

The Ontario Securities Commission

# OSC Bulletin

November 23, 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 Securities Commission**

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# Table of Contents

<p><b>Chapter 1 Notices / News Releases .....6961</b></p> <p><b>1.1 Notices .....6961</b></p> <p>1.1.1 Current Proceedings Before The Ontario Securities Commission .....6961</p> <p>1.1.2 Notice of Minister of Finance Approval for OSC Rule 45-501 Exempt Distributions .....6964</p> <p>1.1.3 IDA Notice of Amendments to By-laws 3.8, 3.9, 3.10 .....6964</p> <p>1.1.4 Notice of Minister of Finance Approval - Multilateral Instrument 45-102 .....6965</p> <p>1.1.5 Notice of Commission Approval - Amendment to IDA By-laws 10.1 and 10.15 .....6965</p> <p>1.1.6 Amendments to IDA By-Law No. 22 and to Regulation 700 - Notice of Commission Approval .....6966</p> <p><b>1.2 News Releases .....6967</b></p> <p>1.2.1 OSC Proceeding in Respect of Arlington Securities Inc. and Samuel Arthur Brian Milne .....6967</p> <p>1.2.2 CSA - Securities Industry Estimates \$85 million in Benefits from NRD over Five Years .....6968</p> <p><b>Chapter 2 Decisions, Orders and Rulings ..6969</b></p> <p><b>2.1 Decisions .....6969</b></p> <p>2.1.1 Atlas Cold Storage Income Trust - MRRS Decision .....6969</p> <p>2.1.2 Great-West Lifeco Inc. - MRRS Decision .....6971</p> <p>2.1.3 Citicorp and Associates Capital Corporation of Canada - MRRS Decision .....6973</p> <p>2.1.4 RBC Dominion Securities Inc., et al. and BC Gas Inc. - MRRS Decision .....6978</p> <p>2.1.5 Scotia Capital Inc. et al. and Primewest Energy Trust - MRRS Decision .....6979</p> <p>2.1.6 Causeway Energy Corporation - MRRS Decision .....6982</p> <p>2.1.7 Harrowston Inc. - MRRS Decision .....6983</p> <p>2.1.8 CMP 2001 II Resource Limited Partnership .....6984</p> <p>2.1.9 ML Alternative Strategies Absolute Returns Ltd. - MRRS Decision .....6986</p> <p>2.1.10 XSTM Holdings (2000) Inc. - MRRS Decision .....6989</p> <p>2.1.11 First Commercial Bank - MRRS Decision .....6990</p>	<p>2.1.12 TD TSE 300 Index Fund and TD TSE 300 Capped Index Fund .....6993</p> <p>2.1.13 Goldman Sachs &amp; Co. and its Affiliates - MRRS Decision .....6995</p> <p><b>2.2 Orders .....6999</b></p> <p>2.2.1 Certain Reporting Issuers - s.144 .....6999</p> <p>2.2.2 Michael Omer Bourgon - s. 127 .....6999</p> <p>2.2.3 Expatriate Resources Ltd. - s. 83.1(1) .....7000</p> <p><b>2.3 Rulings .....7002</b></p> <p>2.3.1 Systech Retail Systems Inc. - s. 74(1) .....7002</p> <p><b>Chapter 3 Reasons: Decisions, Orders and Rulings (nil) .....7007</b></p> <p><b>Chapter 4 Cease Trading Orders (nil) .....7009</b></p> <p><b>Chapter 5 Rules and Policies .....7011</b></p> <p>5.1.1 OSC Rule 45-501 Exempt Distributions .....7011</p> <p>5.1.2 Multilateral Instrument 45-102: Resale of Securities .....7029</p> <p><b>Chapter 6 Request for Comments (nil) .....7053</b></p> <p><b>Chapter 7 Insider Reporting .....7055</b></p> <p><b>Chapter 8 Notice of Exempt Financings .....7085</b></p> <p>Reports of Trades Submitted on Form 45-501f1 .....7085</p> <p>Notice of Intention to Distribute Securities Pursuant to Subsection 7 of Section 72 - (Form 23) .....7087</p> <p><b>Chapter 9 Legislation .....7089</b></p> <p>9.1.1 Amending Reg. 1015 of R.R.O 1990 - MI 45-102 Resale of Securities .....7089</p> <p>9.1.2 Amending Reg. 1015 of R.R.O. 1990 - Rule 45-501 Exempt Distributions .....7090</p> <p><b>Chapter 11 IPOs, New Issues and Secondary Financings .....7091</b></p> <p><b>Chapter 12 Registrations .....7097</b></p> <p>12.1.1 Securities .....7097</p>
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# Table of Contents

## (cont'd)

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<b>Chapter 13 SRO Notices and Disciplinary Proceedings .....</b>	<b>7099</b>
13.1.1 IDA Amendment to Association By-law 3.8 Relating to Underwriting Levies .....	7099
13.1.2 TSE Notice to Participating Organizations - Approved Person Disciplined.....	7102
<b>Chapter 25 Other Information (nil) .....</b>	<b>7103</b>
<b>Index .....</b>	<b>7105</b>

Chapter 1

Notices / News Releases

1.1 Notices

SCHEDULED OSC HEARINGS

1.1.1 Current Proceedings Before The Ontario Securities Commission

November 23, 2001

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
Suite 1700, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

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Paul M. Moore, Q.C., Vice-Chair — PMM
Howard Wetston, Q.C., Vice-Chair — HW
Kerry D. Adams, FCA — KDA
Derek Brown — DB
Robert W. Davis, FCA — RWD
Robert W. Korthals — RWK
Mary Theresa McLeod — MTM
H. Lorne Morphy, Q. C. — HLM
R. Stephen Paddon, Q.C. — RSP

Date to be announced

Mark Bonham and Bonham & Co. Inc.

s. 127

M. Kennedy in attendance for staff

Panel: TBA

November 26/2001

Michael Bourgon

s. 127

10:00 a.m.

H. Corbett in attendance for staff

Panel: PMM

November 30/2001

Rampart Securities Inc.

s. 127

10:00 a.m.

T. Pratt in attendance for staff.

Panel: PMM

December 5/2001

Teodosio Vincent Pangia, Agostino Capista And Dallas/north Group Inc.

10:00 a.m.

s. 127

Y. Chisholm in attendance for staff

Panel: TBA

December 5 /2001

Livent Inc., Garth Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol

10:00 a.m.

s. 127 and 127.1

J. Superina in attendance for staff.

Panel: HIW

December 7/2001 Michael Goselin, Irvine Dyck, Donald McCrory, Roger Chiasson  
 9:00 a.m. s.127  
 T. Pratt in attendance for staff  
 Panel: TBA

April 15 - 19, 2002 Sohan Singh Koonar  
 9:00 a.m. s. 127  
 J. Superina in attendance for staff  
 Panel: PMM

December 17/2001 James Frederick Pincock  
 10:00 a.m. ss. 127  
 J. Superina in attendance for staff.  
 Panel: PMM

May 27 - July 5, 2002 Michael Cowpland and M.C.J.C. Holdings Inc.  
 s. 122  
 M. Kennedy and M. Britton in attendance for staff.  
 161 Elgin Street, Ottawa

January 8,10,11, 17,18,22,24,25, 31/2002 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)  
 10:00 a.m. s.127

January 15,29, February 12 2:00 p.m.  
 March 5,7,8,14, 15,19,21,22,28, 29/2002  
 10:00 a.m. s.127  
 March 12, 26 2:00 p.m. K. Daniels/M. Code/J. Naster/I. Smith in attendance for staff.

April 2,4,5,11,12 10:00 a.m.

April 9, 2002 2:00 p.m. Panel: HIW / DB / RWD

January 3/2002 Jack Banks et al.  
 s. 127  
 Ian Smith in attendance for staff.  
 Panel: PMM

February 4, 6, 13, 14, 15, 28, 2002 Arlington Securities Inc. and Samuel Arthur Brian Milne  
 9:30 a.m. J. Superina in attendance for Staff  
 s. 127  
 Panel: PMM

**ADJOURNED SINE DIE**

Buckingham Securities Corporation,  
Lloyd Bruce, David Bromberg, Harold  
Seidel, Rampart Securities Inc., W.D.  
Latimer Co. Limited, Canaccord Capital  
Corporation, BMO Nesbitt Burns Inc.,  
Bear, Stearns & Co. Inc., Dundee  
Securities Corporation, Caldwell  
Securities Limited and B2B Trust

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

Ricardo Molinari, Ashley Cooper,  
Thomas Stevenson, Marshall Sone, Fred  
Elliott, Elliott Management Inc. and  
Amber Coast Resort Corporation

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

**PROVINCIAL DIVISION PROCEEDINGS**

November 9/  
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

s. 122

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

November  
15/2001  
9:00 a.m.

Einar Bellfield

s. 122

Ms. Sarah Oseni in attendance for staff.

Courtroom 111, Provincial  
Offences Court  
Old City Hall, Toronto

Reference:

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

**1.1.2 Notice of Minister of Finance Approval for  
OSC Rule 45-501 Exempt Distributions**

**NOTICE OF MINISTER OF FINANCE APPROVAL  
FOR  
ONTARIO SECURITIES COMMISSION RULE 45-501  
EXEMPT DISTRIBUTIONS**

On November 7, 2001, the Minister of Finance approved Ontario Securities Commission Rule 45-501 *Exempt Distributions* and related Forms 45-501F1, 45-501F2 and 45-501F3 (collectively, "Rule 45-501"). **Rule 45-501 will come into force on November 30, 2001.**

On November 7, 2001 the Minister of Finance also approved a regulation (the "Regulation") amending certain sections of Regulation 1015 of the Revised Regulations of Ontario, 1990 made under the Securities Act in connection with Rule 45-501. The Regulation was filed as O. Reg. 424/01 on November 15, 2001 and is expected to be published in the Ontario Gazette on December 1, 2001. **The Regulation comes into force on November 30, 2001.**

The Rule along with Companion Policy 45-501 are published in Chapter 5 of this Bulletin. The Regulation is published in Chapter 9 of this Bulletin. Materials related to the Rule were previously published in the Bulletin on September 8, 2000, April 6, 2001, July 13, 2001 and September 14, 2001.

**1.1.3 IDA Notice of Amendments to By-laws 3.8,  
3.9, 3.10**

**AMENDMENTS TO IDA BY-LAWS 3.8, 3.9  
AND 3.10,  
UNDERWRITING LEVIES -  
NOTICE OF COMMISSION APPROVAL**

**AMENDMENTS TO IDA BY-LAWS 3.8, 3.9 AND 3.10,  
UNDERWRITING LEVIES**

IDA By-laws 3.8, 3.9 and 3.10, underwriting levies have been approved by the Ontario Securities Commission. In addition, the Saskatchewan Securities Commission approved, the Alberta Securities Commission did not disapprove, and the British Columbia Securities Commission did not object to these amendments. These amendments are effective as of September 21, 2001. The amendments to the by-laws are to address the increasing obsolescence of the original by-law language and remove the confusion and uncertainty on Member firms in complying with the by-law instructions. The amendments will result in greater efficiency of the levy collection process. The amendments are housekeeping in nature. A copy and description of the amendments is being published in Chapter 13 of this Bulletin.



**1.1.4 Notice of Minister of Finance Approval -  
Multilateral Instrument 45-102**

**NOTICE OF MINISTER OF FINANCE APPROVAL OF  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES**

On November 7, 2001, the Minister of Finance approved Multilateral Instrument 45-102 *Resale of Securities* and its related Forms 45-102F1, 45-102F2 and 45-102F3. **Multilateral Instrument 45-102 will come into force on November 30, 2001.**

The Minister of Finance has also approved a regulation (the "Regulation") amending certain sections of Regulation 1015 of the Revised Regulations of Ontario, 1990 made under the Securities Act in connection with Multilateral Instrument 45-102. The Regulation was filed as O. Reg. 423/01 and is expected to be published in the Ontario Gazette on December 1, 2001. **The Regulation comes into force on November 30, 2001.**

Multilateral Instrument 45-102 and Companion Policy 45-102CP are published in Chapter 5 of this Bulletin. The Regulation is published in Chapter 9 of this Bulletin. Materials related to the Multilateral Instrument were previously published in the Bulletin on September 8, 2000, April 20, 2001, May 18, 2001 and September 14, 2001.

**1.1.5 Notice of Commission Approval -  
Amendment to IDA By-laws 10.1 and 10.15**

**AMENDMENT TO IDA BY-LAWS NO. 10.1 AND 10.15,  
BOARD OF DIRECTORS AND EXECUTIVE COMMITTEE**

**NOTICE OF COMMISSION APPROVAL**

Amendments to IDA By-Laws No. 10.1 and 10.15 regarding Board of Directors and Executive Committee have been approved by the Ontario Securities Commission subject to the condition that the composition of the Board of Directors and, in particular, the number of public directors be revisited by the IDA in two years and an amended by-law concerning the Board of Directors and Executive Committee be submitted two years from the date of approval. In addition, the Saskatchewan Securities Commission approved, the Alberta Securities Commission did not disapprove and the British Columbia Securities Commission did not object to these amendments subject to the same condition. These amendments are effective as of November 15, 2001. The amendments allow the corporate governance structure of the IDA to address the inherent conflicts of interest between the public, members and management. The size of the Board of Directors will be reduced from 28 to 24 by eliminating representatives from the Montreal Exchange, the Toronto Stock Exchange, the Canadian Venture Exchange and the Financial Administrators Section. The number of public directors will increase from six to eight over a two year period commencing June 2001. A copy and description of the amendments were published on June 8, 2001 at (2001) 24 OSCB 3557. No comments were received.

**1.1.6 Amendments to IDA By-Law No. 22 and to  
Regulation 700- Notice of Commission  
Approval**

**AMENDMENTS TO IDA BY-LAW NO. 22,  
USE OF NAME: LIABILITIES: CLAIMS  
AND TO  
REGULATION 700, USE OF NAME OF THE  
ASSOCIATION**

**NOTICE OF COMMISSION APPROVAL**

Amendments to IDA By-Law No. 22, *Use of Name: Liabilities: Claims* and to Regulation 700, *Use of Name of the Association* have been approved by the Ontario Securities Commission. In addition, the Saskatchewan Securities Commission approved, the Alberta Securities Commission did not disapprove and the British Columbia Securities Commission did not object to these amendments. These amendments are effective as of November 13, 2001. The amendments clarify under what circumstances the IDA logo may be used by IDA Members. A copy and description of the amendments were published on July 27, 2001 at (2001) 24 OSCB 4673. No comments were received.

**-1.2 News Releases**

**1.2.1 OSC Proceeding in Respect of Arlington Securities Inc. and Samuel Arthur Brian Milne**

FOR IMMEDIATE RELEASE  
November 15, 2001

**OSC PROCEEDING IN RESPECT  
OF ARLINGTON SECURITIES INC.  
AND SAMUEL ARTHUR BRIAN MILNE**

**Toronto** – At a hearing before the Ontario Securities Commission (the “Commission”) on November 12, 2001, the proceeding commenced by Notice of Hearing dated October 11, 2001, in respect of Arlington Securities Inc. (“Arlington”) and Samuel Arthur Brian Milne (“Milne”), was adjourned to be heard on February 4, 6, 13, 14, and 15, 2002 commencing at 9:30 a.m. The Commission previously made an Order on October 24, 2001 extending a Temporary Order imposing certain terms and conditions on the registration of Arlington and Milne, the sole registered officer of Arlington, pending the conclusion of the hearing.

Arlington's anniversary date for renewal of registration was November 13, 2001. Pursuant to Commission Rule 31-507 Arlington was required to be a member of an SRO recognized by the Commission by its anniversary date. Arlington's registration has not been renewed, and consequently, the registration of Arlington and its salespersons, partners and officers has been suspended since November 13, 2001.

The Commission has also directed a freeze of all assets of Arlington under the control of Arlington and certain financial institutions. The Commission's application to the Superior Court of Justice for an Order to continue the freeze is scheduled to be heard on November 16, 2001. Staff of the Commission continues to review this situation.

The hearing of the proceeding before the Commission scheduled for February 4, 6, 13, 14 and 15, 2002 will take place in the main hearing room of the Commission located on the 17<sup>th</sup> Floor, 20 Queen Street West, Toronto, Ontario.

Copies of the Temporary Order, the Order extending the Temporary Order, as amended, the Notice of Hearing and related Statement of Allegations are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca) or from the Commission, 19<sup>th</sup> Floor, 20 Queen Street West, Toronto, Ontario.

