconditionally responsible.

4. Banks and Trust Companies otherwise classified as Acceptable Counterparties - with respect to securities for which they act as transfer agent (in such case, a written custody agreement is not required).

5. Mutual Funds or their Agents - with respect to security positions maintained as a book entry of securities issued by the mutual fund and for which the mutual fund is unconditionally responsible.

6. Regulated entities.

7. Foreign institutions and securities dealers that satisfy the following criteria:

(a) the paid-up capital and surplus according to its most recent audited balance sheet is in excess of CDN $150 million as evidenced by the audited financial statements of such entity;

(b) in respect of which a foreign custodian certificate has been completed and signed in the prescribed form by the Member's board of directors or authorized committee thereof;

provided that:

(c) a formal application in respect of each such foreign location is made by the Member to the relevant joint regulatory authority in the form of a letter enclosing the financial statements and certificate described above; and

(d) the Member reviews each such foreign location annually and files a foreign custodian certificate with the appropriate joint regulatory authority annually.

and such other locations which have been approved as acceptable securities locations by the Joint Regulatory Body having prime jurisdiction over the Member."[12]

**CONCEPT PAPER ONLY - PROPOSAL STILL SUBJECT TO IMPACT TESTING**

12 IDA Form 1, General Notes and Definitions, definition of "acceptable securities locations"

ENCLOSURE #3

## Summary of Transactions and Relationships

| Relationship / Transaction Type | Counterparty risk identification | Supported by a written Agreement? | Risk in the event of default not already provided? |
|---|---|---|---|
| 1. Cash on deposit | Failure to advance monies on deposit on demand | Yes (Bank account opening agreements) | 100% of deposit in excess of CDIC coverage limit |
| 2. Receivables - Commissions / fees / interest / dividends etc. | Failure to pay | Yes (Terms of payment structure) | 100% of receivable net of capital already provided |
| 3. RRSP deposits | Failure to return trust monies to clients | Yes (RRSP Trust Agreement) | 100% to the extent that individual client balances exceed CDIC coverage limit net of capital already provided |
| 4. Inventory | Market value loss of security issues held by member | Equity - Prospectus<br>Debt - Terms of indenture | 100% of market value of securities net of margin and securities concentration charges already provided |
| 5. Forward Contracts | Failure to settle | Yes (Customized Agreements as to terms and conditions) | 100% of market exposure to the transaction and increased if matched |
| 6. Derivatives | Failure to settle | Yes (Customized Agreements as to terms and conditions) | 100% of market exposure to the transaction and increased if matched |
| 7. C.O.D. Accounts | Failure to settle | Yes (Customer Agreement) | 100% of market deficiency per o/s transaction net of margin and securities concentration charges already provided |
| 8. Margin Accounts | Failure to pay | Yes (Margin/Options Agreements) | 100% of unsecured balance in the account net of margin and securities concentration charges already provided |
| 9. Lending/borrowing | Default in maintenance of margin or closing out financing arrangement on demand | Yes (Standard Security Lending and Borrowing Agreement with right of set off) | 100% of unsecured amount net of margin already provided |
| 10. Repurchase / Resale Transactions | Default in maintenance of margin or closing out financing arrangement on notice. | Yes (Standard Repo Agreement with right of set-off) | 100% of unsecured amount net of margin already provided |
| 11. Call Loans | Failure to close out financing arrangement on demand | Yes (Bank Call Loan Agreements) | 100% of unsecured amount net of margin already provided |
| 12. Bank Letters (undrawn) | Failure to advance funds to member on demand | Yes (New issue letter) | 100% of difference between normal new issue margin with bank letter and without bank letter taken into consideration |
| 13. Letters Of Credit Secured by Others | Failure to advance funds to holder of letter per terms of letter of credit | Yes (Unconditional / irrevocable terms) | 100% of letter amount used as collateral in financing transaction |
| Letters Of Credit Secured by Member | Default in closing out facility and returning assets used to secure letter of credit | Yes (Unconditional / irrevocable terms) | 100% of assets used to secure letter of credit |
| 14. AI Guarantee of subsidiary(s) for AC margin treatment | Failure to honour guarantee. | Yes (Guarantee Agreement) | 100% of unsecured amount |
| 15. Clearing Agent | Failure to settle trades for member | Yes (Service Agreement) | 100% of market value clearing funds/securities |
| 16. Custodian | Default in returning securities held in custody on demand | Yes (Standard custodial agreement) | 100% of market value of holdings (unless securities held in trust / separate segregation) |

ENCLOSURE #4

D. Debt Security Concentration Charge

i) Overview

The securities concentration charge is designed to increase the likelihood of the firm continuing as a going concern subsequent to incurring a loss as the result of an adverse change in the price of an individual security or a group of securities of the same issuer to which the firm is heavily exposed. The securities concentration charge is not designed to prevent firms from increasing their business risk as the result of increasing their exposure to a particular security or a group of securities of the same issuer, but to provide sufficient coverage against the increased risk associated with exposing a large portion of the firms capital to the securities of a single issuer.

Under the existing regulations a concentration charge is levied when the amount loaned of the securities of a particular issuer with a margin rate of greater than 10% exceeds a predetermined proportion of Risk Adjusted Capital ("RAC"). Since most debt securities have margin rates which are less than 10%, the concentration calculation basically excludes debt securities. Given the price of a debt security can change adversely as the result of an adverse change in bond yields or the result of an adverse change in the credit quality of the issuer, the securities concentration calculation does not accurately address the business risk faced by an investment firm which is heavily exposed to the debt securities of a single issuer.

ii) Proposed Concentration Charge

The proposed concentration charge is designed to address the increased risk associated with holding a relatively large dollar value of the securities of a particular issuer. The proposed concentration calculation is structured to allow firms and clients to carry larger quantities of high quality debt securities yet smaller quantities of low quality securities by basing the concentration charge on the credit quality of the issuer, the loan value of the security, and the relationship of the concentration value of the security to the risk adjusted capital.

Government of Canada debt securities and new issues are exempt from the concentration charge. In addition, firms and clients will be given a five day grace period to rectify a concentration before the concentration charge is levied.

The concentration charge is determined based on the following three step calculation.

**Step 1. Calculate the concentration value of the individual security or the group of securities of the same issuer**

*Calculate the concentration value for each individual security*

The concentration value for an individual security is calculated as the product of the loan value of the security and the concentration margin rate. See Table 1 for a summary of the concentration margin rates. The purpose of the concentration margin rate is to weigh the riskiness of the individual security and thereby determine a firms ability to hold the particular security given its level of risk. For example, a firms ability to hold provincial debt securities is 7.5 times greater than their ability to hold low grade corporate debt securities.
The concentration value for an individual security is calculated based on the following formula:

**Concentration = Loan Value X Concentration Margin Rate Value**

**Where:**

**Loan Value** = Market Value - Margin Requirement (Primary Method)
**Loan Value** = Market Value - SR Margin Requirement (Alternative Method)
**Loan Value** = (Delta x Underlying Market Value) - Margin Requirement (Options)

*Calculate the concentration value for the group of related securities of the same issuer*

a) Offsets between debt securities of the same issuer
Where a firm holds long and short positions of the debt securities of the same issuer, the concentration value is calculated as the net positive concentration value of the long and short security positions.

b) Offsets between debt and equity securities of the same issuer
Where a firm holds long and short positions of the debt and equity securities of the same issuer, the concentration value is calculated as the greater of the concentration value of the long or the short debt or equity security position.

**Step 2.** **Calculate the dollar value of the concentration thresholds**

The dollar concentration thresholds are calculated as the product of the firm's RAC and the fractional concentration thresholds shown in Table 2.

**Step 3.** **Calculate the securities concentration charge**

The total securities concentration charge is the sum of the concentration charges at each concentration level. The concentration charge at a concentration level is calculated as the product of the concentration value and the concentration margin surcharge rate associated with the specific concentration level. See Table 2 for a summary of the concentration levels and associated concentration margin surcharge rates.