For Media Inquiries:

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416-593-8156

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Director, Communications  
416-593-8120

For Investor Inquiries:

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416-593-8314  
1-877-785-5555 (toll free)

## 1.2.2 CSA - Securities Industry Estimates \$85 million in Benefits from NRD over Five Years

For Immediate Release  
November 16, 2001

### SECURITIES INDUSTRY ESTIMATES NATIONAL REGISTRATION DATABASE COULD GENERATE \$85 MILLION IN BENEFITS OVER FIVE YEARS

**Toronto** – A new national database for registering dealers and advisers could generate about \$85 million in benefits for Canada's financial services industry over the five years following its start-up, says a study released today by Canadian securities regulators.

The benefits to firms are mainly in the form of cost savings and efficiency gains and far outweigh the estimated \$47 million cost of developing the web-based system and operating it over the same five-year period, the study said.

Some 131 firms provided the benefit estimates in response to a survey. The benefits include reduced cash expenditures for the registration process, lower labour costs and the opportunity to make more effective use of the time of employees now involved in the registration process.

The study was undertaken to ensure the costs of developing the new system, known as the National Registration Database (NRD), are justified. The database is scheduled to be launched late next year.

The study also found:

- Large firms (more than 500 registered individuals) could realize more than 50% of the \$85 million of total benefits.
- Small firms (one to 50 registered individuals) gain more than large firms on a "per registrant basis": \$2,200 compared to \$264 per "large firm" registrant.
- The single most valued feature firms cited is their ability to use one application to register dealers and advisers in more than one jurisdiction

The NRD will permit dealers and advisers to file registration forms electronically over the Internet and replaces the present paper-based process. The development of the system is being overseen by the Canadian Securities Administrators, the national association of 13 provincial and territorial securities regulators. Quebec is not participating in the NRD project, due to provincial legislation which prohibits the sharing of nominal information about individuals.

"We were very encouraged by the results, particularly the magnitude of the benefits the industry estimates it will realize from the switch," said Ontario Securities Commission Chief Economist Randall Powley, whose office conducted the survey.

The \$85 million figure doesn't include cutting from weeks to days the lost productivity firms experience while waiting for their new employees to be registered to sell securities, he said. Registration approval can currently take between four and six weeks, during which time new employees are barred from actively serving the firm's clients.

"The additional benefits to the industry of this time savings alone could be in the same order of magnitude as the total benefits predicted in the study," said Powley.

The survey asked staff at registrant firms to estimate the benefits to their firms of numerous NRD features. Researchers contacted over 700 firms with registrants in several provinces. The 131 firms that responded represent 47,000 registrants, or nearly half the registrant population of the participating jurisdictions. A sample this comprehensive should have a margin of error of less than one per cent, the study said.

A summary report on the results of the study is available at the OSC web-site, [www.osc.gov.on.ca/en/Market/registrants.html](http://www.osc.gov.on.ca/en/Market/registrants.html)

For more information:

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BC Securities Commission  
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Ainsley Cunningham  
Manitoba Securities Commission  
204-945-4733

## Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Atlas Cold Storage Income Trust - MRRS Decision

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer is a "connected issuer" in respect of the Filers - Filers exempt from requirement in the Legislation that an independent underwriter underwrite a portion of the distribution at least equal to that underwritten by non-independent underwriters subject to certain conditions.

#### Applicable Ontario Regulations

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

#### Applicable Ontario Rules

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

Proposed Multi-Jurisdictional Instrument 33-105 Underwriting Conflicts (2001), 24 OSCB 3805.

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

AND

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

AND

IN THE MATTER OF  
BMO NESBITT BURNS INC.  
SCOTIA CAPITAL INC.  
AND TD SECURITIES INC.

AND

IN THE MATTER OF  
ATLAS COLD STORAGE INCOME TRUST  
MRRS DECISION DOCUMENT

WHEREAS the securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Alberta, Québec and Newfoundland (the "Jurisdictions") has received an application from BMO Nesbitt Burns Inc. ("BMO-NB"), Scotia Capital Inc. ("SCI") and TD Securities Inc. ("TDSI" and together with BMO-NB and SCI, the "Filers") for a decision pursuant to the securities legislation (the "Legislation") of the Jurisdictions 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 by an issuer made by means of a prospectus, where the issuer is a connected issuer or a related issuer (or the equivalent) of the registrant unless a portion of the distribution at least equal to that underwritten by non-independent underwriters is underwritten by an independent underwriter, shall not apply to the Filers in respect of a proposed distribution (the "Offering") of trust units (the "Offered Securities") of Atlas Cold Storage Income Trust (the "Issuer") pursuant to a short-form prospectus (the "Prospectus");

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

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

1. The Issuer is a reporting issuer under the Legislation of each Jurisdiction and is not in default of any requirements of the Legislation.
2. The Trust is a special purpose trust the activities of which are limited specifically to investing in securities issued by Atlas Cold Storage Holdings Inc., a corporation involved in providing public refrigerated warehouse services.
3. The trust units of the Issuer are listed on The Toronto Stock Exchange.
4. The Issuer has filed a preliminary short-form prospectus dated November 7, 2001 (the "Preliminary Prospectus") in the Jurisdictions.
5. The Offered Securities will be offered by BMO Nesbitt Burns Inc., SCI, National Bank Financial Inc., RBC Dominion Securities Inc. and TDSI (collectively, the "Underwriters").
6. The proportionate share of the Offering to be underwritten by each of the Underwriters is as follows:

BMO Nesbitt Burns Inc.	33%
Scotia Capital Inc.	22%
National Bank Financial Inc.	20%
RBC Dominion Securities Inc.	15%
TD Securities Inc.	10%
	100%

7. Each of National Bank Financial Inc. and RBC Dominion Securities Inc. (the "Independent Underwriters") is an independent underwriter as defined in 1998 draft Multi-Jurisdictional Instrument 33-105 *Underwriting Conflicts* (the "1998 Proposed Instrument") and for purposes of the proposed Multi-Jurisdictional Instrument 33-105 *Underwriting Conflicts* as republished on June 21, 2001.
8. The Toronto-Dominion Bank (the "TD Bank") is the owner of approximately 18.5% of the outstanding trust units of the Issuer on a partially-diluted basis without giving effect to the Offering.
9. Each of The Bank of Nova Scotia ("BNS"), Bank of Montreal ("BMO") and The Toronto-Dominion Bank ("TD Bank") is a lender to certain operating subsidiaries of the Issuer. All of the net proceeds of the Offering will be used to reduce the outstanding indebtedness (if any) of such subsidiaries to the Issuer's bankers including BNS, BMO and TD Bank.
10. By virtue of the relationships described above, the Issuer may, in connection with the Offering, be considered a connected issuer (or the equivalent) of each of the Filers and a related issuer of TDSI.
11. The nature and details of the relationships between the Issuer and the Filers will be described in the Prospectus. The Prospectus will contain the information specified in subsection 2.1 and in Appendix "C" of the 1998 Proposed Instrument.
12. The decision to issue the Offered Securities, including the determination of the terms of such distribution, has been made through negotiations between the Issuer and the Underwriters.
13. The Independent Underwriters as a group will underwrite 35% of the Offering and NBF will underwrite 20% of the Offering. The Prospectus will identify the Independent Underwriters and disclose the role of the Independent Underwriters in the structuring and pricing of the Offering and in the due diligence activities performed by the Underwriters.
14. The certificate in the Preliminary Prospectus has been, and the certificate in the Prospectus will be, signed by the Underwriters, including each of the Independent Underwriters.

**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 Filers in connection with the Offering provided that:

- (i) the Independent Underwriters participate in the Offering as stated in paragraph 13 above; and
- (ii) the Prospectus contains the disclosure stated in paragraphs 11 and 13 above.

November 14, 2001.

"Paul M. Moore"

"Robert W. Korthals"

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

**2.1.2 Great-West Lifeco Inc. - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – issuer is a connected, but not a related, issuer in respect of a registrant that is an underwriter in a proposed distribution of debentures by the issuer – underwriter exempt from the independent underwriter requirement in the legislation provided that an independent underwriter underwrites not less than the lesser of 20 percent of the dollar value of the distribution, and the largest portion of the distribution underwritten by a registrant that is not an independent underwriter – Decision to remain confidential for up to 120 days pending announcement of subject transaction

**Applicable Ontario Regulations**

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

**Applicable Ontario Rules**

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

Proposed Multilateral Instrument 33-105: Underwriting Conflicts (2001), 24 OSCB 3805 (June 22, 2001).

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

**AND**

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

**AND**

**IN THE MATTER OF  
BMO NESBITT BURNS INC. & TD SECURITIES INC.**

**AND**

**GREAT-WEST LIFECO INC.  
MRRS DECISION DOCUMENT**

**WHEREAS** the securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Alberta, Québec and Newfoundland (the "Jurisdictions") has received an application from BMO Nesbitt Burns Inc. and TD Securities Inc. (collectively the "Filers") for a decision, pursuant to the securities legislation of the Jurisdictions (the "Legislation"), that the requirement (the "Independent Underwriter Requirement") contained in the Legislation which restricts a registrant from acting as an underwriter in connection with a distribution of securities of an issuer made by means of prospectus, 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 Filers in respect of a proposed distribution (the "Offering") of senior unsecured debentures (the "Securities") of Great-West Lifeco Inc. (the "Issuer"), pursuant to a short form prospectus (the "Prospectus");

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

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

1. Each of the Filers is a registrant in each of the Jurisdictions and is not in default of any of its terms of registration.
2. The head office of each of the Filers is in Toronto, Ontario.
3. The Issuer is a corporation formed under the *Canada Business Corporations Act* on November 8, 1979. The Issuer maintains its registered office at 100 Osborne Street North, Winnipeg, Manitoba.
4. The Issuer is a financial services holding company with interests in the life and health insurance, investment and retirement savings, reinsurance and specialty general insurance businesses, primarily in Canada and the United States. For the year ended December 31, 2000, the Issuer had operating revenues of approximately \$15.3 billion and net income of approximately \$674.0 million. As at December 31, 2000, the Issuer and its subsidiaries had \$93 billion in assets under administration.
5. The Issuer's common shares, First Preferred Shares Series B, C and D, and Class A Preferred Shares, Series 1 are listed on The Toronto Stock Exchange.
6. As at May 1, 2001, the Issuer had a market capitalization of approximately \$12.1 billion.
7. The Issuer is a reporting issuer under the Legislation of each Jurisdiction and is not in default of any requirements of the Legislation.
8. BMO Nesbitt Burns Inc. is proposing to act as lead underwriter in connection with the Offering. CIBC World Markets Inc., RBC Dominion Securities Inc., Scotia Capital Inc., TD Securities Inc., National Bank Financial Inc., Merrill Lynch Canada Inc. and Casgrain & Company Limited will constitute the remaining members of the underwriting syndicate. No other underwriter will underwrite a greater percentage of the Offering than BMO Nesbitt Burns Inc.
9. It is expected that the Issuer may issue Securities having an aggregate principal amount of up to \$200 million under the Offering.

10. It is anticipated that the Securities will receive a rating of "AA(low)" from Dominion Bond Rating Service Limited and "AA-" from Standard & Poor's Issuer.
11. 3812774 Canada Inc. (the "Borrower"), a wholly-owned subsidiary of the Issuer, and the Issuer, as guarantor, are party to a credit facility (the "Credit Facility") equally with Bank of Montreal and The Toronto-Dominion Bank (collectively, the "Lenders") under which \$150 million is outstanding.
12. The Borrower is and has been in compliance with the terms of the Credit Facility and is not in financial difficulty, nor is the Issuer.
13. It is intended that the Issuer will effect a capital reorganization which will result in the outstanding indebtedness under the Credit Facility being repaid in full.
14. BMO Nesbitt Burns Inc. is a wholly-owned subsidiary of Bank of Montreal and TD Securities Inc. is a wholly-owned subsidiary of The Toronto-Dominion Bank.
15. By virtue of the Credit Facility, the Issuer may, in connection with the Offering, be considered a "connected issuer" (or the equivalent) of either or both of the Filers.
16. The Issuer is not a "related issuer" (or the equivalent) of either of the Filers or of any of the other members of the underwriting syndicate.
17. The nature of the relationship among the Issuer, the Lenders, and the Filers will be described in the Prospectus.
18. The Lenders did not and will not participate in the decision to make the Offering or in the determination of its terms.
19. Neither of the Filers will benefit in any manner from the Offering other than by the payment of their fees in connection with the Offering.
20. The nature and details of the relationship between the Issuer and the Filers will be described in the Prospectus. The Prospectus will contain the information specified in Appendix "C" of the draft Multilateral Instrument 33-105 *Underwriting Conflicts* (the "Proposed Instrument").
21. A member of the underwriting syndicate, other than the Filers, will underwrite not less than 20 percent of the dollar value of the Offering. Such underwriter will be an independent underwriter as such term is defined in the Proposed Instrument.
22. The Issuer is not under any immediate financial pressure to proceed with the Offering and has not been requested or required by the Lenders to repay the amounts owing under the Credit Facility.

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

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

**AND WHEREAS** the Filers have requested that the Decision of the Decision Makers (as defined below), the application dated July 13, 2001 filed in connection with the Decision, and materials related thereto (collectively, the "Confidential Materials") be held in confidence for up to 120 days from the date of the Decision by the Decision Makers subject to certain conditions;

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

1. the Independent Underwriter Requirement shall not apply to the Filers in connection with the Offering of the Securities provided that:
  - (a) an independent underwriter underwrites not less than the lesser of
    - (i) 20 percent of the dollar value of the distribution, and
    - (ii) the largest portion of the distribution underwritten by a registrant that is not an independent underwriter; and
  - (b) the Prospectus contains the information described by paragraph 20 hereof; and
2. the Confidential Materials will be held in confidence by the Decision Makers until the occurrence of the earliest of the following:
  - (a) the date on which the Prospectus is filed with the Decision Makers or a press release or other public announcement in respect of the Offering is made by the Filer or the Issuer;
  - (b) the date the Filers advise the Decision Makers that there is no longer any need to hold the Confidential Materials in confidence; and
  - (c) the date that is 120 calendar days from the date of the Decision

November 7, 2001.

"R.S. Paddon"

"H.I. Wetston"



**2.1.3 Citicorp and Associates Capital Corporation of Canada - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemption Relief Applications - Director grants exemption from GAAP Reconciliation Requirement and GAAS Reconciliation Requirement of NI 44-101 - Director grants exemption from certain Prospectus Disclosure Requirements of Form 44-101F3 - Director grants exemption from AIF Requirements of Ontario, Quebec and Saskatchewan - Commission grants exemptions from MD&A Requirements, Material Change Requirements, Proxy Requirements and Insider Reporting Requirements subject to conditions, including filing, under issuer's SEDAR profile, of documents filed by the credit support of the issuer with the Securities and Exchange Commission.

**Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 75, 80(b)(iii), 77, 78, 107, 108, 109 and 121(2)(a)(ii).

**National Instruments Cited**

National Instrument 44-101 Short Form Prospectus Distributions, s. 7.1, 7.4, and 7.5.

Form 44-101F3 to National Instrument 44-101, Items 7, 12.1(1)1 to 12.1(1)2, 12.1(1)5 to 12.1(1)8, 12.2(1) to 12.2(4), and 13.1(1)2.

National Instrument 44-102 Shelf Distributions.

National Instrument 71-101 Multijurisdictional Disclosure System, s. 3.1, 3.2 and 3.3.

**Ontario Rules Cited**

Rule 51-501 AIF and MD&A, s. 5.1.

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

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

**AND  
IN THE MATTER OF  
CITICORP AND  
ASSOCIATES CAPITAL CORPORATION OF CANADA**

**MRRS DECISION DOCUMENT**

Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan (the "Jurisdictions") has received an application from Citicorp and Citicorp's wholly-owned indirect subsidiary, Associates Capital Corporation of Canada ("ACCC" or the "Issuer", together with Citicorp the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation that:

- (a) ACCC comply with the requirement (the "Canadian GAAP Reconciliation Requirement") to reconcile the Citicorp financial statements included in a short form shelf prospectus and prepared in accordance with generally accepted accounting principles ("GAAP") of a foreign jurisdiction to Canadian GAAP;
- (b) ACCC comply with the requirement (the "Canadian GAAS Reconciliation Requirement" and together with the Canadian GAAP Reconciliation Requirement, the "Reconciliation Requirements") to provide, where financial statements included in a short form shelf prospectus are audited in accordance with generally accepted auditing standards ("GAAS") of a foreign jurisdiction, a statement by the auditor (A) disclosing any material differences in the form and content of the auditor's report as compared to a Canadian auditor's report; and (B) confirming that the auditing standards of the foreign jurisdiction are substantially equivalent to Canadian GAAS;
- (c) ACCC comply with the annual information form requirements in the provinces of Ontario, Québec and Saskatchewan (the "AIF Requirements");
- (d) ACCC file with the Decision Makers, and send to the applicable securityholders of ACCC, annual and interim MD&A (the "MD&A Requirements");
- (e) ACCC file with the Decision Makers, and send to the applicable securityholders of ACCC, audited annual financial statements, and annual reports where applicable, (the "Annual Financial Statement Requirement");
- (f) ACCC file with the Decision Makers, and send to the applicable securityholders of ACCC, unaudited interim financial statements (the "Interim Financial Statement Requirement");
- (g) ACCC issue and file with the Decision Makers press releases, and file with the Decision Makers material change reports (together, the "Material Change Requirements");
- (h) ACCC comply with the proxy and proxy solicitation requirements under the Legislation, including filing an information circular or report in lieu thereof and, if applicable, sending such documents to applicable securityholders of ACCC (the "Proxy Requirements");

- (i) Insiders of ACCC file insider reports with the Decision Makers (the "Insider Reporting Requirements"); and
- (j) ACCC comply with the requirements (the "Prospectus Disclosure Requirements") of items 12.1(1)1 to 12.1(1)2, items 12.1(1)5 to 12.1(1)8 and items 12.2(1) to 12.2(4) of Form 44-101F3;

shall not apply;

**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. ACCC's primary business is to provide commercial and consumer financial services in Canada. ACCC's commercial operations offer finance, leasing and related services primarily to dealers and purchasers of heavy-duty and medium-duty trucks and truck trailers, heavy-duty industrial equipment, vendor equipment and communications equipment. ACCC's consumer operations offer home equity loans, personal loans and retail sales finance products.
2. ACCC was incorporated under the *Canada Business Corporations Act* on October 19, 1982 and is an indirect wholly-owned subsidiary of Citicorp. ACCC's head office is located at 201 Queens Avenue, London, Ontario, N6A 1J1.
3. ACCC became a reporting issuer or the equivalent in each of the Jurisdictions at various dates between May 14, 1970 and January 31, 1997 and is not in default of any requirement under the Legislation of the Jurisdictions.
4. Citicorp was incorporated under the laws of the State of Delaware in 1967 and is a wholly-owned indirect subsidiary of Citigroup Inc. Citicorp is a reporting issuer or the equivalent in each of the Jurisdictions except Newfoundland and Manitoba and is not in default of any requirement under the Legislation in such Jurisdictions.
5. Citicorp is also a reporting company under the Securities Exchange Act of 1934, as amended (the "1934 Act"). Citicorp files with the United States Securities and Exchange Commission (the "SEC") annual reports on Form 10-K and quarterly reports on Form 10-Q in accordance with the filing obligations set out in Sections 13 and 15(d) of the 1934 Act.
6. Citicorp is a diversified financial services company that serves individuals, businesses, governments and financial institutions in over 100 countries and territories.
7. On November 30, 2000, Citigroup Inc. completed the acquisition of Associates First Capital Corporation ("AFCC") and its subsidiaries, including ACCC (the "Associates Acquisition"). Subsequent to the

Associates Acquisition, AFCC was contributed to and became a wholly-owned subsidiary of Citicorp and Citicorp issued a full and unconditional guarantee (the "Citicorp Guarantee") of the outstanding long-term debt securities and commercial paper of, among other subsidiaries, ACCC.

8. Under a short form shelf prospectus dated November 16, 1999, as thereafter supplemented (the "1999 MTN Program"), ACCC may issue an aggregate principal amount of up to Cdn.\$3,000,000,000 (or the equivalent thereof in other currencies) of non-convertible medium term notes (the "First Series Notes"). As of the date hereof, Citicorp and AFCC have unconditionally guaranteed the payment of principal and interest due under the First Series Notes.
9. As at September 30, 2001, ACCC had issued Cdn. \$1,279,250,000 aggregate principal amount of First Series Notes and had approximately Cdn. \$2,815,250,000 in total outstanding long term debt. ACCC's First Series Notes are rated "AA" by Dominion Bond Rating Service and "AA-" by Standard & Poor's.
10. Upon the expiry of the two year effective period of the 1999 MTN Program on November 16, 2001, the offering of the First Series Notes will be completed with no further issuances of First Series Notes thereunder.
11. As at June 30, 2001, Citicorp had approximately US\$86,583 million in consolidated third party long term debt outstanding.
12. Citicorp satisfies the criteria set forth in paragraph 3.1(a) of National Instrument 71-101 ("NI 71-101") and is eligible to use the multi-jurisdictional disclosure system ("MJDS") (as set out in NI 71-101) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.
13. Except for the fact that ACCC is not incorporated under United States law, the distribution of Second Series Notes (as defined below) would comply with the alternative eligibility criteria for non-convertible debt having an approved rating under the MJDS as set forth in sections 3.1 and 3.2 of NI 71-101.
14. In lieu of renewing the 1999 MTN Program, ACCC proposes to establish a new medium term note program pursuant to National Instrument 44-101 ("NI 44-101") and National Instrument 44-102 to provide for the issuance of up to an aggregate principal amount of Cdn.\$3,000,000,000 only through the issuance of notes (the "Second Series Notes") under a short form base shelf prospectus (the "2001 Prospectus") from time to time over a twenty-five month period. The Second Series Notes will be fully and unconditionally guaranteed by Citicorp as to payment of principal and interest. The Second Series Notes will have an approved rating (as defined in NI 44-101)(an "Approved Rating") and will be rated by a recognized security evaluation agency in one of the categories determined by the Commission des valeurs mobilières du Québec.

**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 securities regulatory authority or securities regulator in each of Ontario, Québec and Saskatchewan is that the AIF Requirements shall not apply to ACCC provided that (i) both ACCC and Citicorp comply with all of the requirements of each of the Decisions below and (ii) Citicorp complies with the AIF requirements of NI 44-101 as if it is the Issuer.

DATED November 14, 2001.

"Iva Vranic"

**AND THE FURTHER DECISION** of the Decision Makers under the Legislation is that the Reconciliation Requirements shall not apply to financial statements of Citicorp included or incorporated by reference in the 2001 Prospectus provided that:

- (a) the Citicorp financial statements that are included or incorporated by reference in the 2001 Prospectus are prepared in accordance with United States GAAP and otherwise comply with the requirements of United States law, and in the case of the Citicorp audited annual financial statements, such financial statements are audited in accordance with United States GAAS;
- (b) the Second Series Notes maintain an Approved Rating;
- (c) Citicorp maintains direct or indirect beneficial ownership of all of the voting shares of ACCC;
- (d) Citicorp continues to satisfy the eligibility criteria set forth in section 3.1 of NI 71-101 (or any applicable successor provision) for using MJDS (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure; and
- (e) Citicorp continues to fully and unconditionally guarantee payment of the principal and interest on the Second Series Notes.

November 14, 2001

"Iva Vranic"

**AND THE FURTHER DECISION** of the Decision Makers under the Legislation is that the Prospectus Disclosure Requirements shall not apply to the 2001 Prospectus provided that:

- (a) the Issuer complies with all of the other requirements of NI 44-101, except as varied in paragraph (b) below;
- (b) the 2001 Prospectus is prepared pursuant to NI 44-101 and NI 44-102 and complies with the requirements set out in Form 44-101F3, with the disclosure required by item 12 of Form 44-101F3 being addressed by incorporating by reference Citicorp's public disclosure documents, including Citicorp's 10-K, with the summary financial information disclosure required by item 13.1(1)2 in respect of the Issuer being made in the manner specified in paragraph (i) of the Further Decision below and the disclosure required by item 7 of Form 44-101F3 being addressed by disclosure with respect to Citicorp in accordance with United States requirements;
- (c) the only continuous disclosure filings to be made by ACCC with the Decision Makers and incorporated by reference in the 2001 Prospectus will be the summary financial information disclosure specified in paragraphs (i) and (j) of the Further Decision below;
- (d) the 2001 Prospectus includes all material disclosure concerning the Issuer;
- (e) the 2001 Prospectus incorporates by reference disclosure made in Citicorp's most recent Form 10-K (as filed under the 1934 Act) together with all Form 10-Qs and Form 8-Ks filed under the 1934 Act in respect of the financial year following the year that is the subject of Citicorp's most recently filed Form 10-K and incorporates by reference any documents of the foregoing type filed after the date of the 2001 Prospectus and prior to termination of the distribution of the Second Series Notes;
- (f) Citicorp continues to fully and unconditionally guarantee the Second Series Notes as to the payments required to be made by the Issuer to holders of the Second Series Notes;
- (g) the Second Series Notes maintain an Approved Rating;
- (h) Citicorp signs the 2001 Prospectus as credit supporter;
- (i) Citicorp remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of the Issuer;
- (j) Citicorp continues to satisfy the criteria set forth in section 3.1 of NI 71-101 (or any successor provision) and remains eligible to use MJDS (or any successor instrument) for the purpose of

distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure; and

- (k) Citicorp undertakes to file with the Decision Makers, in electronic format under the Issuer's SEDAR profile, all documents that it files under Sections 13 and 15(d) of the 1934 Act until such time as the Second Series Notes are no longer outstanding.

November, 2001.

"Iva Vranic"

**AND THE FURTHER DECISION** of the Decision Makers under the Legislation is that the Annual Financial Statement Requirement, the Interim Financial Statement Requirement, the MD&A Requirements, the Material Change Requirements, the Proxy Requirements and the Insider Reporting Requirements (collectively, the "Continuous Disclosure Requirements") shall not apply to the Issuer or any insider of the Issuer, so long as:

- (a) Citicorp files with each of the Decision Makers, in electronic format under the Issuer's SEDAR profile, copies of all documents filed by it with the SEC under Sections 13 and 15(d) of the 1934 Act, within one business day of filing with the SEC including, but not limited to, copies of any Form 10-K, Form 10-Q, Form 8-K (including press releases) and proxy statements, proxies and proxy solicitations in connection with Citicorp's annual meetings and in accordance with the 1934 Act, if any;
- (b) the documents referred to above are provided to debt security holders whose last address as shown on the books of the Issuer is in Canada in the manner, at the time and only if required by applicable United States law;
- (c) Citicorp remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of the Issuer;
- (d) Citicorp maintains a class of securities registered pursuant to section 12 of the 1934 Act;
- (e) if there is a material change in respect of the business, operations or capital of the Issuer that is not a material change in respect of Citicorp, the Issuer will comply with the requirements of the Legislation to issue a press release and file a material change report notwithstanding that the change may not be a material change in respect of Citicorp;
- (f) Citicorp continues to fully and unconditionally guarantee the Second Series Notes as to the payments required to be made by the Issuer to holders of the Second Series Notes;

- (g) the Issuer does not issue additional securities other than the Second Series Notes (or any other series of notes which hereinafter may be issued), debt securities ranking *pari passu* to the Second Series Notes, any debentures issued in connection with any security granted by the Issuer to the holders of Second Series Notes or debt ranking *pari passu* with the Second Series Notes, and those securities currently issued and outstanding, other than to Citicorp or to wholly-owned subsidiaries of Citicorp;

- (h) if notes of another series of debt securities ranking *pari passu* with the Second Series Notes are hereinafter issued by the Issuer, Citicorp shall fully and unconditionally guarantee such notes or debt securities as to the payments required to be made by the Issuer to holders of such notes or debt securities;

- (i) the Issuer files, in electronic format, annual comparative selected financial information derived from the Issuer's audited consolidated financial statements for its most recently completed financial year and the financial year immediately preceding such financial year, prepared in accordance with generally accepted accounting principles in Canada ("Canadian GAAP"), accompanied by a specified procedures report of the auditors to the Issuer. The Issuer's annual comparative selected financial information shall define and include the following line items:

- (i) total revenues;
- (ii) income/loss from continuing operations (if applicable), income/loss from discontinued operations (if applicable) and net income/loss;
- (iii) finance receivables, together with a descriptive note on the dollar amount of the allowance for credit losses;
- (iv) operating agreements and customer lists, net of accumulated amortization;
- (v) goodwill, net of accumulated amortization;
- (vi) total assets;
- (vii) commercial paper;
- (viii) term debt;
- (ix) all other liabilities; and
- (x) total shareholders' equity;

- (j) the Issuer files, in electronic format, interim comparative selected financial information derived from the Issuer's consolidated unaudited financial statements for its most recently

completed interim period and the corresponding interim period in the previous financial year, prepared in accordance with Canadian GAAP. The Issuer's interim comparative selected financial information shall define and include the following line items:

- (i) total revenues;
  - (ii) income/loss from continuing operations (if applicable), income/loss from discontinued operations (if applicable) and net income/loss;
  - (iii) finance receivables, together with a descriptive note on the dollar amount of the allowance for credit losses;
  - (iv) operating agreements and customer lists, net of accumulated amortization;
  - (v) goodwill, net of accumulated amortization;
  - (vi) total assets;
  - (vii) commercial paper;
  - (viii) term debt;
  - (ix) all other liabilities; and
  - (x) total shareholders' equity;
- (k) the Second Series Notes maintain an Approved Rating;
- (l) Citicorp continues to satisfy the eligibility criteria set forth in section 3.1 of NI 71-101 (or any successor provision) and remains eligible to use MJDS (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure;
- (m) each insider of ACCC (as defined under the Legislation) files with the SEC on a timely basis the reports, if any, required to be filed with the SEC pursuant to Section 16(a) of the 1934 Act and the rules and regulations thereunder;
- (n) such filings of selected financial information as are referred to in (i) and (j) above are to be made within the time limits required by the Legislation in respect of such financial information, provided that the first required filing to be made by the Issuer under clause (j) shall be in respect of the third quarter ended September 30, 2001 and the first required filing to be made by the Issuer under clause (i) shall be in respect of the financial year ending December 31, 2001, and provided further that the Issuer shall be entitled to incorporate in the 2001 Prospectus such selected financial information in respect of the

second quarter ended June 30, 2001 (if the Issuer is not required by the Legislation to incorporate in the 2001 Prospectus financial information for the period ended September 30, 2001) and the financial year ended December 31, 2000; and

- (o) all filing fees that would otherwise be payable by the Issuer in connection with the Continuous Disclosure Requirements are paid.

November 14, 2001.

"Paul M. Moore"

"Robert W. Korthals"

**2.1.4 RBC Dominion Securities Inc., et al. and BC Gas Inc. - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Issuer is a connected issuer, but not a related issuer, in respect of registrants that are underwriters in proposed distribution of subscription receipts by the issuer - Underwriters exempt from the independent underwriter requirement in the legislation provided that issuer not in financial difficulty.

**Applicable Ontario Regulations**

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

**Applicable Ontario Rules**

Proposed Multi-Jurisdictional Instrument 33-105 *Underwriting Conflicts* (published for comment February 6, 1998).