The concentration margin surcharge has been structured to result in a concentration charge of approximately 50% of the loan value of BBB or lesser quality securities when the total loan value of the security approaches 100% of the firm's RAC before minimum capital.

iii) Example Showing Calculation Of Debt Securities Concentration Charge

The following example demonstrates the calculation of the concentration margin requirement for a firm with RAC of $80,000,000 holding $100,000,000 30 year bonds rated BBB.

**Step 1.** **Calculate the concentration value**

| Security Description | Market Value ($) | Margin Rate (%) | Loan Value ($) | Concentration Margin Rate[1] (%) | Concentration Value ($) |
|---|---|---|---|---|---|
| 30-year bond rated - BBB | 100,000,000 | 11.35 | 88,650,000 | 75.00 | 66,487,500 |

[1] See Table 1 for Concentration Margin Rates

**Step 2.** **Calculate the dollar value of the concentration thresholds**

| Concentration Level | Concentration Threshold | Concentration Threshold Amount ($) | Concentration Margin Surcharge Rate (%)[1] |
|---|---|---|---|
| Level 0 | 0 RAC to 1/3 RAC | NIL | NIL |
| Level 1 | 1/3 RAC to 1/2 RAC | 26,666,667 | 100.00 |
| Level 2 | 1/2 RAC to 2/3 RAC | 40,000,000 | 150.00 |
| Level 3 | 2/3 RAC to +0 RAC | 53,333,333 | 200.00 |
| Level 4 | > RAC | 80,000,000 | 250.00 |

[1] See Table 2 for Concentration Levels and Associated Concentration Margin Surcharge Rates

**Step 3.** Calculate the concentration charge

| Concentration Level | Concentration Amount ($) | Concentration Margin Surcharge Rate (%) | Concentration Margin Surcharge Amount ($) |
|---|---|---|---|
| Level 0 | 0 - 26,666,667 = | 0% | $0 |
| Level 1 | 40,000,000 - 26,666,667 = 13,333,333 | 100% | $13,333,333 |
| Level 2 | 53,333,333 - 40,000,000 = 13,333,333 | 150% | $20,000,000 |
| Level 3 | 66,487,500 - 53,333,333 = 13,154,167 | 200% | $26,308,333 |
| Level 4 | N/A | N/A | N/A |
| TOTAL CONCENTRATION MARGIN REQUIREMENT | | | $59,641,666 |

**TABLE 1**

**Proposed Concentration Margin Rates**

| Issuer Category | Concentration Margin Rate |
|---|---|
| Government of Canada | 0% |
| Provincial | 10% |
| AAA - A | 20% |
| BBB or lower & non-rated issues | 75% |
| Bonds in default | 100% |

**TABLE 2**

**Proposed Concentration Levels and Concentration Margin Surcharge Rates**

| Concentration Level | Concentration Threshold | Concentration Margin Surcharge Rate |
|---|---|---|
| Level 0 | < 1/3 RAC | 0% |
| Level 1 | 1/3 RAC to 1/2 RAC | 100% |
| Level 2 | 1/2 RAC to 2/3 RAC | 150% |
| Level 3 | 2/3 RAC to RAC | 200% |
| Level 4 | > RAC | 250% |

ENCLOSURE # 5

DATE: _____ SCHEDULE 15

**PART II**
**JOINT REGULATORY FINANCIAL QUESTIONNAIRE AND REPORT**

_____

**(Firm Name)**
**ACCOUNT CONCENTRATION CHARGE -**
**INDIVIDUAL COUNTERPARTY EXPOSURE SCHEDULE**

| | | | | Amount (000's) |
|---|---|---|---|---|
| | A. | CALCULATION OF OVERALL "COUNTERPARTY GROUP" EXPOSURE THRESHOLD | | |
| 1. | | Net Allowable Assets | | $ 0 |
| 2. | | Exposure threshold is the greater of: | | |
| | (a) | Ten million dollars | 10,000 | |
| | (b) | 25% of Net Allowable Assets *[25% of Line 1]* | | |
| 3. | | **"COUNTERPARTY GROUP" EXPOSURE THRESHOLD** *[Greater of Lines 2(a) and 2(b)]* | | $ |
| | B. | CALCULATION OF TOTAL "MARKET VALUE DEFICIENCY" EXPOSURE TO INDIVIDUAL COUNTERPARTY WITHIN "COUNTERPARTY GROUP" | | |
| 1. | | Cash on deposit with counterparty | | $ 0 |
| 2. | | Cash, held in trust with counterparty, due to free credit ratio calculation | | |
| 3. | | Loans receivable, securities borrowed and resales - "market value deficiency" exposure to counterparty, net of any margin provided elsewhere | | |
| 4. | | Loans receivable, securities borrowed and resales - exposures to counterparty that are secured by investments in securities issued by the counterparty | | |
| 5. | | Securities owned - investments in securities issued by the counterparty (net of any margin and concentration charges already provided) | | |
| 6. | | Commissions and fees receivable from the counterparty | | |
| 7. | | Interest and dividends receivable from the counterparty | | |
| 8. | | Other receivables from the counterparty | | |
| 9. | | Loans payable, securities loaned and repurchases - "market value deficiency" exposure to counterparty, net of any margin provided elsewhere | | |
| 10. | | Securities loaned - exposures to counterparty that are secured by investments in securities issued by the counterparty | | |
| | **LESS:** | | | |
| 11. | | Bank overdrafts with the counterparty, provided that they may be legally netted against the deposits reported on Section B, Line 1 | | 0 |
| 12. | | Securities sold short - investments in securities issued by the counterparty (**including** any margin and concentration charges already provided) | | 0 |
| 13. | | Market value of securities that are reported on Section B, Line 5 that are part of a valid offset strategy in Regulation 100 and for which the margin for that offset has been provided for elsewhere | | |
| 14. | | TOTAL "MARKET VALUE DEFICIENCY" EXPOSURE TO COUNTERPARTY *[Lines 2 through 10 less Lines 11 through 13]* | | $ |

C. **CALCULATION OF TOTAL "ADJUSTED MARKET VALUE DEFICIENCY" EXPOSURE TO INDIVIDUAL COUNTERPARTY WITHIN "COUNTERPARTY GROUP"**

| | | | |
|---|---|---|---|
| 1. | Sec. B, Line 14 | "Market value deficiency" exposure to counterparty | $ 0 |
| 2. | | Exposure adjustment percentage | |
| 3. | | TOTAL "ADJUSTED MARKET VALUE DEFICIENCY" EXPOSURE TO COUNTERPARTY *[Line 1 multiplied by Line 2]* | $ |

ENCLOSURE # 5

DATE: _____ SCHEDULE 15

**PART II**
**JOINT REGULATORY FINANCIAL QUESTIONNAIRE AND REPORT**

_____

**(Firm Name)**

**ACCOUNT CONCENTRATION CHARGE -**
**OVERALL "COUNTERPARTY GROUP" EXPOSURE SCHEDULE**

| | | D. CALCULATION OF TOTAL "ADJUSTED MARKET VALUE DEFICIENCY" EXPOSURE TO "COUNTERPARTY GROUP" | Amount (000's) |
|---|---|---|---|
| 1. | Sec. C, Line 3 | Total "adjusted market value deficiency" exposure to counterparty *[Insert exposure amount for each counterparty within counterparty group below]* | |
| | (a) | $ _____ | |
| | (b) | _____ | |
| | (c) | _____ | |
| | (d) | _____ | |
| | (e) | _____ | |
| | (f) | _____ | |
| | (g) | _____ | |
| | (h) | _____ | |
| | (i) | _____ | |
| | (j) | _____ | |
| 2. | | **TOTAL "ADJUSTED MARKET VALUE DEFICIENCY" EXPOSURE TO "COUNTERPARTY GROUP"** *[Total of amounts reported on Line 1 above]* | $ _____ |

| | | E. CALCULATION OF ACCOUNT CONCENTRATION CHARGE FOR EXPOSURES TO "COUNTERPARTY GROUP" | |
|---|---|---|---|
| 1. | Sec. D, Line 2 | Total "adjusted market value deficiency" exposure to "Counterparty Group" | $ _____ |
| 2. | Sec. A, Line 3 | "Counterparty Group" exposure threshold | _____ |
| 3. | | **ACCOUNT CONCENTRATION CHARGE FOR EXPOSURES TO "COUNTERPARTY GROUP"** *[100% of the excess of Line 1 over Line 2; If none report NIL]* | $ _____ |

| | | F. CALCULATION OF ACCOUNT CONCENTRATION CHARGE FOR ALL EXPOSURES TO ALL "COUNTERPARTY GROUPS" | |
|---|---|---|---|
| 1. | Sec. E, Line 3 | Total "adjusted market value deficiency" exposure to "Counterparty Group" *[Insert exposure amount for each counterparty group below]* | |
| | (a) | $ _____ | |
| | (b) | _____ | |

(c) _____

(d) _____

(e) _____

(f) _____

(g) _____

(h) _____

(i) _____

(j) _____

2. **TOTAL ACCOUNT CONCENTRATION CHARGE** *[Total of amounts reported on Line 1 above]* $

B-XX

**ENCLOSURE #5**

## SCHEDULE 15
## NOTES AND INSTRUCTIONS

1. The purpose of this schedule is to measure the exposure a Member firm has to all "counterparty groups" (as defined below) with which it has "market value deficiency" exposures from time to time where margin is not otherwise required. Where these "market value deficiency" exposures to a "counterparty group" exceed the greater of $10 million and 25% of a Member firm's Net Allowable Assets, an Account Concentration Charge may result. As such is the case, a separate copy of this schedule should be completed for each "counterparty group" where the capital provided is in excess of the greater of $10 million and 25% of a Member firm's Net Allowable Assets. Where, the schedule must be completed for a particular "counterparty group":

- A separate copy of the "Account Concentration Charge - Individual Counterparty Exposure Schedule" [Schedule 15, Page 1] must be completed for each counterparty within the "counterparty group"; and
- A separate copy of the "Account Concentration Charge - Overall "Counterparty Group" Exposure Schedule" [Schedule 15, Page 2] must be completed for each "counterparty group"

2. For the purposes of this schedule a "counterparty group" is a counterparty and its affiliates.

3. "Counterparty group" exposures that need not be reported include:

- Exposures to a "provider of capital" as defined in the Notes and Instructions to Schedule 14; and
- Exposures to a regulated entity pursuant to an introducing broker / carrying broker arrangement.

### CALCULATION OF TOTAL "MARKET VALUE DEFICIENCY" EXPOSURE TO INDIVIDUAL COUNTERPARTY WITHIN "COUNTERPARTY GROUP

3. **Section B, Lines 3 and 9** - The "market value deficiency" exposure amount to be reported on this line refers to any deficiency between the market value of the cash or securities received in by the Member firm and the market value of the cash or securities delivered out by the Member firm. To the extent there other transactions with "market value excess" for which the Member firm has the legal right of offset, these offsets may be considered in determining the "market value deficiency" exposure amount to be reported.

4. **Section B, Lines 4 and 10** - The amount to be reported on this line refers to the entire receivable balance if the only collateral received in by the Member firm is securities issued by the counterparty or its affiliates. To the extent there other transactions with "market value excess" for which the Member firm has the legal right of offset, these offsets may be considered in determining the "market value deficiency" exposure amount to be reported.

5. **Section B, Line 5** - Include all investments in securities issued by the counterparty or its affiliates.

6. **Section B, Line 11** - Report only those overdraft balances which may be legally netted against deposits reported on Section B, Line 1.

7. **Section B, Line 13** - Include only those security positions that:

Are not otherwise reported on Line 12; and

Are part of a valid offset strategy set out in Regulation 100;

for which the offset margin requirement has already been provided pursuant to SRO capital requirements.

### CALCULATION OF TOTAL "ADJUSTED MARKET VALUE DEFICIENCY" EXPOSURE TO INDIVIDUAL COUNTERPARTY WITHIN "COUNTERPARTY GROUP"

8. **Section C, Line 2** - Include exposure adjustment percentage for counterparty based on the counterparty's credit rating as follows:

| Counterparty Credit Rating | Exposure Adjustment Percentage |
|---|---|
| AAA to A | 20.0% |
| Other Investment Grade | 40.0% |
| Lower or non-rated | 75.0% |
| In default | 100.0% |

## 13.1.8 IDA - Capital Amendments to the Capital Requirements

### INVESTMENT DEALERS ASSOCIATION OF CANADA – PROPOSED AMENDMENTS TO THE CAPITAL REQUIREMENTS FOR FINANCING TRANSACTIONS

### I OVERVIEW

### A Introduction

With the last major rewrite of the capital formula in 1993, four classifications of counterparties were introduced:

1. Acceptable institutions;
2. Acceptable counterparties;
3. Regulated entities; and
4. Other counterparties

Under this new formula, Member firms were permitted to deal with counterparties considered to be "acceptable institutions" on an unsecured basis and counterparties considered to be either "acceptable counterparties" or "regulated entities" on a "value for value"[1] basis, with no capital implications.

However, there are certain transactions where legislative or regulatory requirements imposed on a counterparty make it impossible for a Member firm to deal with that counterparty on a value for value basis.

A prime example is securities borrowing arrangements. In a situation where a Member firm wishes to borrow securities from a chartered bank, the bank, pursuant to OSFI requirements, is required to ask for collateral with a market value of at least 105% of the market value of the securities lent to the Member firm. If the bank happens to be an "acceptable institution" this poses no problem to the Member firm as it is permitted to deal with an "acceptable institution" on an unsecured basis, with no capital implications. However, if the bank happens to be an "acceptable counterparty", the Member firm would be subject to an immediate 5% capital charge.

### B The Issue

From a risk perspective, it is not felt that it is appropriate to charge the Member firm this 5% capital charge[2] when the reason this additional collateral is being provided by the Member firm is because the counterparty is required by its regulator or by legislation to ask for it.

### C Objective

In order to not unduly restrict the ability of a Member firm to enter into financing transactions[3] with "acceptable counterparties", amendments to the existing capital requirements are proposed as follows:

- That the Notes and Instructions to Schedules 1 and 7 of Form 1 be amended as set out in Attachment #2 from the current "market value deficiency" requirement to the excess of the Member firm's actual collateralization level over the counterparty's regulatory or legislative requirement, to be referred to as the "excess collateral deficiency"

- That the total "acceptable counterparties" market value exposure relating to financing transactions be limited by the "Financing Activities Concentration Charge", as set out in Attachment #3, to 100% of the Member firm's net allowable assets; and.

- That all market value exposures[4] to "acceptable counterparties" resulting from financing transactions be considered reportable exposure items when completing the proposed new Account Concentration Charge schedule, Schedule 15 to Form 1 (refer to separate Board paper that details this proposal).

### D Effect of Proposed Rules

As stated previously, amendments are being proposed to the capital rules in order to not unduly restrict the ability of a Member firm to enter into financing transactions with "acceptable counterparties". The amendments seek to reduce the capital requirement for financing transactions involving "acceptable counterparties" from a "market value deficiency" requirement to an "excess collateral deficiency" requirement. As a result of this reduction, Member firms will be able to transact with "acceptable counterparties" without incurring an immediate capital charge when entering into a financing transaction. Since this proposed capital requirement reduction may result in a Member firm taking on "value for value" exposures with "acceptable counterparties", without providing capital, an overall limit on utilizing this new reduced capital requirement, the Acceptable Counterparties Financing Activities Concentration Charge, is also part of the proposed amendments.

### II DETAILED ANALYSIS

### A Present Rules and Relevant History

---

1 Transactions performed on a "value for value" basis are those where the market value of the cash or securities held as collateral by the Member firm is equal to the market value of the cash or securities related credit exposure to the counterparty.

2 Current legislative/regulatory requirements to be met for each category of "acceptable counterparty" are summarized in the table included as Attachment #1

3 For the purposes of this amendment proposal "financing transactions" includes all transactions whose balances are reportable on Schedules 1 and 7 of Form 1. These transactions include call loans and reverse call loans, loans payable and receivable, securities loaned and borrowed and repurchase and resale agreements.