**IN THE MATTER OF  
THE CANADIAN SECURITIES LEGISLATION OF  
THE PROVINCES OF ALBERTA, ONTARIO,  
QUEBEC AND NEWFOUNDLAND**

**AND**

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

**AND**

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

**AND**

**IN THE MATTER OF  
BC GAS INC.**

**MRRS DECISION DOCUMENT**

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Ontario, Quebec and Newfoundland (the "Jurisdictions") has received an application from RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., TD Securities Inc. and National Bank Financial Inc. (the "Filers") for a decision pursuant to the securities legislation of the Jurisdictions or the respective regulations or rules made thereunder (the "Legislation") that the requirement (the "Independent Underwriter Requirement") contained in the Legislation which restricts a registrant from participating in a distribution of securities of an issuer made by means of prospectus, where the issuer is a connected issuer of a

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 members of an underwriting syndicate in connection with a proposed firmly underwritten offering (the "Offering") of subscription receipts by BC Gas Inc. (the "Issuer") to be made pursuant to a short form prospectus to be filed with all securities commissions in Canada;

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 Filers and the Issuer have represented to the Decision Makers that:

1. The head and principal office of the Issuer is in British Columbia.
2. The Issuer was incorporated on August 15, 1985 under the laws of British Columbia. The common shares of the Issuer are listed on The Toronto Stock Exchange.
3. The Issuer is a reporting issuer under the legislation of each of the Canadian provinces and territories.
4. The Issuer has filed a preliminary short form prospectus on October [29], 2001 and intends to file a final short form prospectus (the "Prospectus") as soon as possible thereafter with each of the securities regulatory authorities in the provinces of Canada to qualify the Offering.
5. Pursuant to the terms of an underwriting agreement between the Filers and BMO Nesbitt Burns Inc. and Raymond James Ltd. (together with the Filers, the "Syndicate"), the Underwriters have agreed to act as underwriters in connection with the Offering.
6. RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., TD Securities Inc. and National Bank Financial Inc. (collectively, the "Connected Underwriters") are subsidiaries of certain Canadian chartered banks (the "Banks") which are among the lenders to the Issuer.
7. The Issuer is, in relation to each of the Connected Underwriters, a "connected issuer", but not a "related issuer" within the meaning of proposed Multi-Jurisdictional Instrument 33-105 published in February 1998 (the "Proposed Instrument").
8. The Filers do not comply with the Independent Underwriter Requirement in connection with the Offering.
9. The decision to undertake the Offering was made by the Issuer. The terms of the distribution will be settled through negotiations between the Issuer and the Syndicate without involvement of the Banks.
10. The Prospectus will contain a certificate signed by each member of the Syndicate in accordance with the

requirements of the Legislation. Each member of the Syndicate has participated in the formal due diligence session relating to the Offering.

11. The Issuer is not a "specified party" as defined in the Proposed Instrument. The entire net proceeds of the Offering are intended to be used to fund part the Issuer's acquisition cost of all of the outstanding securities and inter-company debt of two private companies, Centra Gas British Columbia Inc. and Centra Gas Whistler Inc..
12. The Connected Underwriters will not benefit in any manner from the Offering other than the payment of their fees in connection with the Offering.
13. The nature and details of the relationship between the Issuer, the Banks and the Connected Underwriters will be described in the Prospectus as required by Appendix C to the Proposed Instrument.

**AND WHEREAS** pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker;

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

**THE DECISION** of the Decision Makers, under the Legislation, is that the Independent Underwriter Requirement shall not apply to the Filers in connection with the Offering, provided that the Issuer is not a related issuer, as defined in the Proposed Instrument, to the Connected Underwriters at the time of the Offering and is not a specified party, as defined in the Proposed Instrument, at the time of the Offering.

November 7, 2001.

"Paul Moore"

"R. Stephen Paddon"

## 2.1.5 Scotia Capital Inc. et al. and Primewest Energy Trust - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer is a connected issuer, but not a related issuer, in respect of registrants that are underwriters in proposed distribution of securities by the issuer - Underwriters exempt from the independent underwriter requirement in the legislation provided that issuer not in financial difficulty.

### Applicable Ontario Regulations

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

### Applicable Ontario Rules

Proposed Multi-Jurisdictional Instrument 33-105 *Underwriting Conflicts*.

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

**AND**

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

**AND**

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

**AND**

**PRIMEWEST ENERGY TRUST**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Ontario, Québec and Newfoundland (the "Jurisdictions") have received an application from Scotia Capital Inc., CIBC World Markets Inc., BMO Nesbitt Burns Inc., RBC Dominion Securities Inc., and TD Securities Inc. (the "Filers") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement (the "Independent Underwriter Requirement") contained in the Legislation which restricts a registrant from acting as an underwriter in connection with a distribution of securities of an issuer made by means of prospectus, 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 Filers in respect of a proposed distribution

of trust units (the "Trust Units") of PrimeWest Energy Trust (the "Issuer") to be made by way of a short form prospectus (the "Offering");

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

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

1. The head office of each of the Filers is in the province of Ontario.
2. The Issuer is an open-end investment trust established under the laws of Alberta pursuant to a declaration of trust dated August 2, 1996.
3. The Issuer's principle assets are royalties in certain petroleum and natural gas properties owned by PrimeWest Energy Inc. ("PrimeWest"), PrimeWest Royalty Corp. ("PrimeWest Royalty"), PrimeWest Oil and Gas Corp. ("PrimeWest Oil and Gas") and PrimeWest Resources Ltd. ("PrimeWest Resources")(collectively, PrimeWest, PrimeWest Royalty, PrimeWest Oil and Gas and PrimeWest Resources will be referred to hereinafter as the "PrimeWest Corporations") and debt instruments issued to the Issuer by such entities. The royalties and debt instruments entitle the Issuer to receive substantially all of the net cash flow generated by those properties, after certain costs and deductions.
4. The Issuer is authorized to issue an unlimited number of transferable, redeemable Trust Units. Each Trust Unit represents an equal fractional undivided beneficial interest in the net assets of the Issuer, and entitles its holder to one vote at meetings of unitholders of the Issuer and to participate equally with respect to any and all distributions made by the Issuer, including distributions of net income and net realized capital gains, if any.
5. The Issuer is a reporting issuer in each of the provinces of Canada and is not in default of any requirements of the securities legislation of any of the provinces. The Issuer is eligible to file a short form prospectus under National Instrument 44-101 in each of the provinces of Canada.
6. The Trust Units are listed and posted for trading on The Toronto Stock Exchange.
7. The Issuer and the PrimeWest Corporations have certain revolving and non-revolving credit facilities to a maximum of \$350,000,000 (the "Credit Facilities") under which the lender is a syndicate of banks that includes Canadian Imperial Bank of Commerce ("CIBC"), The Toronto Dominion Bank ("TD"), Bank of Nova Scotia ("BNS"), Bank of Montreal ("BMO") and Royal Bank of Canada ("RBC")(collectively, CIBC, TD, BNS, BMO and RBC will be referred to hereinafter as the "Banking Group" or the "Banks").

8. Each of Scotia Capital Inc., CIBC World Markets Inc., BMO Nesbitt Burns Inc., RBC Dominion Securities Inc. and TD Securities Inc. are direct or indirect wholly-owned subsidiaries of members of the Banking Group.
9. The revolving portion of the Credit Facilities is subject to an annual review. At the time of the annual review, the revolving portion may be extended, at the Banking Group's option, for a further 364 days. If the Banks convert the revolving portion to a non-revolving facility, the amounts outstanding under the facility become repayable in quarterly instalments over a period of up to three years following the maturity date of the revolving facility. The cost of funds borrowed under the Credit Facilities is calculated by reference to CIBC's Prime Rate or United States Base Rate or a specified adjusted interbank deposit rate, stamping fee or discount rate, depending on the form of borrowing. Security for amounts outstanding is provided by a floating charge oil and gas debenture over all of the present and after-acquired assets of the Issuer and the PrimeWest Corporations.
10. As at September 30, 2001, there was \$300,000,000 outstanding under the Credit Facilities.
11. The Issuer has entered into an underwriting agreement (the "Underwriting Agreement") in respect of the preliminary short form prospectus between the Issuer, PrimeWest, PrimeWest Management Inc. (the "Manager") and Scotia Capital Inc., CIBC World Markets Inc., BMO Nesbitt Burns Inc., Merrill Lynch Canada Inc., RBC Dominion Securities Inc., TD Securities Inc., Canaccord Capital Corporation, Dundee Securities Corporation and Yorkton Securities Inc. (collectively, the "Underwriters") pursuant to which the Issuer agrees to issue and sell and the Underwriters agree to purchase, as principals, Trust Units of the Issuer.
12. The Underwriting Agreement provides, among other things, for the payment of a 5% commission to the Underwriters. Each of the Underwriters, including the Filers, will receive their respective share of the Underwriters' fee.
13. The proportion of the Offering to be purchased by the Underwriters (the "Syndicate Composition") pursuant to the Underwriting Agreement is as follows:

Scotia Capital Inc.	-	27.50%
CIBC World Markets Inc.	-	27.50%
BMO Nesbitt Burns Inc.	-	10.00%
Merrill Lynch Canada Inc.	-	10.00%
RBC Dominion Securities Inc.	-	10.00%
TD Securities Inc.	-	10.00%
Canaccord Capital Corporation	-	3.00%
Dundee Securities Corporation	-	1.00%
Yorkton Securities Inc.	-	1.00%
		100.00%
14. The Underwriters will not benefit in any manner from the Offering other than the payment of the commissions described in paragraph 12 above. However, it is currently intended that the net proceeds of the Offering



- will initially be used to repay outstanding indebtedness of the Issuer and the PrimeWest Corporations under the Credit Facilities.
- 15. The Issuer filed a preliminary short form prospectus on November 1, 2001 and undertakes in the Underwriting Agreement to file a short form prospectus with the securities regulatory authorities in each of the provinces of Canada and to obtain a receipt therefor in order to qualify the Trust Units for distribution in those provinces. Alberta has been designated as the principal jurisdiction for filing of the prospectuses.
- 16. The decision to undertake the Offering, including the determination of the terms of the distribution, was made through negotiation between the Manager on behalf of the Issuer and Scotia Capital Inc. on its own behalf and on behalf of the other Underwriters, without involvement of the Banks.
- 17. The independent Underwriters have participated in the pricing of the Offering and will participate in the due diligence activities performed by the Underwriters for the Offering, and will sign the prospectus certificate required by securities legislation in each of the provinces of Canada.
- 18. As a result of the foregoing, the underwriting syndicate for the Offering will not meet the requirements for certain minimum proportions of the distribution to be underwritten by independent registrants, as set forth in the Legislation.
- 19. The Issuer is not, in connection with the Offering, a "related issuer" of any of the Underwriters for the purposes of Part XIII of the Regulation or for purposes of the Proposed Multi-Jurisdictional Instrument 33-105 as published February 6, 1998 (the "1998 Proposed Instrument").
- 20. The Issuer may be considered a "connected issuer" of the Filers, as such term is described in the Legislation, as a result of the Filers' relationship with the Banks.
- 21. The prospectus relating to the Offering will contain such disclosure concerning the nature of the relationship among the Issuer, the Filers and the Banks as would be required under Appendix "C" of the 1998 Proposed Instrument.
- 22. The Issuer is not in financial difficulty. The Issuer's cash flow from operations for the six months ended June 30, 2001 was \$105.4 million.
- 23. The Issuer is not a "specified party" as that term is defined in the 1998 Proposed Instrument.

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Independent Underwriter Requirement shall not apply to the Filers in respect of the Offering provided that:

- (a) at the time of the Offering, the Issuer is not a "specified party" as that term is defined in the 1998 Proposed Instrument, and the Issuer is not a "related issuer" of any of the Filers as that term is defined in the 1998 Proposed Instrument; and
- (b) the prospectus relating to the Offering contains disclosure of the relationship between the Issuer, the Filers and the Banks as would be required under Appendix "C" of the 1998 Proposed Instrument.

November 8, 2001.

"Paul M. Moore"

"R.W. Korthals"

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

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

**2.1.6 Causeway Energy Corporation - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - corporation deemed to have ceased to be a reporting issuer when all of its issued and outstanding securities were acquired by another issuer.

**Applicable Alberta Statutory Provisions**

Securities Act, S.A., 1981, c.S-6.1, as amended, s. 125

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

**AND**

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

**AND**

**IN THE MATTER OF  
CAUSEWAY ENERGY CORPORATION**

**MRRS DECISION DOCUMENT**

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in Alberta, Ontario, and Québec (the "Jurisdictions") has received an application from Causeway Energy Corporation ("Causeway") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that Causeway be deemed to have ceased to be a reporting issuer under the Legislation;
  2. **AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Alberta Securities Commission is the principal regulator for this application;
  3. **AND WHEREAS** Causeway has represented to the Decision Makers that:
    - a. Causeway was formed effective December 31, 1998 by the amalgamation (the "Amalgamation") under the *Business Corporations Act* (Alberta) (the "ABCA") of Causeway Energy Corporation and Catalina Energy Corporation;
    - b. Causeway's head office is located in Calgary, Alberta;
    - c. Causeway is a reporting issuer in the Jurisdictions and became a reporting issuer in Alberta on December 31, 1998 as a result of the Amalgamation;
  - d. Causeway is not in default of any of the requirements of the Legislation;
  - e. the authorized share capital of Causeway consists of an unlimited number of common shares (the "Causeway Shares") and an unlimited number of preferred shares of which there were 25,201,103 Causeway Shares outstanding on August 29, 2001;
  - f. on August 29, 2001 an arrangement agreement dated June 14, 2001 (the "Arrangement") involving Causeway, PanCanadian Petroleum Limited ("PCPL"), and Bushmills Energy Corporation ("Bushmills") became effective;
  - g. Under the terms of the Arrangement:
    - i. PCPL acquired all the outstanding Causeway Shares;
    - ii. certain Canadian assets of Causeway were sold to Bushmills;
    - iii. \$2.58 cash plus one-fifth of one common share in the capital of Bushmills for each Causeway Share held prior to the Arrangement were distributed to holders of Causeway Shares; and
    - iv. all unexercised options were cancelled;
  - h. on August 27, 2001 the Arrangement was approved by special resolution of the holders of securities of Causeway and by order of the Court of Queen's Bench of Alberta under section 186 of the ABCA;
  - i. at the close of trading on August 30, 2001 the Causeway Shares were delisted from The Toronto Stock Exchange and no securities of Causeway are listed or quoted on any exchange or market;
  - j. PCPL holds all of the outstanding Causeway Shares;
  - k. other than the outstanding Causeway Shares, there are no securities of Causeway, including debt securities, outstanding;
  - l. Causeway 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 Causeway is deemed to have ceased to be a reporting issuer under the Legislation.

October 30, 2001.

"Patricia M. Johnston"

## 2.1.7 Harrowston Inc. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Applications - as a result of an offer and the subsequent compulsory acquisition procedures, issuer has only one security holder - issuer deemed to have ceased being a reporting issuer.

### Applicable Ontario Statutory Provisions

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
HARROWSTON INC.**

### MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from Harrowston Inc. (the "Filer") for:

- (i) a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Filer be deemed to have ceased to be a reporting issuer or its equivalent under the Legislation; and
- (ii) in Ontario only, an order pursuant to the *Business Corporations Act* (Ontario) (the "OBCA") that the Filer be deemed to have ceased to be offering its securities to the public;

**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 Filer is a corporation existing under the OBCA with its head office located in Toronto, Ontario.
2. The Filer is a reporting issuer in the Jurisdictions, and other than the failure to file interim financial statements on or before August 29, 2001 for the period ended June 30, 2001, is not in default of any of the requirements of the Legislation.

3. The authorised capital of the Filer consists of an unlimited number of Class A common shares (the "Class A Shares") and an unlimited number of Class B non-voting shares, of which 26,050,453 Class A Shares are issued and outstanding.
4. As a result of an offer to acquire all of the Filer's issued and outstanding Class A Shares by 1479523 Ontario Inc. ("1479523") and the subsequent completion of the compulsory acquisition procedures of the OBCA, all the issued and outstanding Class A Shares are owned by 1479523.
5. The Class A Shares were delisted from the Toronto Stock Exchange on July 30, 2001 and no securities of the Filer are listed or quoted on any exchange or market.
6. The Filer has no securities, including debt securities, outstanding other than the Class A Shares.
7. The Filer does not intend to seek public financing by way of an offering of its securities.

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

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

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

October 25, 2001.

"Margo Paul"

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

October 19, 2001.

"Derek Brown"

"R. Stephen Paddon, Q.C."