4 The market value exposure amount reported would be net of any capital already provided.

As stated previously, as a result of the last major rewrite of the capital formula in 1993, four new classifications of counterparties were introduced: (i) "acceptable institutions", (ii) "acceptable counterparties", (iii) "regulated entities" and (iv) "other counterparties". One of the impacts of the introduction of these new credit risk categories was that a large number of financial institutions that were formerly considered to be "defined financial institutions", were now considered to be "acceptable counterparties". As a result, there were a number of financial institutions that Member firms had previously dealt with on an undersecured basis with no capital implications that were now subject to a "market value deficiency" requirement (See Attachment #4).

At the time these changes were made, it had been assumed that over time regulatory over-collateralization requirements (such as the OSFI's 105% requirement) would either be reduced or eliminated. As a result, it was also assumed that, as over-collateralization became less of an issue, requiring Member firms to provide capital for "market value deficiencies" arising from financing transactions would not result in material capital requirements.

The problem is that legislative/regulatory over-collateralization requirements have not been reduced or eliminated over the years since 1993. Further, when CSA National Instrument 81-102 and Companion Policy 81-102CP are implemented later this year, mutual funds[1] will be permitted to enter into repurchase and securities lending transactions, subject to certain limitations, including meeting minimum over-collateralization levels. So, the issue of legislative/regulatory over-collateralization is of greater importance (with greater capital implications) than it was when the capital requirements relating to financing transactions were last revised in 1993. This is evidenced by the number of categories of "acceptable counterparties" that continue to have over-collateralization requirements, as set out in Attachment #1.

## B Issues and Approaches Considered

As stated previously, from a risk perspective, it is not felt that it is appropriate to charge the Member firm a capital charge when the reason additional collateral is being provided to a counterparty is so the counterparty can meet it's legislative/regulatory requirements.

In order to address this issue, the major objective was to reduce the capital requirements for financing transactions involving financial institutions, pension funds and mutual funds without permitting possible abuses of this reduction. Two approaches considered were:

1. Amend the definitions in Form 1 by lessening the financial requirements to permit additional numbers of financial institutions, pension funds and mutual funds to be considered "acceptable institutions"; or

2. Revise the capital requirements for financing transactions to address the over-collateralization issue.

[1] Mutual funds with net assets in excess of $10 million are classified as "acceptable counterparties".

While amendments to the "acceptable institutions" definition were considered this approach was quickly rejected, as an amendment to the definition would have had significant impacts on the capital formula that were not acceptable.
As a result, the approach agreed upon was to make specific amendments to the capital requirements for financing transactions as follows:

- That the Notes and Instructions to Schedules 1 and 7 of Form 1 be amended as set out in Attachment #2 from the current "market value deficiency" requirement to the excess of the Member firm's actual collateralization level over the counterparty's regulatory or legislative requirement, to be referred to as the "excess collateral deficiency"

- That the total acceptable counterparties market value exposure relating to financing transactions be limited by the "Financing Activities Concentration Charge", as set out in Attachment #3, to 100% of the Member firm's net allowable assets; and.

- That all market value exposures to acceptable counterparties resulting from financing transactions be considered reportable exposure items when completing the proposed new Account Concentration Charge schedule, Schedule 15 to Form 1 (refer to separate Board paper that details this proposal)

## C COMPARISON WITH SIMILAR PROVISIONS

### 1. United States

In the United States, over-collateralization requirements are also common amongst financial institutions. In order to compensate for these requirements, rules are in place for different financing transaction types that allow over-collateralization with no capital implications. As an example, for repurchase agreements ("repo"), permitted levels are set:

- From 105% to 110% over-collateralization, where the repo involves government of U.S. issued or guaranteed debt; and

- At 120%7 over-collateralization, where the repo involves any other securities.

The U.S. rules also contain both individual counterparty (25% of net capital) and overall counterparty (300% of net capital) exposure tests, which serve to limit the level of financing activities performed by an investment dealer. These limiting tests are similar to the proposed new Schedule 7A, which will also serve to limit the level of financing activities performed by our Member firms. As a result, while the over-collateralization levels that are exempt from capital may be different, the proposed amendments are consistent with concepts underlying the U.S. rules.

### 2. United Kingdom

As with Canada and the U.S., over-collateralization requirements are common amongst financial institutions in the U.K. In order to

compensate for these requirements, rules are in place that allow for:

- 105%[1] over-collateralization, where the financing activities involve qualifying debt securities; and
- 110%8 over-collateralization, where the financing activities involve any other securities.

As a result, while the over-collateralization levels that are exempt from capital may be different, the proposed amendments are consistent with concepts underlying the U.K. rules.

### D Proposed Policy

As previously stated the proposed amendments to the capital requirements Member firms provide for financing transactions are as follows:

- That the Notes and Instructions to Schedules 1 and 7 of Form 1 be amended as set out in Attachment #2 from the current "market value deficiency" requirement to the excess of the Member firm's actual collateralization level over the counterparty's regulatory or legislative requirement, to be referred to as the "excess collateral deficiency"
- That the total acceptable counterparties market value exposure relating to financing transactions be limited by the "Financing Activities Concentration Charge", as set out in Attachment #3, to 100% of the Member firm's net allowable assets; and.
- That all market value exposures to acceptable counterparties resulting from financing transactions be considered reportable exposure items when completing the proposed new Account Concentration Charge schedule, Schedule 15 to Form 1 (refer to separate Board paper that details this proposal).

### E Public Interest Objective

According to subparagraph 14(c) of the IDA's Order of Recognition as a self regulatory organization, the IDA shall, where requested, provide in respect of a proposed rule change, "a concise statement of its nature, purposes (having regard to paragraph 13 above) and effects, including possible effects on market structure and competition". Statements have been made elsewhere as to the nature and effect of the proposals with respect to the proposed account concentration charge requirements. The purpose of this proposal is to amend the capital requirements Member firms provide for financing transactions to allow for certain levels of over-collateralization in transactions with "acceptable counterparties" without capital implication. The amendment will only involve those counterparties who are required to receive additional collateral in order to meet legislative/regulatory requirements and its use will be limited by a concentration charge. As a result the proposed amendments are considered to be in the public interest.

## III COMMENTARY

### A Filing in Other Jurisdictions

Approval of these proposed amendments will be sought from the Alberta, British Columbia, Ontario, Nova Scotia and Saskatchewan Securities Commissions.

### B Effectiveness

As stated previously, the purpose of this proposal is to amend the capital requirements Member firms provide for financing transactions to allow for certain levels of over-collateralization in transactions with "acceptable counterparties" without capital implication. The amendment will only involve those counterparties who are required to receive additional collateral in order to meet legislative/regulatory requirements and its use will be limited by a concentration charge.

It is believed that adoption of the above amendments will remove certain inappropriate capital requirements for certain financing transactions involving "acceptable counterparties", resulting in a closer matching of the capital being provided to the risks being undertaken.

### C Process

This proposal was developed the FAS Capital Formula Subcommittee. This proposal has also been reviewed and recommended for approval by the Executive Committee of the Financial Administrators Section and the Financial Administrators Section itself.

## IV SOURCES

Form 1 - Joint Regulatory Financial Questionnaire and Report
Joint Industry Capital Project Draft 5.4.1 dated March 12, 1993
New York Stock Exchange and Securities Exchange Commission Uniform Net Capital Rule 15c3-1(c)(2)(iv)(F)
United Kingdom Securities and Futures Authority, Rule 10-173, Repurchase and Reverse Repurchase, Securities Lending and Borrowing and Sale and Buy Back Agreements

[1] United Kingdom Securities and Futures Authority, Rule 10-173

## V OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the accompanying proposed form amendments to 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 form amendments would be in the public interest. Comments are sought on the proposed Policy. 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 Richard Corner, Director, Regulatory Policy, 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 of Compliance, Capital Markets, Ontario Securities Commission, 20 Queen Street West, Suite 800, Toronto, Ontario, M5H 3S8.