## 2.1.8 CMP 2001 II Resource Limited Partnership

### Headnote

MRRS - Mutual Reliance Review System for Exemptive Relief Applications – Issuer is related issuer of registrant by virtue of common ownership of registrant and general partner of Issuer – Issuer is special purpose entity for investing in flow-through shares of resource issuers – distribution of units of Issuer on best efforts agency basis – proposed distribution does not comply with independent underwriter requirements in the Act but does comply with the requirements in proposed National Instrument 33-105 -Underwriting Conflicts

### Applicable Ontario Regulations

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

### Rules Cited

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

Proposed National Instrument 33-105 -Underwriting Conflicts (2001) 24 OSCB 6407

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

**AND**

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

**AND**

**IN THE MATTER OF  
DUNDEE SECURITIES CORPORATION**

**AND**

**CMP 2001 II RESOURCE LIMITED PARTNERSHIP**

**MRRS DECISION DOCUMENT**

**WHEREAS** the securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Quebec and Newfoundland (the "Jurisdictions") has received an application from Dundee Securities Corporation (the "Filer") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement (the "Independent Underwriter Requirement") contained in the Legislation which restricts a registrant from acting as an underwriter in connection with a distribution of securities by an issuer made by means of a prospectus, where the issuer is a related issuer (or the equivalent) or 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 independent underwriters shall not apply to the Filer in respect of a proposed distribution (the

"Offering") of units (the "Units" or "Offered Securities") of CMP 2001 II Resource Limited Partnership (the "Issuer"), pursuant to a prospectus;

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

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

1. The Issuer is a limited partnership created by the filing of a declaration in accordance with the *Limited Partnerships Act* (Ontario).
2. The Issuer is a special purpose entity created for the sole purpose of investing in flow-through shares of resource companies with a view to achieving capital appreciation for the limited partners of the Issuer. The Issuer will enter into share purchase agreements with such resource companies under which such companies will agree to incur Canadian Exploration Expense ("CEE") in carrying out exploration in Canada, renounce such CEE to the Issuer and issue flow-through shares to the Issuer.
3. The Issuer has filed a preliminary prospectus (the "Preliminary Prospectus") in each of the provinces and territories of Canada in connection with the Offering.
4. Under the terms of the Offering, the Issuer is seeking to distribute a minimum of 5,000 Units (for aggregate proceeds of \$5,000,000) and a maximum of 25,000 Units (for aggregate proceeds of \$25,000,000).
5. The Filer is registered as a securities dealer (or equivalent) under the Legislation in each of the Jurisdictions. The Filer is not in default of any requirements of the Legislation or any rules or regulations made thereunder.
6. The Filer is a member of the Investment Dealers Association of Canada and The Toronto Stock Exchange.
7. Pursuant to an agreement (the "Agency Agreement") to be made between the Filer and certain registered securities dealers (collectively, the "Agents" and individually, an "Agent") and the Issuer, the Issuer will appoint the Agents, as its agents, to offer the Units on a best efforts basis.
8. Pursuant to the Agency Agreement, the Agents will be entitled to receive an aggregate fee (the "Commission") of \$70.00 for each Unit sold, with \$50.00 per Unit being ultimately paid to dealers (Agents and selling group members) based on the numbers of Units sold through them.
9. The agents' fee portion of the Commission (the "Agents' Fee") will be divided among the Agents as follows:

<u>Agents</u>	<u>Percentage of Agents' Fee</u>
Dundee Securities Corporation	24%
Scotia Capital Inc.	24%
BMO Nesbitt Burns Inc.	14%
National Bank Financial Inc.	14%
TD Securities Inc.	14%
Raymond James Ltd.	5%
Wellington West Capital Inc.	5%

10. The general partner of the Issuer, Dynamic CMP Funds IV Management Inc. (the "General Partner"), is an affiliate of the Filer by virtue of the fact that both the General Partner and the Filer are wholly-owned subsidiaries of Dundee Wealth Management Inc. By reason of this relationship, the Issuer may be considered a related issuer (or the equivalent) of the Filer and may be considered a connected issuer (or the equivalent) of the Filer.
11. With the exception of the Filer, each of the remaining Agents (the "Independent Underwriters") will be independent underwriters as defined in draft National Instrument 33-105 *Underwriting Conflicts* (the "Proposed Instrument") with respect to the Offering.
12. The Issuer is not a "related issuer" or "connected issuer" (as those terms are defined in the Proposed Instrument) of any of the Independent Underwriters.
13. The Agents will receive no benefit under the Offering other than the payment of their fees in connection with the Offering.
14. The nature and details of the relationship between the Issuer and the Filer are described in the Preliminary Prospectus and will be described in the (final) prospectus. The (final) prospectus will contain the information specified in Appendix "C" of the Proposed Instrument.
15. The decision to issue the Units, including the determination of the terms of such distribution, has been made through negotiations between the Issuer and the Agents.
16. Pursuant to the Agency Agreement, an Independent Underwriter will receive a portion of the total Agents' Fee equal to an amount not less than 20 percent of the total Agents' Fee for the distribution.
17. The Independent Underwriters have participated and will continue to participate in the due diligence relating to the Offering and have participated in the structuring and pricing of the offering of the Units.
18. The certificate in the Preliminary Prospectus has been and the certificate in the (final) prospectus will be signed by the Agents, including each of the Independent Underwriters.

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

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

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

- (i) the Independent Underwriters participate in the offering as stated in paragraphs 16 & 17 above; and
- (ii) the relationship between the Issuer and the Filer is disclosed in the Preliminary Prospectus and the (final) prospectus.

November 15, 2001.

"R. Stephen Paddon"

"Howard I. Wetston"

## **2.1.9 ML Alternative Strategies Absolute Returns Ltd. - MRRS Decision**

### **Headnote**

MRRS for Exemptive Relief Applications - trades by mutual fund of additional shares to existing shareholders holding shares of such fund having an aggregate acquisition cost or net asset value of not less than \$150,000 exempted from prospectus requirement - trades in units of mutual fund exempt from requirement to file a report of such trades within ten days of the trade provided that reports filed and fees paid yearly.

### **Applicable Ontario Statutes**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 72(3), 72(4)

### **Applicable Ontario Rules**

Proposed Rule 45-501 Exempt Distributions (2001) 24 OSCB 5544

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO, MANITOBA, NEW BRUNSWICK,  
PRINCE EDWARD ISLAND, QUÉBEC,  
NEWFOUNDLAND AND YUKON TERRITORY**

**AND**

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

**AND**

**IN THE MATTER OF  
MERRILL LYNCH INVESTMENT MANAGERS, L.P.**

**AND**

**IN THE MATTER OF  
ML ALTERNATIVE STRATEGIES  
ABSOLUTE RETURNS LTD.**

### **MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Manitoba, Québec, New Brunswick, Prince Edward Island, Newfoundland and Yukon Territory (the "Jurisdictions") has received an application (the "Application") from Merrill Lynch Investment Managers, L.P. (the "Applicant") for a decision pursuant to the securities legislation and securities directions of the Jurisdictions (the "Legislation") that the distribution of non-voting, redeemable, participating US\$ Class A shares (the "Class A Shares"), non-voting, redeemable, participating US\$ Class B shares (the "Class B Shares") and non-voting, redeemable, participating US\$ Class I shares (the "Class I Shares", and collectively with the Class A Shares and the Class B Shares, the "Shares") of ML Alternative Strategies Absolute Returns Ltd. (the "Fund") by the Applicant not be subject to the prospectus requirement, subject to certain

conditions, and that the requirement contained in the Legislation to file a report of an exempt trade within 10 days of such trade shall not apply to the Fund in connection with certain trades of Shares, subject to certain conditions;

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

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

1. The Fund is a limited liability company incorporated under the laws of the Cayman Islands on March 21, 2001. The Fund is not a reporting issuer (or the equivalent) in any jurisdiction in Canada.
2. The Fund is a mutual fund regulated by the Cayman Islands Monetary Authority under *The Mutual Fund Law* (1999 revision) (Cayman Islands).
3. The Applicant is a limited partnership formed under the laws of Delaware.
4. The Applicant is registered in Ontario as an international investment counsel and portfolio manager.
5. Merrill Lynch Canada Inc. (the "Agent") is a corporation organized under the laws of Canada.
6. The Agent is a fully registered dealer in all jurisdictions of Canada.
7. Each of the Applicant and the Agent is a wholly-owned indirect subsidiary of Merrill Lynch & Co., Inc.
8. The Fund has an authorized share capital of US\$10,000,000 divided into 100 Management Shares of a par value of US\$0.01 each and 999,999,900 non-voting, redeemable, participating shares of a par value of US\$0.01 each, of which the board of directors has to date authorized the issuance of several classes, including Class A Shares, Class B Shares and Class I Shares.
9. Class A Shares are offered at US\$1 per share during the initial offering period and at net asset value ("NAV") thereafter, plus an upfront sales charge of up to 5.5%. Class B Shares are offered at US\$1 per share during the initial offering period and at NAV thereafter and are subject to a contingent deferred sales charge of up to 4% if redeemed within 4 years of purchase. Class I Shares are offered in monthly series at US\$1 per share with an upfront sales charge between 0 and 1%. Holders of Class A Shares and Class B Shares are charged a management fee of 1.5% of NAV per annum and holders of Class I Shares are charged a management fee of 1% of NAV per annum. The minimum initial acquisition cost for the Class A Shares and the Class B Shares is the greater of Cdn.\$150,000 and U.S.\$100,000. The minimum initial acquisition cost for the Class I Shares is U.S.\$5,000,000.
10. The Class A Shares, the Class B Shares and the Class I Shares differ only as to (i) the quantum and timing of sales charges levied in connection with their purchase and disposition, (ii) annual management fees and (iii) minimum initial acquisition amount, as described in the preceding paragraph. In all other respects, the Class A Shares, Class B Shares and Class I Shares are substantially the same.
11. The Shares do not have any voting rights, except as required by Cayman Islands law or disclosed in the offering memorandum provided to prospective purchasers.
12. Subject to the ability of the board of directors to limit or suspend redemption rights under certain circumstances, a holder of Shares will have the right to redeem its Shares at a price equal to the NAV calculated on the last calendar day of each March, June, September and December on 50 calendar days' written notice from the shareholder to the transfer agent. Shares may also be redeemed on the last calendar day of any other month on 50 calendar days' written notice, in which case the proceeds of such redemption will be reduced by a monthly redemption fee of 4% of such proceeds (calculated before deduction of any applicable fees therefrom).
13. The Shares may not be assigned or otherwise transferred (except by operation of law) in whole or in part, without the consent of the board of directors of the Fund, which consent will only be withheld where the holding of such Shares may result in regulatory, pecuniary, legal, taxation or material administrative disadvantage for the Fund or its shareholders as a whole, or where such transfer would result in a shareholder falling below the minimum specified holding. Under such conditions, the board of directors may also in their discretion, upon giving five days' prior written notice to any shareholder, compulsorily redeem all or any part of the Shares of such shareholder at NAV.
14. The Shares are being primarily offered outside of Canada. The Shares will be sold to purchasers by the Agent, a registered dealer in all jurisdictions of Canada, as part of the global offering of the Shares.
15. The minimum initial investment in any class of the Shares by an investor in Canada is not less than Cdn.\$150,000 (the "Initial Investment"), and the Initial Investment will be made in reliance upon applicable prospectus exemptions contained in the Legislation.
16. Following the Initial Investment, it is proposed that existing Shareholders in the Fund be permitted to subscribe for further Shares by subscribing and paying for additional Shares (the "Additional Shares") in amounts greater than U.S.\$10,000.
17. No Shareholder will be permitted to acquire Additional Shares at an acquisition cost of less than Cdn.\$150,000 unless, at the time of such subsequent acquisition, the shareholder holds Shares which have either an

aggregate acquisition cost or an aggregate net asset value of at least the Cdn.\$150,000.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the prospectus requirements of the Legislation do not apply to the purchase of Additional Shares provided that:

- (a) this decision will cease to be effective in a Jurisdiction 90 days after the coming into force in such Jurisdiction of legislation or a rule governing trades in securities of pooled funds (other than proposed Ontario Securities Commission Rule 45-501 Exempt Distributions, as published at (2001) 24 OSCB 5544);
- (b) at the time of acquisition of Additional Shares, the Shareholder then owns Shares having either an aggregate acquisition cost or net asset value of not less than Cdn. \$150,000;
- (c) in accordance with the Legislation, the Applicant files with the applicable Decision Maker a report in respect of all trades in Additional Shares made by the Fund as if the trades in Additional Shares were trades in Shares and pays to the applicable Decision Maker the fees relating to such filing prescribed by the Legislation; and
- (d) the first trade in Additional Shares is deemed to be a distribution 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 Fund is a reporting issuer or the equivalent under the Applicable Legislation;
  - (ii) if the seller of the Additional Shares is in a special relationship (where such expression is 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 Additional Shares and no extraordinary commission or consideration is paid in respect of such trade; and

- (iv) the Additional Shares have been held for a period of at least eighteen months from the later of the date they were acquired by the seller of the Additional Shares or the date the Fund became a reporting issuer or the equivalent in the Applicable Jurisdiction;

**AND THE FURTHER DECISION** of the Decision Makers (other than the Decision Maker in Manitoba) pursuant to the Legislation is that the requirement contained in the Legislation and in this Decision Document to file a report of an Initial Investment or subscription for Additional Shares (the "Exempt Trades") within 10 days of such trade shall not apply in connection with the Exempt Trades, provided that within 30 days after each financial year end of the Fund:

- (a) the Applicant files with the applicable Decision Maker a report in respect of all trades in Shares and Additional Shares by the Applicant during that financial year, in the form prescribed by the Applicable Legislation;
- (b) the Applicant remits the fee prescribed by the Legislation to the Decision Makers of the applicable Jurisdictions; and
- (c) this further decision will cease to be effective in a Jurisdiction 90 days after the coming into force in such Jurisdiction of legislation or a rule governing trades in securities of pooled funds.

November 13, 2001.

"Paul M. Moore"

"Robert W. Korthals"



**2.1.10 XSTM Holdings (2000) Inc. - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Issuer has only one security holder - issuer deemed to have ceased being a reporting issuer.

**Applicable Ontario Statutory Provisions**

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
XSTM HOLDINGS (2000) INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Provinces of Ontario, Alberta, Nova Scotia, Québec and Saskatchewan (the "**Jurisdictions**") has received an application from XSTM Holdings (2000) Inc. (the "**Filer**") for a decision under the securities legislation of each of the Jurisdictions (the "**Legislation**") that the Filer be deemed to have ceased to be a reporting issuer under the Legislation;

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

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

1. The Filer is a corporation existing under the laws of the Province of Nova Scotia, is a reporting issuer in each of the Jurisdictions, and is not in default of any requirements of the Legislation.
2. The Filer's head office is located in Toronto, Ontario.
3. In December 1998, Hollinger Canadian Publishing Holdings Co. (formerly Hollinger Canadian Publishing Holdings Inc.) ("**HCPH**") made an offer (the "**Offer**") to purchase all the outstanding common shares of the Filer. In January 1999, HCPH took up and paid for common shares of the Filer validly tendered to the Offer, which represented 97% of the outstanding common shares of the Filer at the time of the Offer.

4. In January 1999, HCPH acquired under the compulsory acquisition provisions of the CBCA the remaining outstanding shares of the Filer not deposited under the Offer, on the same terms that the shares were acquired under the Offer.
5. Immediately after the Offer and the compulsory acquisition, the Filer had two types of outstanding securities: common shares held by HCPH and certain affiliates and \$75 million principal amount of medium-term notes held by institutional investors.
6. The common shares of the Filer were delisted from trading on The Toronto Stock Exchange and the Montreal Exchange on January 22, 1999.
7. In October 2000, the Filer reorganized its share capital and reclassified its common shares as retractable common shares ("**Shares**").
8. In November 2000, the Filer paid out in full the medium term notes.
9. The authorized capital of the Filer currently consists of an unlimited number of Shares of which 50 shares are issued and outstanding and held by HCPH and an affiliate.
10. No securities, including debt securities, of the Filer are listed or quoted on any exchange or market.
11. Other than the Shares, the Filer has no other securities, including debt securities, outstanding.
12. The Filer does not intend to seek public financing by way of an offering of its securities.

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

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

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

November 12, 2001.

"John Hughes"

## 2.1.11 First Commercial Bank - MRRS Decision

### Headnote

Mutual Reliance Review System - underwriter and advisor registration relief for Schedule III Bank - prospectus and registration relief for trades where Schedule III Bank purchasing as principal and first trade relief for Schedule III Bank, subject to certain conditions - prospectus and registration relief for trades of bonds, debentures and other evidences of indebtedness of or guaranteed by Schedule III Bank provided trades with specified purchasers - prospectus and registration relief for evidences of deposits by Schedule III Bank to specified purchasers.

### Applicable British Columbia Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., 25(1)(a), 34(a), 35(1)(3), 35(2)(1)(c), 53(1), 72(1)(a)(i), 74, 147.

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

AND

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

AND

IN THE MATTER OF  
FIRST COMMERCIAL BANK

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, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, and in each of the territories of the Northwest Territories, Nunavut Territory and Yukon Territory (the "Jurisdictions") has received an application (the "Application") from First Commercial Bank ("First Commercial") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that First Commercial is exempt from various registration, prospectus and filing requirements of the Legislation in connection with the banking activities to be carried on by First Commercial in the Jurisdictions;

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

AND WHEREAS First Commercial has represented to the Decision Makers that:

1. First Commercial is a full-service commercial chartered bank under the laws of Taiwan with its head office in Taipei, Taiwan.
2. First Commercial is not, and has no current intention of becoming, a reporting issuer in any province or territory of Canada, nor are its securities listed on any stock exchange in Canada.
3. In June of 1999 amendments to the Bank Act were proclaimed that permit commercial banks to establish direct branches in Canada. These amendments have created a new Schedule III listing for foreign banks permitted to carry on banking through branches in Canada.
4. First Commercial received an order dated October 10, 2001 under the Bank Act permitting it to establish a full service foreign bank branch in Canada and designating it on Schedule III thereto.
5. First Commercial will establish and commence business as a foreign bank branch under the Bank Act. The head office of First Commercial in Canada will be located in Vancouver, British Columbia.
6. The operation of First Commercial's foreign bank branch will be primarily comprised of foreign exchange and trade finance activities, but will also include corporate banking and mortgage lending services.
7. In connection with its foreign bank branch operations in Canada, First Commercial will only accept deposits from the following:
  - (a) Her Majesty in right of Canada or in right of a province or territory, an agent of Her Majesty in either of those rights and includes a municipal or public body empowered to perform a function of government in Canada, or an entity controlled by Her Majesty in either of those rights;
  - (b) the government of a foreign country or any political subdivision thereof, an agency of the government of a foreign country or any political subdivision thereof, or an entity that is controlled by the government of a foreign country or any political subdivision thereof;
  - (c) an international agency of which Canada is a member, including an international agency that is a member of the World Bank Group, the Inter-American Development Bank, the Asian Development Bank, the Caribbean Development Bank and the European Bank for Reconstruction and Development and any other international regional bank;
  - (d) a financial institution (i.e.: (a) a bank or an authorized foreign bank under the Bank Act; (b) a body corporate to which The Trust and Loan Companies Act (Canada) applies; (c) an association to which the *Cooperative Credit Association Act* (Canada) applies; (d) an insurance company or a fraternal benefit society

to which the *Insurance Companies Act* (Canada) applies; (e) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province or territory in Canada; (f) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province or territory in Canada; (g) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province or territory in Canada and that is primarily engaged in dealing in securities, including portfolio management and investment counselling, and is registered to act in such capacity under the applicable legislation; and (h) a foreign institution that is (i) engaged in the banking, trust, loan or insurance business, the business of a cooperative credit society or the business of dealing in securities or is otherwise engaged primarily in the business of providing financial services, and (ii) is incorporated or formed otherwise than by or under an Act of Parliament or of the legislature of a province or territory in Canada);

- (e) a pension fund sponsored by an employer for the benefit of its employees or employees of an affiliate that is registered and that has total plan assets under administration of greater than \$100 million;
- (f) a mutual fund corporation that is regulated under an Act of the legislature of a province or territory in Canada or under the laws of any other jurisdiction and that has total assets under administration of greater than \$10 million;
- (g) an entity (other than an individual), that for the fiscal year immediately preceding the initial deposit, had gross revenues on its own books and records of greater than \$5 million; or
- (h) any other person if the trade is in a security which has an aggregate acquisition cost to the purchaser of greater than \$150,000;

collectively referred to for purposes of this application as "Authorized Purchasers";

1. First Commercial will be performing certain foreign exchange and trade finance advisory services in connection with its principal banking business. The only advising activities which First Commercial will undertake will be incidental to its primary business and it will not advertise itself as an adviser or allow itself to be advertised as an adviser in the Jurisdictions.
2. Under the current legislation, banks chartered under Schedules I and II to the Bank Act have numerous exemptions from various aspects of the Legislation; however, no reference is made in any of the Legislation to entities listed on Schedule III to the Bank Act. Since First Commercial's foreign bank branch will not be chartered under Schedule I or II to the Bank Act, the existing exemptions relating to the registration,

prospectus and filing requirements will not be available to First Commercial.

3. In order to ensure that First Commercial, as an entity listed on Schedule III to the Bank Act, is able to provide banking services to businesses in the Jurisdictions, it requires the same exemptions as other federally regulated banks to the extent that the current exemptions applicable to Schedule I and II banks are relevant to the business being undertaken by First Commercial in the Jurisdictions.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that in connection with the banking business to be carried on by First Commercial in the Jurisdictions upon the establishment by First Commercial of a branch designated on Schedule III to the Bank Act:

1. First Commercial is exempt from the requirement under the Legislation, where applicable, to be registered as an underwriter with respect to trading in the same types of securities that an entity listed on Schedule I or II to the Bank Act may act as an underwriter in respect of, without being required to be registered under the Legislation as an underwriter.
2. First Commercial is exempt from the requirement under the Legislation to be registered as an adviser where the performance of the service as an adviser is solely incidental to its primary banking business.
3. A trade of a security to First Commercial and where First Commercial purchases the security as principal shall be exempt from the registration and prospectus requirements of the Legislation of the Participating Jurisdiction in which the trade takes place (the "Applicable Legislation") provided that:
  - (a) the forms that would have been filed and the fees that would have been paid under the Applicable Legislation if the trade had been made, on an exempt basis, to an entity listed on Schedule I or II to the Bank Act purchasing as principal (referred to in this Decision as a "Schedule I or II Bank Exempt Trade") are filed and paid in respect of the trade to First Commercial; and
  - (b) the first trade in a security acquired by First Commercial pursuant to this Decision is deemed a distribution (or primary distribution to the public) under the Applicable Legislation unless;
    - (i) the issuer of the security is a reporting issuer, or the equivalent, under the Applicable Legislation and, if First

Commercial is in a special relationship (where such term is defined in the Applicable Legislation) with such issuer, First Commercial has reasonable grounds to believe that such issuer is not in default of any requirements of the Applicable Legislation;

(ii) (a) the securities are listed and posted for trading on a stock exchange, that is recognized by the Decision Maker of the applicable Jurisdiction for purposes of the resale of a security acquired in a Schedule I or II Bank Exempt Trade, and comply with the requirements set out in paragraph (a) or (b) of Appendix A to this Decision Document and have been held at least six months from the date of the initial exempt trade to First Commercial or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is the later; or

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

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

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

(iii) First Commercial files a report within 10 days of the trade prepared and executed in accordance with the requirements of the Applicable Legislation that would apply to a Schedule I or II Bank Exempt Trade, and provided that no unusual effort is made to prepare the market or to create a demand for such securities and no extraordinary commission or consideration is paid in respect of such trade and provided First Commercial does not hold a sufficient number of securities to materially affect the control of the issuer of such securities, but any holding by First Commercial of more than 20 per cent of the outstanding voting securities of the issuer of such securities shall, in the absence of evidence to the contrary, be deemed to affect materially the control of such issuer;

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

November 16, 2001.

"Brenda Leong"

APPENDIX A

Securities that are:

- (a) preferred shares of a corporation if,
  - (i) the corporation has paid a dividend in each of the five years immediately preceding the date of the initial exempt trade at least equal to the specified annual rate upon all of its preferred shares, or
  - (ii) the common shares of the corporation are, at the date of the initial exempt trade, in compliance with paragraph (b) of this Appendix A;
- (b) fully paid common shares of a corporation that during a period of five years that ended less than one year before the date of the initial exempt trade has either,
  - (i) paid a dividend in each such year upon its common shares, or
  - (ii) had earnings in each such year available for the payment of a dividend upon its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the corporation had earnings available for the payment of dividends as the case may be;
- (c) bonds, debentures or other evidences of indebtedness issued or guaranteed by,
  - (i) a corporation if, at the date of the initial exempt trade, the preferred shares or the common shares of the corporation which comply with paragraph (a) or (b) of this Appendix A, or
  - (ii) a corporation if its earnings in a period of five years ended less than one year before the date of the initial trade have been equal in sum total to at least ten times and in each of any four of the five years have been equal to at least 1-1/2 times the annual interest requirements at the date of the initial exempt trade on all indebtedness of or guaranteed by it, other than indebtedness classified as a current liability in its balance sheet, and, if the corporation at the date of the initial exempt trades owns directly or indirectly more than 50% of the common shares of another corporation, the earnings of the corporations during the said period of five years may be consolidated with due allowance for minority interests, if any, and in that event the interest requirements of the corporation shall be consolidated and such consolidated earnings and consolidated interest requirements shall be taken as the earnings and interest requirements of the corporation, and, for the purpose of this subclause, "earnings" mean earnings available to meet charges on indebtedness other than indebtedness classified as a current liability.

2.1.12 TD TSE 300 Index Fund and TD TSE 300 Capped Index Fund

Headnote

Mutual Reliance Review System for Exemptive Relief Application - all unitholders of exchange traded index fund exempted from formal take-over bid requirements in connection with normal course purchases of units on the TSE, provided that such unitholders provide trustee/manager of fund with an undertaking not to exercise any votes attached to units which represent more than 20% of the votes attached to all outstanding units of the fund.

Applicable Ontario Statute

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

Applicable Ontario Regulation

Regulation under the Securities Act, R.R.O. 1990, Regulation 1015, as amended, s.203.1(1).

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF BRITISH  
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,  
ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA,  
NEWFOUNDLAND, YUKON AND NUNAVUT

AND

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

AND

IN THE MATTER OF  
TD SECURITIES INC. ("TDSI")

AND

IN THE MATTER OF  
TD TSE 300 INDEX FUND AND  
TD TSE 300 CAPPED INDEX FUND  
(COLLECTIVELY, THE "TD FUNDS")

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland, Yukon and Nunavut (the "Jurisdictions") has received an application from TDSI for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") exempting all unitholders of the TD Funds from the requirements of the Legislation related to take-over bids, including the requirement to file a report of a take-over bid and the accompanying fee with each applicable Jurisdiction, (the "Take-over Bid Requirements") in respect of take-over bids for the Funds (as defined in paragraph 10 below);

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

**AND WHEREAS** TDSI has represented to the Decision Makers as follows:

1. Each TD Fund is a trust that has been created under the laws of Ontario, the units of each TD Fund are listed on The Toronto Stock Exchange (the "TSE"), the head office of each TD Fund is located in Toronto, Ontario and each TD Fund is a reporting issuer or its equivalent in every province and territory of Canada.
2. The investment objective of each TD Fund is to track the performance of a relevant S&P/TSE Index (each, an "Index"). Each TD Fund holds shares of the companies (collectively, the "Constituent Companies") that make up the relevant Index in substantially the same weight as they are reflected in the Index.
3. TD Asset Management Inc. ("TDAM"), an affiliate of TDSI, is the trustee of the TD Funds and as such is responsible for the day-to-day administration of each TD Fund.
4. The market price of the shares of Constituent Companies underlying each TD Fund unit equals, as closely as possible, a specified percentage of the level of the relevant Index. The net asset value of each TD Fund is calculated and published daily.
5. Units of a TD Fund may be purchased directly from the TD Fund by registered dealers who have entered into an underwriting agreement with the TD Fund. The consideration payable by underwriters for each Unit consists of a basket of shares of the TD Fund's Constituent Companies (a "Basket of Shares") and a cash component.
6. Each TD Fund has appointed TDSI as the designated broker (the "Designated Broker") to perform certain functions which include standing in the market with a bid and ask price for the TD Fund's units for the purpose of maintaining market liquidity for the units and facilitating adjustments to Baskets of Shares both as a result of adjustments that have been made to the Index and as a result of non-cash distributions received by the TD Fund.
7. Except as described in paragraphs 5 and 6 above, units of a TD Fund may not be purchased directly from the TD Fund. As a result, investors must generally acquire units through the facilities of the TSE.
8. Individuals who wish to dispose of units must generally do so by selling them through the TSE. Unitholders of the TD Funds ("Unitholders") may, however, redeem prescribed numbers of units, or integral multiples thereof, for Baskets of Shares plus cash. Each Unitholder also has the right to have its units redeemed for cash only at a discount to the then market price of the units on the TSE. The cash redemption price of the units of each TD Fund is equal to 95% of the closing trading price of such units on the effective day of the redemption.
9. Unitholders holding at least a prescribed number of the units of a TD Fund are also entitled to vote the proportion of the shares of a Constituent Company that are held by the TD Fund that is equal to the Unitholder's proportionate holding of outstanding units. Unitholders holding less than the prescribed number of units have no right to vote the shares of Constituent Companies.
10. TDAM may, from time to time, establish additional exchange traded index funds (the "Future TD Funds") for the purpose of tracking indices other than those tracked by the TD Funds and it is anticipated that Future TD Funds will be structured and operated in a manner that is substantially similar to the way in which the TD Funds are structured and operated. For purposes of this MRRS Decision Document, TD Funds and Future TD Funds are referred to each as a "Fund" or collectively as "Funds", and Unitholders and unitholders of Future TD Funds are referred to collectively as "Fund Unitholders".
11. As the units of each Fund are, or will be, both voting and equity securities for purposes of the Take-over Bid Requirements, anyone acquiring beneficial ownership of, or the power to exercise control or direction over, 10% or more of the outstanding units of a Fund would be required to comply with the early warning press release and reporting requirements, as well as the further acquisition restrictions, imposed by the Legislation (the "Early Warning Requirements") but for section 3.3 of National Instrument 62-103 which provides that the Early Warning Requirements do not apply in respect of the ownership or control of securities issued by a mutual fund that is governed by National Instrument 81-102.
12. There is no exemption from the Take-over Bid Requirements for conventional mutual funds that is comparable to the exemption from Early Warning Requirements in section 3.3 of National Instrument 62-103 because the securities of conventional mutual funds are not typically subject to the Take-over Bid Requirements because acquisitions of conventional mutual funds are made from treasury.
13. Although units of the Funds trade, or will trade, on the TSE and the acquisition of such units can therefore become subject to the Take-over Bid Requirements,
  - (a) it is not, and will not be, possible for one or more Fund Unitholders to exercise control or direction over a Fund as the constating document of each Fund generally ensures, or will ensure, that there can be no changes made to the Fund which do not have the support of the trustee of the Fund;
  - (b) it is difficult for purchasers of units of the Funds to monitor compliance with Take-over Bid Requirements because the number of outstanding units is always in flux as a result of

the ongoing issuance and redemption of units by the Funds; and

- (c) the way in which Fund units are, or will be, priced deters anyone from either seeking to acquire control, or offering to pay a control premium, for outstanding units because unit pricing is dependent upon, and generally represents a prescribed percentage of, the level of the relevant Index.

14. The application of the Take-over Bid Requirements to the Funds can have an adverse impact upon Fund unit liquidity because they can cause both the Designated Broker and hedgers to cease trading Fund units once prescribed take-over bid thresholds are reached and this, in turn, can serve to provide conventional mutual funds with a competitive advantage over the Funds.

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

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

THE DECISION of the Decision Makers pursuant to the Legislation is that the purchase of the units of a Fund by a person or company (a "Unit Purchaser") in the normal course through the facilities of the TSE is exempt from the Take-over Bid Requirements for so long as the Fund remains an exchange traded index fund provided that, prior to making any take-over bid for the units of the Fund that is not otherwise exempt from the Take-over Bid Requirements, the Unit Purchaser, and any person or company acting jointly or in concert with the Unit Purchaser (a "Concert Party"), provide TDAM, as trustee and manager of the Funds, with an undertaking not to exercise any votes attached to units of the Fund held by the Unit Purchaser and any Concert Party which represent more than 20% of the votes attached to all outstanding units of the Fund.

November 16, 2001.

"Paul M. Moore"

"R. Stephen Paddon"

## 2.1.13 Goldman Sachs & Co. and its Affiliates - 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 exempted from registration and prospectus requirement - trades in units of pooled funds no 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.

Ontario - Waiver of certain fees in respect of issuances of money market funds, provided fee paid annually on net sales during that year.