Questions may be referred to:

Richard Corner,
Director, Regulatory Policy,
Investment Dealers Association of Canada
(416) 943-6908
rcorner@ida.ca

Attachment #1

ACCEPTABLE COUNTERPARTIES:

ACCEPTABLE COLLATERALIZATION RATES FOR THE PURPOSES OF FINANCING TRANSACTIONS BASED ON EXISTING LEGISLATIVE/REGULATORY REQUIREMENTS

| CATEGORIES OF "ACCEPTABLE COUNTERPARTIES" | | ACCEPTABLE COLLATERALIZATION RATES |
|---|---|---|
| 1. | Canadian banks, Quebec savings banks, trust companies and loan companies | 105%[1] |
| 2. | Credit and central credit unions and regional caisses populaires | 105%[1] |
| 3. | Insurance companies | 105%[1] |
| 4. | Canadian provincial capital cities and all other Canadian cities and municipalities, or their equivalents | 100%[2] |
| 5. | Mutual Funds | 102%[3], 105%[3] |
| 6. | Corporations (other than Regulated Entities) | 100%[2] |
| 7. | Trusts | 100%[2] |
| 8. | Limited Partnerships | 100%[2] |
| 9. | Pension Funds | 105%[1] |
| 10. | Foreign banks and trust companies | 102%[4] |
| 11. | Foreign insurance companies | 102%[4] |
| 12. | Foreign governments of foreign countries which do not qualify as Basle Accord Countries | 100%[2] |

1 Existing requirements of the OSFI.

2 No known over-collateralization requirement, so set at 100%.

3 Pursuant to National Instrument 81-102 to be implemented in May 2001, the over-collateralization requirements are 102% for repurchase and resale agreements and 105% for security lending agreements.

4 These institutions must be in Basle Accord countries to qualify as "acceptable counterparties". While requirements in each country vary (i.e., the U.S. and U.K. requirements range from 102% to 110%) every country requires at least 102% over-collateralization. So, to be conservative use 102%.

Attachment #2

DATE: _____ SCHEDULE 1

## PART II
## JOINT REGULATORY FINANCIAL QUESTIONNAIRE AND REPORT

(Firm Name)

## ANALYSIS OF LOANS RECEIVABLE, SECURITIES BORROWED AND RESALE AGREEMENTS

| | | Amount of loan receivable or cash delivered as collateral | Market value of securities delivered as collateral | Market value of securities received as collateral or borrowed | Required to margin |
|---|---|---|---|---|---|
| | | | *[see note 3]* | *[see note 4]* | *[see note 4]* |
| **LOANS RECEIVABLE:** | | | | | |
| 1. | Acceptable Institutions | $_____ | N/A | _____ | $Nil |
| 2. | Acceptable Counterparties | _____ | N/A | _____ | _____ |
| 3. | Regulated Entities | _____ | N/A | _____ | _____ |
| 4. | Others *[see note 12]* | _____ | N/A | _____ | _____ |
| | **SECURITIES BORROWED:** | | | | |
| 5. | Acceptable Institutions | _____ | _____ | _____ | Nil |
| 6. | Acceptable Counterparties | _____ | _____ | _____ | _____ |
| 7. | Regulated Entities | _____ | _____ | _____ | _____ |
| 8. | Others *[see note 12]* | _____ | _____ | _____ | _____ |
| | **RESALE AGREEMENTS:** | | | | |
| 9. | Acceptable Institutions | _____ | N/A | _____ | Nil |
| 10. | Acceptable Counterparties | _____ | N/A | _____ | _____ |
| 11. | Regulated Entities | _____ | N/A | _____ | _____ |
| 12. | Others *[see note 12]* | _____ | N/A | _____ | _____ |
| TOTAL *[Lines 1 through 12]* | | $ ========== | | $ ========== | |

A-6B-8

**Attachment #2**

## SCHEDULE 1
## NOTES AND I NSTRUCTIONS

1. This schedule is to be completed for secured loan receivable transactions whereby the stated purpose of the transaction is to lend excess cash. All security borrowing transactions and resale (i.e. reverse repo) agreements, including financing transactions done via 2 trade tickets and those with related parties, should also be disclosed on this schedule.

2. For the purpose of this schedule, "excess collateral deficiency" is defined as the actual collateral provided to the counterparty less the collateral required to be received by the counterparty pursuant to regulatory or legislative requirements. A list of current collateralization rates for each category of Acceptable Counterparties is published on a regular basis.

3. Include accrued interest in amount of loan receivable.

4. Market value of securities delivered or received as collateral should include accrued interest.

5. In the case of either a cash loan and securities borrowing or a resale transaction, if a written agreement between the firm and the counterparty has been entered into containing the terms described below, the instructions in Notes 7, 8, 9 and 10 are applicable, as the case may be. Each such written agreement shall include terms which provide (i) for the rights of either party to retain or realize on securities held by it from the other party on default, (ii) for events of default, (iii) for the treatment of the value of securities held by a non-defaulting party in excess of amounts which may be owed by a defaulting party, (iv) either for set-off or, in the case of secured loans of securities, continuous segregation of collateral and the requirement for the lender to perfect a security interest in collateral giving the highest priority, and (v) if set-off rights or security interests are created in securities sold or loaned by one party to another, that the securities are endorsed for transfer and free of any trading restrictions. In addition, in the case of a resale transaction such written agreement shall contain an acknowledgement by the parties that either has the right, upon notice, to call for any shortfall in the difference between the collateral and the securities at any time. Such agreements are not mandatory and if not used are to be margined as provided below.

In the case of a cash loan and securities borrowing transaction, if no such written agreement has been entered into in respect of the transaction, then 100% of the market value must be provided as margin by the firm on the collateral given to the lender except in the case where the lender is an Acceptable Institution in which case no margin need be provided.

In the case of a resale transaction, if no such written agreement has been entered into in respect of the transaction, the position shall be margined as follows:

| Counterparty | Written Repurchase/Reverse Repurchase Agreement | NO Written Repurchase/Reverse Repurchase Agreement<br>Calendar days after regular settlement (Note 1) | |
|---|---|---|---|
| | | 30 days or less | Greater than 30 days |
| Acceptable Institution | No margin | No margin (Note 2) | |
| Acceptable Counterparty | Excess collateral deficiency | Excess collateral deficiency (Note 2) | |
| Regulated Entity | Market deficiency | Market deficiency (Note 2) | Margin |
| Other | Margin | Margin | 200% of margin (to a maximum of the market value of the underlying securities) |

Note 1: Regular settlement means the settlement dates or delivery date generally accepted according to industry practice for the relevant security in the market in which the transaction occurs. Margin is calculated from the date of regular settlement. Calendar days refers to the original term of the repurchase/reverse repurchase.

Note 2: Any transaction which has not been confirmed by an Acceptable Institution, Acceptable Counterparty or Regulated Entity within 15 business days of the trade shall be margined.

6. For any given counterparty a deficiency in one type of loan may be offset by an excess in another type of loan provided that there are written agreements for each type of loan which provide for the right of offset between each type of loan. In such case, the balances may also be offset.

7. **Lines 1, 5 and 9 -** In a cash loan and securities borrow or resale transaction between a firm and an Acceptable Institution, no capital need be provided in the case where a deficiency exists between the market value of the cash loaned or securities borrowed or resold and the market value of the collateral or cash pledged.

In order for a pension fund to be treated as an Acceptable Institution for purposes of this Schedule, it must not only meet the Acceptable Institution criteria outlined in General Notes and Definitions, but the Member firm must also have received representation that the pension fund is legally able to enter into the obligations of the transaction. If such representation has not been received, the pension fund which otherwise meets the Acceptable Institution criteria must be treated as an Acceptable Counterparty.

WHERE AN AGREEMENT HAS BEEN EXECUTED, THEN:

8. **Lines 2, 6 and 10 -** In a cash loan and securities borrow or resale transaction between a firm and an Acceptable Counterparty, where an excess collateral deficiency exists, action must be taken to correct the deficiency. If no action is taken the amount of excess collateral deficiency must be immediately provided out of the firm's capital. In any case, where the deficiency exists for more than one business day, it must be provided out of the firm's capital.