### Statutes Cited

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

### Regulations Cited

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

### Rules Cited

Ontario Securities Commission Rule 45-501 - Exempt Distributions  
Ontario Securities Commission Rule 81-501 - Mutual Fund Reinvestment Plans

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

AND

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

AND

IN THE MATTER OF  
GOLDMAN, SACHS & CO. AND ITS AFFILIATES

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, New Brunswick, Nova Scotia and Prince Edward Island, (the "Jurisdictions"), has received an application from Goldman Sachs & Co. ("GS&Co.") on behalf of itself and its affiliates (collectively, "Goldman Sachs") for a decision pursuant to the securities legislation and securities directions (collectively, the "Legislation") of the Jurisdictions that:

- A. certain trades in securities ("Securities") of certain investment funds (individually, a "Fund" and collectively, the "Funds") which have been or will be established by Goldman Sachs are not subject to the registration requirements or the prospectus requirements of the Legislation of Ontario, New Brunswick and Prince Edward Island (the "Prospectus and Registration Jurisdictions") subject to certain conditions;
- B. distributions of Securities of the Funds are not subject to the requirements of the Legislation of the Jurisdictions relating to the filing of forms and the payment of fees within 10 days of each distribution or in some cases within 10 days after the end of the calendar year in which the distribution takes place, subject to certain conditions; and
- C. distributions of Securities of Money Market Funds (as defined in paragraph 10 below) are exempt from the fees that would otherwise be payable in the province of Ontario pursuant to the Legislation of Ontario;

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

**AND WHEREAS** it has been represented by GS&Co. to the Decision Makers that:

1. GS&Co. is a limited partnership governed by the laws of New York and is registered under the Securities Act (Ontario) (the "Act") as a dealer in the category of international dealer and as an adviser in the category of international adviser.
2. Existing Funds have been established by Goldman Sachs under the laws of the United States, the Cayman Islands, Ireland and Luxembourg.
3. Future Funds may be established by Goldman Sachs under the laws of Canada or a jurisdiction within Canada, or under the laws of a jurisdiction outside Canada.
4. The Securities of the Funds will be distributed in the Jurisdictions only by registrants appropriately registered therein or pursuant to an exemption from the requirement to be registered therein, and may be distributed by GS&Co. or by Goldman Sachs Canada Inc. ("GSCI"), a corporation governed by the laws of Ontario that is registered under the Act as a dealer in the category of investment dealer.

5. The Securities of the Funds will be distributed in the Jurisdictions on a continuous basis on the terms described in an offering memorandum which will be provided to each investor in connection with the initial distribution of Securities of a particular Fund to that investor and which will contain a description of any applicable rights of action provided to that investor under statute, regulation or contract.
6. The minimum initial investment (the "Initial Minimum Investment") in any of the Funds by an investor in any Jurisdiction will be not less than the minimum aggregate purchase amount prescribed by the applicable Legislation (the "Prescribed Amount") and will be made in reliance upon the prospectus exemption in the Jurisdiction (the "Private Placement Exemption").
7. Following the Initial Minimum Investment in a Fund, it is proposed that the securityholders of the Fund who were sold Securities of such Fund in reliance on the Private Placement Exemption be permitted to:
  - A. automatically reinvest distributions attributable to outstanding Securities held by the securityholder in the Fund to acquire additional securities of the Fund ("Reinvested Securities"), unless otherwise requested by the securityholder; or
  - B. subscribe and pay for additional securities of the Fund ("Additional Securities").
8. It is proposed that investments in Additional Securities in a Fund be permitted in amounts less than the Prescribed Amount; provided that at the time of such subsequent investment the securityholder holds Securities of the Fund with an aggregate acquisition cost or aggregate net asset value of at least the applicable Prescribed Amount.
9. Securities in each of the Funds will not be transferable, but will be redeemable upon the request of the securityholders at the net asset value per security on a valuation day to be provided for in the trust indenture or other governing document of a particular Fund.
10. The Funds may include investment funds that are money market funds (the "Money Market Funds") within the meaning of National Instrument 81-102.

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

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

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

- A. the registration requirements and the prospectus requirements contained in the Legislation of the Prospectus and Registration Jurisdictions shall not apply to:



- (i) the issuance of Additional Securities of a Fund to a securityholder of that Fund provided that:
- (1) the initial investment in Securities of that Fund was pursuant to the applicable Private Placement Exemption;
  - (2) at the time of the issuance of such Additional Securities of the Fund, the holder owns Securities of the 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 acquisition of such Additional Securities, the manager of the Fund is registered under the Legislation of Ontario as an adviser in the category of international adviser and such registration is in good standing, or is a person or company exempt from the adviser registration requirements of the Legislation of Ontario;
  - (4) this clause (i) will cease to be in effect with respect to a Prospectus and Registration Jurisdiction upon the coming into force of any legislation, regulation or rule in such Jurisdiction relating to the distribution of Additional Securities of the Funds; and;
- (ii) the issuance of Reinvested Securities of a Fund to a securityholder of that Fund provided that:
- (1) no sales commission or other charge in respect of such issuance of Reinvested Securities is payable by the securityholder; and
  - (2) the securityholder has received, not more than 12 months before such issuance, a statement 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 Security, (B) the right that the securityholder has to make an election to receive cash instead of Securities 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) can be exercised, and (D) the fact that no prospectus is available for the Fund as Securities are offered pursuant to prospectus exemptions only;
- B. the requirements contained in the Legislation of the Jurisdictions to file a report of a distribution of Securities of the Funds within 10 days of such distribution or in some cases within 10 days after the end of the calendar year in which the distribution takes place shall not apply to distributions of Securities of the Funds, including distributions of Additional Securities, 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 distributions of Securities of the Fund in the applicable Jurisdictions during the financial year in the form prescribed by the applicable Legislation; and
  - (ii) subject to paragraph C below, remits the applicable fees in respect of distributions of Securities of the Fund in the applicable Jurisdiction during the financial year for which fees are otherwise required under the applicable Legislation; and
- C. the fees that are otherwise applicable to a distribution of Securities of a Money Market Fund pursuant to the Legislation of Ontario shall not be applicable provided that:
- (i) Securities of the Money Market Fund are only issued in reliance on exemptions or exemptive relief from the prospectus requirement in section 53 of the Act;
  - (ii) the Money Market Fund pays a fee within 30 days after the financial year end of the Fund;
  - (iii) the fee payable by the Money Market Fund is equal to 0.02% (less 20%) of the net sales in Ontario from the distribution of Securities of the Money Market Fund in such financial year, where net sales is the amount calculated by the following formula:  

$$X - Y$$

where

"X" is the aggregate gross proceeds realized in Ontario from distributions of Securities of the Money Market Fund during the financial year in reliance on exemptions or exemptive relief from the prospectus requirement in section 53 of the Act, and

"Y" is the aggregate of the redemption and repurchase prices paid to redeem or repurchase Securities of the Money

Market Fund held by persons in Ontario during the financial year; and

- (iv) this paragraph C will cease to be in effect upon the coming into force of a new fee schedule that amends the formula by which fees for distributions of Securities of Money Market Funds are calculated.

November 21, 2001.

"Robert W. Korthals"

"H. Lorne Morphy"

2.2 Orders

2.2.1 Certain Reporting Issuers - s.144

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

AND

IN THE MATTER OF  
CERTAIN REPORTING ISSUERS

ORDER  
(Section 144)

WHEREAS by an order, entitled "In the Matter of Parts XVII and XX of the *Securities Act* and in the Matter of Certain Reporting Issuers" (1980) O.S.C.B. 54, as amended (the "Policy 7.1 Order"), and published as Appendix A to Policy 7.1 of the Commission, as amended, the Commission granted certain exemptions from certain of the obligations set out in Part XXI of the Act;

AND WHEREAS clause 12(ii) of the Policy 7.1 Order exempts those persons who are insiders of a reporting issuer referred to in clause 12(ii) of the Policy 7.1 Order from certain insider reporting requirements, subject to certain conditions;

AND WHEREAS such an exemption is inconsistent with section 2.2 of National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* ("NI 55-102") which requires insiders of "SEDI issuers" (as that term is defined in NI 55-102) to file insider reports in "SEDI format" (as that term is defined in NI 55-102);

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

IT IS ORDERED pursuant to subsection 144(1) of the Act that upon the coming into effect of section 2.2 of NI 55-102, the Policy 7.1 Order be varied by deleting clause 12(ii) in its entirety and replacing it with the following:

- "(ii) those persons who are insiders of a reporting issuer referred to in clause (i) but are not by that clause exempted from the requirements therein referred to, are exempted from such requirements while and for so long as they file with the Commission two copies of each insider trading report required to be filed by them with the SEC, such filing with the Commission to be effected within 24 hours after the report is filed, or is required to be filed, with the SEC, provided that the exemption afforded to insiders in this clause does not apply to insiders that are required to file insider reports in electronic format under National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*."

October 19, 2001.

"Derek Brown"

"R. Stephen Paddon"

2.2.2 Michael Omer Bourgon - s. 127

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

AND

IN THE MATTER  
OF MICHAEL OMER BOURGON

ORDER  
(Section 127)

WHEREAS on January 15, 2001, the Ontario Securities Commission (the "Commission") issued a notice of hearing pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, Chap. S.5, as amended (the "Act"), in respect of Michael Omer Bourgon ("Bourgon");

AND WHEREAS on March 8, 2001, counsel for Staff of the Commission and Bourgon, acting on his own behalf, appeared before the Commission and requested on consent that this proceeding be adjourned to Wednesday, April 4, 2001, for the purpose of permitting the parties to consider a settlement of these proceedings or, failing which, to set a date for the hearing of these proceedings;

AND WHEREAS on April 4, 2001, counsel for Staff of the Commission appeared before the Commission, neither Bourgon nor anyone on his behalf appearing, and the Commission ordered that this proceeding be adjourned sine die returnable on five business days notice;

AND WHEREAS on November 12, 2001, this matter was duly returned before the Commission on five business days notice by Staff of the Commission for the purpose of setting a date for the hearing in this matter or a date on which to consider a proposed settlement of this matter;

AND UPON hearing the submissions of Staff of the Commission, no one appearing for Bourgon;

AND UPON being advised by Staff of the Commission that Bourgon consents to a hearing on Monday, November 26, 2001, among other dates, to consider a proposed settlement of this matter;

AND WHEREAS by Commission order made March 9, 2001, pursuant to section 3.5(3) of the Act, any one of David A. Brown, Howard I. Wetston and Paul M. Moore, acting alone, is authorized to set dates for hearings;

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

IT IS HEREBY ORDERED THAT a hearing to consider a proposed settlement of this matter shall be held on Monday, November 26, 2001, commencing at 10 am, in a hearing room to be determined at the offices of the Commission.

November 12, 2001.

"Paul M. Moore"

## 2.2.3 Expatriate Resources Ltd. - s. 83.1(1)

### Headnote

Subsection 83.1(1) - issuer deemed to be a reporting issuer in Ontario - issuer has been a reporting issuer in British Columbia since 1994 and in Alberta since 1999 - issuer listed and posted for trading on the Canadian Venture Exchange - continuous disclosure requirements of British Columbia and Alberta substantially identical to those of Ontario.

### Statutes Cited

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

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

**AND**

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

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

UPON the application (the "Application") of Expatriate Resources Ltd. (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 was incorporated under the Company Act (British Columbia) on May 21, 1993.
2. The head office of the Issuer is located at Suite 701 - 475 Howe Street, Vancouver, British Columbia V6C 2B3. The address of the Issuer's registered and records offices is Suite 1710 - 1177 West Hastings Street, Vancouver, British Columbia V6E 2L3.
3. The Issuer is authorized to issue 100,000,000 common shares without par value and 100,000,000 Class "A" preferred shares with a par value of \$1.00 each.
4. As at October 12, 2001, 25,729,239 common shares of the Issuer and no Class "A" preferred shares of the Issuer were issued and outstanding. In addition, special warrants entitling the holders to acquire, for no additional consideration, an additional 3,536,222 common shares and 12,000 common share purchase warrants of the Issuer were outstanding. In addition, incentive stock options and additional common share purchase warrants entitling the holders to purchase up to 4,380,416 additional 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 May 13, 1994 and a reporting issuer under the Securities Act (Alberta) (the "Alberta Act") since October 7, 1999. The Company is not in default of any requirements of the B.C. Act or the Alberta Act.
6. The common shares of the Issuer are listed on the Canadian Venture Exchange (the "CDNX") and the Issuer is in compliance with all of the requirements of the CDNX.
7. The Issuer has a significant connection to Ontario in that: (i) Boliden Limited, which is headquartered in Toronto, Ontario, holds, directly and through various subsidiaries, a total of 8,300,500 common shares of the Issuer, representing 32.26% of the 25,729,239 common shares of the Issuer issued and outstanding as of October 12, 2001; and (ii) Robert Gerard Yeoman, the Chief Financial Officer and a director of the Issuer, and Kjell Emil Larsson, a director of the Issuer, are resident in Ontario.
8. The Issuer is not a reporting issuer in Ontario, and is not a reporting issuer, or equivalent, in any jurisdiction other than British Columbia and Alberta.
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. There have been no penalties or sanctions imposed against the Issuer by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority, and the Issuer has not entered into any settlement agreement with any Canadian securities regulatory authority.
12. Neither the Issuer nor any of its directors, officers nor, to the knowledge of the Issuer, its directors and officers, any of its 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.
13. Neither the Issuer nor any of its directors, officers nor, to the knowledge of the Issuer, its directors and officers, any of its controlling shareholders, is or has been subject to: (i) any known ongoing or concluded investigations by: (a) a Canadian securities regulatory authority, or (b) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or (ii) any bankruptcy or insolvency proceedings, or other

proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

14. None of the directors or officers of the Issuer, nor to the knowledge of the Issuer, its directors and officers, any of its controlling shareholders, is or has been at the time of such event a director or officer of any other issuer which is or has been subject to: (i) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or (ii) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years, save and except that Aurogin Resources Ltd., of which Glenn R. Yeadon, the Secretary of the Issuer, has been a director since January 1986, was the subject of a cease trade order issued by the Ontario Securities Commission on December 3, 1990 as a result of its failure to maintain continuous financial disclosure requirements, which cease trade order was rescinded by the Ontario Securities Commission on July 16, 1996.

**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 be deemed to be a reporting issuer for the purposes of the Act.

November 20, 2001.

"Margo Paul"

## 2.3 Rulings

### 2.3.1 Systech Retail Systems Inc. - s. 74(1)

#### Headnote

Subsection 74(1) - issuance of 35,926 warrants as consideration for the extension of terms of a payout agreement not subject to section 25 and 53 of the Act provided that certain disclosure information is conveyed to the warrant holders - first trade in warrants shall be a distribution, unless such a trade is made in accordance with subsection 72(5) and O.S.C. Rule 45-501.

#### Statutes Cited

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

#### Rules Cited

OSC Rule 45-501 *Exempt Distributions*

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

**AND**

**IN THE MATTER OF  
SYSTECH RETAIL SYSTEMS INC.**

**RULING**

**(Subsection 74(1))**

**UPON** the application (the "Application") of Systech Retail Systems Inc. (the "Corporation") to the Ontario Securities Commission (the "Commission") for a ruling pursuant to subsection 74(1) of the *Securities Act*, R.S.O. 1990, c.S.5 (the "Act") that certain trades in securities of the Corporation shall not be subject to Sections 25 or 53 of the Act.

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

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

1. The Corporation was formed under the laws of British Columbia on February 3, 1983.
2. The Corporation is a reporting issuer under the Act and is not on the list of defaulting reporting issuers maintained pursuant to subsection 72(9) of the Act.
3. The Corporation provides independent information technology solutions to large retailers in the United States and Canada. The Corporation designs, develops and integrates in-house and third-party hardware and software products to build point-of-sale checkout systems and related information systems at the store and corporate level.

4. The authorized capital of the Corporation consists of 100,000,00 common shares ("Common Shares") and 10,000,000 preference shares issuable in series. At present, the Corporation has outstanding 35,870,901 common shares and 271,297 Series A Convertible Preferred Shares. The Corporation has designated and created 500,000 Series A Convertible Preferred Shares and 500,000 Series B Convertible Preferred Shares.
5. The Corporation also has outstanding rights, warrants or options to acquire, or instruments convertible into or exchangeable for, up to 37,474,968 common shares of the Corporation, including an aggregate of 2,100,000 shares issuable pursuant to stock options issued to directors, officers and employees of the Corporation or its affiliates.
6. The Common Shares of the Corporation are listed for trading on The Toronto Stock Exchange ("TSE").
7. As of September 12, 2001, and to the knowledge of the Corporation, the only person or company which beneficially owned, directly or indirectly, or exercised control or direction over, common shares carrying more than 10% of the voting rights attaching to all outstanding common shares was Systech Group Inc. ("Systech Group"), which beneficially owned 21,940,597 Common Shares, representing 61% of the outstanding common shares of the Corporation.
8. The Corporation's audited financial statements as at January 31, 2001 showed current assets of \$32,805,439, \$79,498,924 of current liabilities and a shareholders' equity (deficiency) of \$11,800,025. The Corporation reported a net loss of \$36,331,188 for the year ended January 31, 2001.
9. The Corporation has agreed, subject to regulatory and TSE approval, to issue an aggregate of 671,500 Warrants to purchase Common Shares ("Warrants") to the MGV Selling Shareholders (as hereinafter defined) as follows:
  - a) 471,500 Warrants, each whole Warrant entitling the holder thereof to purchase one common share of the Corporation at \$1.00 per share, exercisable for a period of five years, to be issued to the MGV Selling Shareholders;
  - b) 100,000 Warrants, each whole Warrant entitling the holder thereof to purchase one common share of the Corporation at \$1.00 per share, exercisable for a period of five years, to be issued to the MGV Selling Shareholders, if and only if a payment owing to the MGV Selling Shareholders on December 31, 2001 is not paid (as described below); and
  - c) 100,000 Warrants, each whole Warrant entitling the holder thereof to purchase one common share of the Corporation at \$1.00 per share, exercisable for a period of five years, to be issued to the MGV Selling Shareholders, if and only if a payment owing to the MGV Selling

Shareholders on March 31, 2002 is not paid (as described below).