9. **Lines 3, 7 and 11 -** In a cash loan and securities borrow or resale transaction between a firm and a Regulated Entity, where a deficiency exists between the market value of the cash loaned or securities borrowed or resold and the market value of the collateral or cash pledged, action must be taken to correct the deficiency. If no action is taken the amount of market value deficiency must be immediately provided out of the firm's capital. In any case, where the deficiency exists for more than one business day, it must be provided out of the firm's capital.

10. **Lines 4, 8 and 12 -** In a cash loan and securities borrow or resale transaction between a firm and a party other than an Acceptable Institution, Acceptable Counterparty or Regulated Entity, where a deficiency exists between the loan value of the cash loaned or securities borrowed or resold and the loan value of the collateral or cash pledged, action must be taken to correct the deficiency. If no action is taken the amount of loan value deficiency must be immediately provided out of the firm's capital. The margin required may be reduced by any margin already provided on the collateral (e.g. in inventory). Where the collateral is either held by the Member on a fully segregated basis or held in escrow on its behalf by an Acceptable Depository or a bank or trust company qualifying as either an Acceptable Institution or Acceptable Counterparty, only the amount of market value deficiency need be provided out of the firm's capital. In any case, where the deficiency exists for more than one business day, it must be provided out of the firm's capital.

11. **Lines 5, 6 and 7 -** In a securities borrowed transaction between a firm and an Acceptable Institution, Acceptable Counterparty, or Regulated Entity, where a letter of credit issued by a Schedule 1 Bank is used as collateral for the securities borrowed, there shall be no charge to the Member firm's capital for any excess of the value of the letter of credit pledged as collateral over the market value of the securities borrowed.

12. **Lines 4, 8 and 12 -** Transactions whereby an Acceptable Institution, Acceptable Counterparty, or Regulated Entity are only acting as agents (on behalf of an "other" party) should be reported and margined as "Others".

Attachment #2

DATE:_____

SCHEDULE 7

## PART II
## JOINT REGULATORY FINANCIAL QUESTIONNAIRE AND REPORT

_____

(Firm Name)

## ANALYSIS OF OVERDRAFTS, LOANS, SECURITIES LOANED AND REPURCHASE AGREEMENTS

| | | Amount of loan payable or cash received as collateral | Market value of securities received as collateral | Market value of securities delivered as collateral or loaned | Required to margin |
|---|---|---|---|---|---|
| | | | *[see note 3]* | *[see note 4]* | *[see note 4]* |
| 1. | Bank overdrafts | $_____ | N/A | N/A | $Nil |
| | **LOANS PAYABLE:** | | | | |
| 2. | Acceptable Institutions | _____ | N/A | _____ | Nil |
| 3. | Acceptable Counterparties | _____ | N/A | _____ | _____ |
| 4. | Regulated Entities | _____ | N/A | _____ | _____ |
| 5. | Others | _____ | N/A | _____ | _____ |
| | **SECURITIES LOANED:** | | | | |
| 6. | Acceptable Institutions | _____ | _____ | _____ | Nil |
| 7. | Acceptable Counterparties | _____ | _____ | _____ | _____ |
| 8. | Regulated Entities | _____ | _____ | _____ | _____ |
| 9. | Others | _____ | _____ | _____ | _____ |
| | **REPURCHASE AGREEMENTS:** | | | | |
| 10. | Acceptable Institutions | _____ | N/A | _____ | Nil |
| 11. | Acceptable Counterparties | _____ | N/A | _____ | _____ |
| 12. | Regulated Entities | _____ | N/A | _____ | _____ |
| 13. | Others | _____ | N/A | _____ | _____ |
| TOTAL *[Lines 1 through 13]* | | $ ========== | | $ ========== | |
| | | | A-51 | | B-14 |

## SCHEDULE 7
## NOTES AND INSTRUCTION

1. This schedule is to be completed for loan payable transactions whereby the stated purpose of the transaction is to borrow cash. All security lending transactions and securities repurchases, including financing transactions done via 2 trade tickets and those with related parties, should also be disclosed on this schedule.

2. For the purpose of this schedule, "excess collateral deficiency" is defined as the actual collateral provided to the counterparty less the collateral required to be received by the counterparty pursuant to regulatory or legislative requirements. A list of current collateralization rates for each category of Acceptable Counterparties is published on a regular basis.

3. Include accrued interest in amount of loan payable.

4. Market value of securities received or delivered as collateral should include accrued interest.

5. In the case of either a cash borrow and securities loan or a repurchase transaction, if a written agreement between the firm and the counterparty has been entered into containing the terms described below, the instructions in Notes 7, 8, 9 and 10 are applicable, as the case may be. Each such written agreement shall include terms which provide (i) for the rights of either party to retain or realize on securities held by it from the other party on default, (ii) for events of default, (iii) for the treatment of the value of securities held by a non-defaulting party in excess of amounts which may be owed by a defaulting party, (iv) either for set-off or, in the case of secured loans of securities, continuous segregation of collateral and the requirement for the lender to perfect a security interest in collateral giving the highest priority, and (v) if set-off rights or security interests are created in securities sold or loaned by one party to another, that the securities are endorsed for transfer and free of any trading restrictions. In addition, in the case of a repurchase transaction such written agreement shall contain an acknowledgement by the parties that either has the right, upon notice, to call for any difference between the collateral and the securities at any time. Such agreements are not mandatory and if not used are to be margined as provided below.

In the case of a cash borrow and securities loan transaction, if no such written agreement has been entered into in respect of the transaction, then 100% of the market value must be provided as margin by the firm on the collateral given to the lender except in the case where the lender is an Acceptable Institution in which case no margin need be provided.

In the case of a repurchase transaction, if no such written agreement has been entered into in respect of the transaction, the position shall be margined as follows:

| Counterparty | Written Repurchase/Reverse Repurchase Agreement | NO Written Repurchase/Reverse Repurchase Agreement Calendar days after regular settlement (Note 1) | |
|---|---|---|---|
| | | 30 days or less | Greater than 30 days |
| Acceptable Institution | No margin | No margin (Note 2) | |
| Acceptable Counterparty | Excess collateral deficiency | Excess collateral deficiency (Note 2) | |
| Regulated Entity | Market deficiency | Market deficiency (Note 2) | Margin |
| Other | Margin | Margin | 200% of margin (to a maximum of the market value of the underlying securities) |

Note 1: Regular settlement means the settlement dates or delivery date generally accepted according to industry practice for the relevant security in the market in which the transaction occurs. Margin is calculated from the date of regular settlement. Calendar days refers to the original term of the repurchase/reverse repurchase.

Note 2: Any transaction which has not been confirmed by an Acceptable Institution, Acceptable Counterparty or Regulated Entity within 15 business days of the trade shall be margined.

6. For any given counterparty a deficiency in one type of loan may be offset by an excess in another type of loan provided that there are written agreements for each type of loan which provide for the right of offset between each type of loan. In such case, the balances may also be offset.

7. **Lines 2, 6, and 10** - In a cash borrowed and securities loan or repurchase transaction between a firm and an Acceptable Institution, no capital need be provided in the case where a deficiency exists between the market value of the cash borrowed or securities loaned or repurchased and the market value of the collateral or cash pledged.

In order for a pension fund to be treated as an Acceptable Institution for purposes of this Schedule, it must not only meet the Acceptable Institution criteria outlined in General Notes and Definitions, but the Member firm must also have received representation that the pension fund is legally able to enter into the obligations of the transaction. If such representation has not been received, the pension fund which otherwise meets the Acceptable Institution criteria must be treated as an Acceptable Counterparty.

WHERE AN AGREEMENT HAS BEEN EXECUTED, THEN:

8. **Lines 3, 7, and 11** - In a cash borrowed and securities loan or repurchase transaction between a firm and an Acceptable Counterparty, where an excess collateral deficiency exists, action must be taken to correct the deficiency. If no action is taken, the amount of excess collateral deficiency must be immediately provided out of the firm's capital. In any case, where the deficiency exists for more than one business day it must be provided out of the firm's capital.

9. **Lines 4, 8, and 12** - In a cash borrowed and securities loan or repurchase transaction between a firm and a Regulated Entity, where a deficiency exists between the market value of the cash borrowed or securities loaned or repurchased and the market value of the collateral or cash pledged, action must be taken to correct the deficiency. If no action is taken, the amount of market value deficiency must be immediately provided out of the firm's capital. In any case, where the deficiency exists for more than one business day it must be provided out of the firm's capital.

10. **Lines 5, 9, and I3** - In a cash borrowed and securities loan or repurchase transaction between a firm and a party other than an Acceptable Institution, Acceptable Counterparty or Regulated Entity, where a deficiency exists between the loan value of the cash borrowed or securities loaned or repurchased and the loan value of the collateral or cash pledged, action must be taken to correct the deficiency. If no action is taken, the amount of loan value deficiency must be immediately provided out of the firm's capital. The margin required may be reduced by any margin already provided on the collateral (e.g. in inventory). Where the collateral is either held by the Member on a fully segregated basis or held in escrow on its behalf by an Acceptable Depository or a bank or trust company qualifying as either an Acceptable Institution or Acceptable Counterparty, only the amount of market value deficiency need be provided out of the firm's capital. In any case, where the deficiency exists for more than one business day, it must be provided out of the firm's capital.

11. **Lines 2, 3 and 4** - In a cash borrowed transaction between a firm and an Acceptable Institution, Acceptable Counterparty, or Regulated Entity, where a letter of credit issued by a Schedule 1 Bank is used as collateral for the cash borrowed, there shall be no charge to the Member firm's capital for any excess of the value of the letter of credit pledged as collateral over the cash borrowed.

12. **Lines 5, 9, and I3** - Transactions whereby an Acceptable Institution, Acceptable Counterparty, or Regulated Entity are only acting as agents (on behalf of an "other" party) should be reported and margined as "Others".

**Attachment #3**

DATE: _____ SCHEDULE 7A

**PART II**

**JOINT REGULATORY FINANCIAL QUESTIONNAIRE AND REPORT**

_____
**(Firm Name)**

**"ACCEPTABLE COUNTERPARTIES" FINANCING ACTIVITIES CONCENTRATION CHARGE**

1. "Market value deficiency" amount relating to loans receivable from "acceptable counterparties" reported on Statement 1, Line 2, net of legal offsets and margin already provided $ _____

2. "Market value deficiency" amount relating to securities borrowed from "acceptable counterparties" reported on Statement 1, Line 5, net of legal offsets and margin already provided _____

3. "Market value deficiency" amount relating to resale agreements with "acceptable counterparties" reported on Statement 1, Line 8, net of legal offsets and margin already provided _____

4. "Market value deficiency" amount relating to loans payable to "acceptable counterparties" reported on Statement 7, Line 3, net of legal offsets and margin already provided _____

5. "Market value deficiency" amount relating to securities lent to "acceptable counterparties" reported on Statement 7, Line 6, net of legal offsets and margin already provided _____

6. "Market value deficiency" amount relating to repurchase agreements with "acceptable counterparties" reported on Statement 7, Line 9, net of legal offsets and margin already provided _____

7. **TOTAL "MARKET VALUE DEFICIENCY" EXPOSURE WITH "ACCEPTABLE COUNTERPARTIES", NET OF LEGAL OFFSETS AND MARGIN ALREADY PROVIDED**
*[Sum of Lines 1 to 6]* $ _____

8. **CONCENTRATION THRESHOLD - 100% OF NET ALLOWABLE ASSETS** $ _____

9. **FINANCING ACTIVITIES CONCENTRATION CHARGE**
*[Excess of Line 7 over Line 8, otherwise NIL]* $ _____

| Creditor Category | Rules in place prior to 1993 | Current Rules | Proposed Rules |
|---|---|---|---|
| Federal and provincial governments and related crown corporations and agencies | ***No capital required unless over-collateralization percentage is greater than 110% and excess over 110% over-collaterization level is greater than $100,000.*** | "acceptable institution"<br>***No capital required*** | "acceptable institution"<br>***No capital required but any market value deficiency exposure will be a reportable exposure on Account Concentration Charge schedule*** |
| Canadian chartered banks, Quebec savings banks, trusts, insurance companies, credit unions and regional caisse populaires with paid up capital greater than or equal to $10 million and less than $25 million | Market value deficiency | "acceptable counterparty"<br>***Capital requirement is any market value deficiency exposure*** | "acceptable counterparty"<br>***Capital requirements are:***<br>▪ ***Any over-collateralization in excess of counterparty's regulatory/legislative requirement;***<br>▪ ***Overall limit on market value deficiency exposures to "acceptable counterparties" resulting from financing transactions is 100% of Net Allowable Assets***<br>▪ **Reportable exposure on Account Concentration Charge schedule** |
| Canadian chartered banks, Quebec savings banks, trusts, insurance companies, credit unions and regional caisse populaires with paid up capital greater than or equal to $25 million and less than $100 million | No capital required unless over-collateralization percentage is greater than 110% and excess over 110% over-collaterization level is greater than $100,000. | "acceptable institution"<br>***No capital required*** | "acceptable institution"<br>***No capital required but any market value deficiency exposure will be a reportable exposure on Account Concentration Charge schedule*** |
| Canadian chartered banks, Quebec savings banks, trusts, insurance companies, credit unions and regional caisse populaires with paid up capital greater than or equal to $100 million and less than $1 billion | No capital required unless over-collateralization percentage is greater than 110% and excess over 110% overcollaterization level is greater than $100,000 | "acceptable institution"<br>***No capital required*** | "acceptable institution"<br>***No capital required but any market value deficiency exposure will be a reportable exposure on Account Concentration Charge schedule*** |
| Canadian chartered banks with paid up capital greater than or equal to $1 billion | No capital required | "acceptable institution"<br>***No capital required*** | "acceptable institution"<br>***No capital required but any market value deficiency exposure will be a reportable exposure on Account Concentration Charge schedule*** |
| Federal governments in Basle Accord countries | N/A - These counterparty categories did not exist until 1993 | Foreign "acceptable institution"<br>***No capital required*** | Foreign "acceptable institution"<br>***No capital required but any market value deficiency exposure will be a reportable exposure on Account Concentration Charge schedule*** |
| Foreign banks and trust companies in Basle Accord countries with paid up capital greater than or equal to $15 million and less than $150 million | | Foreign "acceptable counterparty"<br>***Capital requirement is any market value deficiency exposure*** | Foreign "acceptable counterparty"<br>***Capital requirements are:***<br>***Any over-collateralization in excess of counterparty's regulatory/legislative requirement;***<br>***Overall limit on market value deficiency exposures to "acceptable counterparties" resulting from financing transactions is 100% of Net Allowable Assets***<br>***Reportable exposure on Account Concentration Charge schedule*** |

| Creditor Category | Rules in place prior to 1993 | Current Rules | Proposed Rules |
|---|---|---|---|
| Foreign banks and trust companies in Basle Accord countries with paid up capital greater than $150 million | N/A - These counterparty categories did not exist until 1993 | Foreign "acceptable institution"<br>***No capital required*** | Foreign "acceptable institution"<br>***No capital required but any market value deficiency exposure will be a reportable exposure on Account Concentration Charge schedule*** |
| Foreign insurance companies in Basle Accord countries with paid up capital greater than $15 million | | Foreign "acceptable counterparty"<br>***Capital requirement is any market value deficiency exposure*** | Foreign "acceptable counterparty"<br>***Capital requirements are:***<br>***Any over-collateralization in excess of counterparty's regulatory/legislative requirement;***<br>***Overall limit on market value deficiency exposures to "acceptable counterparties" resulting from financing transactions is 100% of Net Allowable Assets***<br>***Reportable exposure on Account Concentration Charge schedule*** |
| Canadian provincial capital cities and all other Canadian cities and municipalities, or their equivalents, with populations of 50,000 and over | No capital required unless over-collateralization percentage is greater than 110% and excess over 110% overcollaterization level is greater than $100,000 | "acceptable counterparty"<br>***Capital requirement is any market value deficiency exposure*** | "acceptable counterparty"<br>***Capital requirements are:***<br>***Any over-collateralization in excess of counterparty's regulatory/legislative requirement;***<br>***Overall limit on market value deficiency exposures to "acceptable counterparties" resulting from financing transactions is 100% of Net Allowable Assets***<br>***Reportable exposure on Account Concentration Charge schedule*** |
| Mutual funds with total net assets of greater than or equal to $10 million | No capital required unless over-collateralization percentage is greater than 110% and excess over 110% overcollaterization level is greater than $100,000 | "acceptable counterparty"<br>***Capital requirement is any market value deficiency exposure*** | "acceptable counterparty"<br>***Capital requirements are:***<br>***Any over-collateralization in excess of counterparty's regulatory/legislative requirement;***<br>***Overall limit on market value deficiency exposures to "acceptable counterparties" resulting from financing transactions is 100% of Net Allowable Assets***<br>***Reportable exposure on Account Concentration Charge schedule*** |

| Creditor Category | Rules in place prior to 1993 | Current Rules | Proposed Rules |
|---|---|---|---|
| Corporations (other than securities dealers) having a minimum net worth of $75 million on the last audited balance sheet | No capital required unless over-collateralization percentage is greater than 110% and excess over 110% over-collaterization level is greater than $100,000 | "acceptable counterparty"<br>***Capital requirement is any market value deficiency exposure*** | "acceptable counterparty"<br>***Capital requirements are:***<br>***Any over-collateralization in excess of counterparty's regulatory/legislative requirement;***<br>***Overall limit on market value deficiency exposures to "acceptable counterparties" resulting from financing transactions is 100% of Net Allowable Assets***<br>***Reportable exposure on Account Concentration Charge schedule*** |
| Trusts and Limited Partnerships with total net assets in excess of $100 million | N/A - This counterparty category did not exist until 1998 | "acceptable counterparty"<br>***Capital requirement is any market value deficiency exposure*** | "acceptable counterparty"<br>***Capital requirements are:***<br>***Any over-collateralization in excess of counterparty's regulatory/legislative requirement;***<br>***Overall limit on market value deficiency exposures to "acceptable counterparties" resulting from financing transactions is 100% of Net Allowable Assets***<br>***Reportable exposure on Account Concentration Charge schedule*** |
| Pension funds with total net assets of greater than or equal to $10 million and less than $200 million | No capital required unless over-collateralization percentage is greater than 110% and excess over 110% over-collaterization level is greater than $100,000 | "acceptable counterparty"<br>***Capital requirement is any market value deficiency exposure*** | "acceptable counterparty"<br>***Capital requirements are:***<br>***Any over-collateralization in excess of counterparty's regulatory/legislative requirement;***<br>***Overall limit on market value deficiency exposures to "acceptable counterparties" resulting from financing transactions is 100% of Net Allowable Assets***<br>***Reportable exposure on Account Concentration Charge schedule*** |
| Pension funds with total net assets of greater than or equal to $200 million | No capital required unless over-collateralization percentage is greater than 110% and excess over 110% over-collaterization level is greater than $100,000 | "acceptable institution"<br>***No capital required*** | "acceptable institution"<br>***No capital required but any market value deficiency exposure will be a reportable exposure on Account Concentration Charge schedule*** |

### 13.1.9 TSE - Piergiorgio Donnini

May 1, 2001 No. 2001-114

**APPROVED PERSON DISCIPLINED**

**Person Disciplined**

On April 25, 2001, a Hearing Committee Panel of The Toronto Stock Exchange Inc. (the "Exchange") approved an Offer of Settlement made between the Exchange and Piergiorgio Donnini. Mr. Donnini is an Approved Person who was at all material times employed as a Registered Representative and Head Trader with Yorkton Securities Inc., a Participating Organization of the Exchange.

**Rules Violated**

Under the terms of the Offer of Settlement, Mr. Donnini admits that he committed the following violations:

a) On January 14, 2000, Mr. Donnini failed to move the market in an orderly manner or to seek directions from the Exchange prior to executing a trade that caused a change greater than $1.00 in the price of a security that was selling below $20.00, contrary to Part XXIII of the Rulings and Directions of the Board ("Ruling XXIII").

b) On September 14, 2000, Mr. Donnini improperly triggered a Registered Trader's Minimum Guaranteed Fill ("MGF") requirement by splitting a single client order to buy shares of a listed security into several smaller orders and entering these orders as MGF-eligible orders, contrary to section 11.20 of the General By-law and the Ruling relating to the MGF facilities (the "MGF Ruling").

c) On January 3, 2001, Mr. Donnini received a client order to sell less than 5,000 shares of a listed security and executed the order in a principal transaction at a price that was not higher than the price of any order on any Canadian stock exchange on which the security was listed, contrary to Rule 4-502(2) of the Rules of the Exchange.

**Penalty Assessed**

Pursuant to the terms of the Offer of Settlement, Mr. Donnini is required to:

a) pay a fine of $20,000;
b) pay $5,000 towards the cost of the Exchange's investigation; and
c) re-write and pass the Trader's Training Course on or before July 24, 2001.

**Summary of Facts**

Prior to 9:30 a.m. on January 14, 2000, Mr. Donnini received an order to cross 260,000 shares of a listed security at $13.00. In a 24-second period from 9:31:46 a.m. to 9:32:10 a.m., Mr. Donnini executed several trades (the "Initial Trades") in the listed security that moved its price down from $14.15 to $13.00. Mr. Donnini then caused the execution of a cross order of 260,000 shares at $13.00. Mr. Donnini did not obtain the approval of the Exchange prior to executing the Initial Trades. Since the shares were selling at less than $20.00 and the Initial Trades and subsequent cross order caused a change in price by more than $1.00, Ruling XXIII required Mr. Donnini to obtain Exchange approval prior to executing the Initial Trades. If Mr. Donnini had contacted the Exchange as required, the Exchange would have required Mr. Donnini to execute the Initial Trades over a 10-15 minute time period prior to executing the cross trade at $13.00. The failure to move the market in a fair and orderly manner did not allow market participants a sufficient amount of time to react to the change in price from $14.15 to $13.00.

On September 14, 2000 at 9:20 a.m. Mr. Donnini received a single client order (the "Client Order") to purchase 40,100 shares of a listed security. The MGF for this listed security was 1,099 shares. Between 9:42:11 a.m. and 11:16:47 a.m., Mr. Donnini executed 16 separate orders to purchase between 1,000 and 4,400 shares of the listed security for the purpose of completing the Client Order. Eight of the 16 orders were improperly designated as "NX" (and were therefore MGF-ineligible). Of the remaining eight orders, two were entered for less than 1,099 shares and were not designated as "BK". The failure to mark the orders "BK" exposed the Registered Trader to a risk of being unfairly disadvantaged.

On January 3, 2001, Mr. Donnini executed a client order to sell 3,185 shares of a listed security in a principal transaction at the price of $1.80 which was the best bid price at the time. Rule 4-502(2) required Mr. Donnini to give the client a better price than the $1.80 bid price. Upon being contacted by a Market Surveillance officer, Mr. Donnini cancelled the original trade and re-executed the order at $1.85, a price that complied with Rule 4-502(2). Prior to January 3, 2001, Mr. Donnini had received warnings from the Exchange's Market Surveillance department for three separate violations of Rule 4-502(2).

Following a review of the findings of the Exchange's investigation, the Toronto Stock Exchange Regulation Services Division has determined that there are no grounds for any disciplinary action against Yorkton Securities Inc.

*Participating Organizations which require additional information should direct their questions to Marie Oswald, Director, Investigations and Enforcement, Regulation Services at 416-947-4376.*

"Leonard Petrillo"

Chapter 25

# Other Information

THERE IS NO MATERIAL FOR THIS CHAPTER

IN THIS ISSUE

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# Index