10. The proposed issue of Warrants is being undertaken in consideration of the agreement by fourteen persons (the "MGV Selling Shareholders"), each of whom was a shareholder of MGV Computer Holdings Inc. ("MGV"), an Ontario corporation, prior to the purchase by the Corporation of all of the outstanding shares of MGV on November 3, 1998, to extend the terms of repayment of monies owing to them (as discussed below). MGV is now a wholly-owned subsidiary of Systech.
11. Each of the MGV Selling Shareholders was an employee of MGV at the time of the transaction. All of the MGV Selling Shareholders resident in Ontario remain employees of Systech or an affiliate thereof, except Beck Hoffland and Paul Halloran (the "Ontario Former Employee Selling Shareholders"), in respect of whom this ruling is required.
12. Pursuant to purchase agreements dated October 30, 1998 (the "Purchase Agreement") the Corporation acquired all of the outstanding shares of MGV for an aggregate purchase price of U.S. \$20,000,000 (the "Purchase Price"). The Corporation paid the Purchase Price, subject to adjustments, to the MGV Selling Shareholders in accordance with their percentage shareholdings of MGV, in part, as to \$3,000,000 by the issue of promissory notes bearing interest at the rate of 7% per annum ("Note A") payable in three equal annual instalments, of which \$1,000,000 of the principal amount was convertible into common shares of the Corporation, as to one-third on each of April 15, 1999, April 15, 2000 and April 15, 2001, which payments were contingent upon MGV Ordinary Revenues (as defined in the Purchase Agreement) for the three twelve month periods ending January 31, 1999, 2000 and 2001.
13. Although MGV Ordinary Revenues (as defined in the Purchase Agreement) were achieved for the applicable periods, the Corporation did not make the third payment of \$1,000,000 under Note A which was due on April 15, 2001.
14. Accordingly, the Corporation, Systech Group and Robert Simon and George Paterson, as agents for and on behalf of the MGV Selling Shareholders (the "Selling Shareholders Representatives") entered into an agreement dated May 28, 2001 (the "MGV Payout Agreement") providing for the payment of monies and issuance of securities to the MGV Selling Shareholders so that the Corporation will satisfy its outstanding obligations to the MGV Selling Shareholders in connection with the payment of the balance of the Purchase Price.
15. The MGV Payout Agreement provides, amongst other things, as follows:
  - a) Systech covenants to pay the sum of U.S. \$1,183,726 (inclusive of accrued interest to and including April 15, 2001), together with interest from April 15, 2001 at an annual rate of 12% per annum, compounded monthly, payable as to:
    - i) 50% on December 31, 2001; and
    - ii) the balance on March 31, 2002.
  - b) the Corporation is to issue, within 10 days of the execution of the MGV Payout Agreement, 471,500 Warrants, each whole Warrant entitling the holder thereof to purchase one common share of the Corporation at \$1.00 per common share, exercisable for a period of five years, to the MGV Selling Shareholders.
16. The MGV Payout Agreement also provides that if the Corporation defaults in any of its obligations the MGV Selling Shareholders may:
  - a) declare all amounts to be due and owing;
  - b) if the December 31, 2001 payment is missed, require the Corporation to issue to the MGV Selling Shareholders on or before January 10, 2002, 100,000 Warrants, each whole Warrant entitling the holder thereof to purchase one common share of the Corporation at \$1.00 per share, exercisable for a period of five years; and
  - c) if the March 31, 2002 payment is missed, require the Corporation to issue to the MGV Selling Shareholders on or before April 10, 2002, 100,000 Warrants, each whole Warrant entitling the holder thereof to purchase one common share of the Corporation at \$1.00 per share, exercisable for a period of five years.
17. The extension of the repayment of Note A to the MGV Selling Shareholders, including the Ontario Former Employee Selling Shareholders, will assist the Corporation in furthering its objective of preserving cash flow necessary for the growth of the Corporation.
18. Each of the Ontario Former Employee Selling Shareholders deals at arm's length with the Corporation. The amounts owing to the Ontario Former Employee Selling Shareholders are bona fide debts of the Corporation. The Selling Shareholders Representatives have accepted the proposal of the Corporation to issue the Warrants to the MGV Selling Shareholders, including the Ontario Former Employee Selling Shareholders.
19. Each of the Ontario Former Employee Selling Shareholders had originally entered into contractual relations with the Corporation with the expectation that cash payment would be made by the Corporation.
20. The TSE has conditionally accepted notice of the distribution of the Warrants to the MGV Selling Shareholders.

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

**IT IS RULED**, pursuant to subsection 74(1) of the Act, that the issuance of an aggregate of up to 35,926 Warrants to the Ontario Former Employee Selling Shareholders, is not subject to section 25 or 53 of the Act, provided that the Corporation shall provide the Ontario Former Employee Selling Shareholders with a copy of this ruling together with a statement to the effect that, as a consequence of this ruling, certain protections, rights and remedies provided by the Act in respect of securities issued pursuant to a prospectus are not available to the Ontario Former Employee Selling Shareholders in respect of the Warrants acquired pursuant to this ruling and setting out the limitations on disposition of such securities;

**AND IT IS FURTHER RULED**, pursuant to subsection 74(1) of the Act, that the first trade in any of the Warrants issued to the Ontario Former Employee Selling Shareholders, pursuant to this ruling shall be a distribution, unless such trade is made in accordance with the provisions of subsection 72(5) of the Act and O.S.C. Rule 45-501, as if such common shares had been acquired pursuant to one of the prospectus exemptions referred to in subsection 72(5) of the Act.

October 12, 2001.

"H.I. Wetston"

"H. Lorne Morphy"



Schedule A

Systemech Retail Systems Inc.

	Number of Warrants to be Issued	Number of Warrants Issued on contingent basis <sup>1</sup>	Total
Beck Hoffland	18,225	7,731	25,956
Paul Halloran	7,001	2,969	9,970
TOTAL:			35,926

Note: 1. An aggregate of 10,700 Warrants issuable to the Ontario Former Employee Selling Shareholders are exercisable if and only if payments owing to such persons are not paid on the stipulated date (see paragraph 9 of the Ruling).

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## Chapter 3

# Reasons: Decisions, Orders and Rulings

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IN THIS ISSUE

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Chapter 4  
**Cease Trading Orders**

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## Chapter 5

# Rules and Policies

### 5.1 Rules

#### 5.1.1 OSC Rule 45-501 Exempt Distributions

##### ONTARIO SECURITIES COMMISSION RULE 45-501 EXEMPT DISTRIBUTIONS

#### PART 1 DEFINITIONS

##### 1.1 Definitions - In this Rule

"accredited investor" means

- (a) a bank listed in Schedule I or II of the Bank Act (Canada), or an authorized foreign bank listed in Schedule III of that Act;
- (b) the Business Development Bank incorporated under the Business Development Bank Act (Canada);
- (c) a loan corporation or trust corporation registered under the Loan and Trust Corporations Act or under the Trust and Loan Companies Act (Canada), or under comparable legislation in any other jurisdiction;
- (d) a co-operative credit society, credit union central, federation of caisses populaires, credit union or league, or regional caisse populaire, or an association under the Cooperative Credit Associations Act (Canada), in each case, located in Canada;
- (e) a company licensed to do business as an insurance company in any jurisdiction;
- (f) a subsidiary of any company referred to in paragraph (a), (b), (c), (d) or (e), where the company owns all of the voting shares of the subsidiary;
- (g) a person or company registered under the Act or securities legislation in another jurisdiction as an adviser or dealer, other than a limited market dealer;
- (h) the government of Canada or of any jurisdiction, or any crown corporation, instrumentality or agency of a Canadian federal, provincial or territorial government;
- (i) any Canadian municipality or any Canadian provincial or territorial capital city;
- (j) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any instrumentality or agency thereof;
- (k) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission or similar regulatory authority;
- (l) a registered charity under the Income Tax Act (Canada);
- (m) an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1,000,000;
- (n) an individual whose net income before taxes exceeded \$200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year;
- (o) an individual who has been granted registration under the Act or securities legislation in another jurisdiction as a representative of a person or company referred to in paragraph (g), whether or not the individual's registration is still in effect;
- (p) a promoter of the issuer or an affiliated entity of a promoter of the issuer;
- (q) a spouse, parent, grandparent or child of an officer, director or promoter of the issuer;
- (r) a person or company that, in relation to the issuer, is an affiliated entity or a person or company referred to in clause (c) of the definition of distribution in subsection 1(1) of the Act;
- (s) an issuer that is acquiring securities of its own issue;
- (t) a company, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redeemable investment fund, that had net assets of at least \$5,000,000 as reflected in its most recently prepared financial statements;

- (u) a person or company that is recognized by the Commission as an accredited investor;
- (v) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities only to persons or companies that are accredited investors;
- (w) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities under a prospectus for which a receipt has been granted by the Director;
- (x) a managed account if it is acquiring a security that is not a security of a mutual fund or non-redeemable investment fund;
- (y) an account that is fully managed by a trust corporation registered under the Loan and Trust Corporations Act;
- (z) an entity organized outside of Canada that is analogous to any of the entities referred to in paragraphs (a) through (g) and paragraph (k) in form and function; and
- (aa) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are accredited investors;

"closely-held issuer" means an issuer, other than a mutual fund or non-redeemable investment fund, whose

- (a) shares are subject to restrictions on transfer requiring the approval of either the board of directors or the shareholders of the issuer (or the equivalent in a non-corporate issuer) contained in constating documents of the issuer or one or more agreements among the issuer and holders of its shares; and
- (b) outstanding securities are beneficially owned, directly or indirectly, by not more than 35 persons or companies, exclusive of
  - (i) persons or companies that are, or at the time they last acquired securities of the issuer were, accredited investors; and
  - (ii) current or former directors, officers or employees of the issuer or an affiliated entity of the issuer, or current or former consultants as defined in Rule 45-503 Trades to Employees, Executives and Consultants, who in each case beneficially own only securities of the issuer that were issued as compensation by, or under an incentive plan of, the issuer or an affiliated entity of the issuer;

provided that:

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

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

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

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

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

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

"government incentive security" means

- (a) a security, or unit or interest in a partnership that invests in a security, that is issued by a company and for which the company has agreed to renounce in favour of the holder of the security, unit or interest, amounts that will constitute Canadian exploration expense, as defined in subsection 66.1(6) of the ITA, or Canadian development expense, as defined in subsection 66.2(5) of the ITA, or Canadian oil and gas property expense, as defined in subsection 66.4(5) of the ITA; or
- (b) a unit or interest in a partnership or joint venture that is issued in order to fund Canadian exploration expense as defined in subsection 66.1(6) of the ITA or Canadian development expense as defined in subsection 66.2(5) of the ITA or Canadian oil and gas property expense as defined in subsection 66.4(5) of the ITA;

"managed account" means an investment portfolio account of a client established in writing with a portfolio adviser who makes investment decisions for



the account and has full discretion to trade in securities of the account without requiring the client's express consent to a transaction;

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

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

"portfolio adviser" means

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

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

"related liabilities" means liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets and liabilities that are secured by financial assets;

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

"Type 1 trade" means a trade in a security under an exemption from the prospectus requirement in clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the Act, or section 2.3, 2.12, 2.13 or 2.14 of this Rule, or section 2.4, 2.5 or 2.11 of the Previous Rule;

"Type 2 trade" means a trade in a security under an exemption from the prospectus requirement in clause 72(1)(f) (other than a trade to an associated consultant or investor consultant as defined in Rule 45-503 Trades to Employees, Executives and Consultants), (h), (i), (j), (k) or (n) of the Act, or section 2.5 or 2.8 of this Rule; and

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

## 1.2 Interpretation

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

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

**2.1 Exemption for a Trade in a Security of a Closely-held Issuer**

- (1) Sections 25 and 53 of the Act do not apply to a trade in a security of a closely-held issuer if
  - (a) following the trade, the issuer will be a closely-held issuer and the aggregate proceeds received by the issuer, and any other issuer engaged in common enterprise with the issuer, in connection with trades made in reliance upon this exemption will not exceed \$3,000,000;
  - (b) no promoter of the issuer has acted as a promoter of any other issuer that has issued a security in reliance upon this exemption within the twelve months preceding the trade; and
  - (c) no selling or promotional expenses are paid or incurred in connection with the trade, except for services performed by a dealer registered under the Act.
- (2) If a trade is made under subsection 2.1(1), the seller shall provide an information statement substantially similar to Form 45-501F3 to the purchaser of the security at least four days prior to the date of the trade unless, following the trade, the issuer will have not more than five beneficial holders of its securities.

**2.2 Exemption for a Trade in a Variable Insurance Contract**

- (1) Sections 25 and 53 of the Act do not apply to a trade by a company licensed under the Insurance Act in a variable insurance contract that is
  - (a) a contract of group insurance;
  - (b) a whole life insurance contract providing for the payment at maturity of an amount not less than three quarters of the premiums paid up to age 75 for a benefit payable at maturity;
  - (c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds; or
  - (d) a variable life annuity.
- (2) For the purposes of subsection (1), "contract", "group insurance", "life insurance" and "policy" have the respective meanings ascribed to them by sections 1 and 171 of the Insurance Act.

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

**2.4 Exemption for a Trade by a Control Person in a Security Acquired under a Formal Take-Over Bid**

- (1) Section 53 of the Act does not apply to a trade that is a control person distribution in a security that was acquired under a formal bid as defined in Part XX of the Act, if
  - (a) the offeree issuer had been a reporting issuer for at least 12 months at the date of the bid;
  - (b) subject to subsection (2), the intention to make the trade was disclosed in the take-over bid circular for the take-over bid;
  - (c) the trade is made within the period commencing on the date of the expiry of the bid and ending 20 days after that date;
  - (d) a notice of intention and a declaration prepared in accordance with Form 45-102F3 are filed by the seller before the trade;
  - (e) an insider report prepared in accordance with Form 55-102F2 or Form 55-102F6, as applicable, is filed by the seller within three days after the completion of the trade; and
  - (f) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission is paid for the trade.
- (2) Paragraph (1)(b) does not apply to a trade to another person or company that has made a competing formal bid for securities of the same issuer for a per security price not greater than the per security consideration offered by that other person or company in its take-over bid.

**2.5 Exemption for a Trade in Connection with a Securities Exchange Issuer Bid** - Sections 25 and 53 of the Act do not apply to a trade in a security that is exchanged by or for the account of the offeror with a securityholder of the offeror in connection with an issuer bid as defined in Part XX of the Act if, at the time of the trade, the issuer whose securities are being issued or transferred is a reporting issuer not in default under the Act or the regulations.

**2.6 Exemption for a Trade upon Exercise of Conversion Rights in a Convertible Security** - Sections 25 and 53 of the Act do not apply to a trade by an issuer in an underlying security of its own issue to a holder of a convertible security or multiple convertible security of the issuer on the exercise by the issuer of its right under the convertible security or multiple convertible security to cause the holder to

convert into or purchase the underlying security or on the automatic conversion of the convertible security or multiple convertible security, if no commission or other remuneration is paid or given to others for the trade except for administrative or professional services or for services performed by a registered dealer.

**2.7 Exemption for a Trade upon Exercise of Exchange Rights in an Exchangeable Security** - Sections 25 and 53 of the Act do not apply to a trade by an exchange issuer in an underlying security to a holder of an exchangeable security or multiple convertible security of the exchange issuer on the exercise by the exchange issuer of its right under the exchangeable security or multiple convertible security to cause the holder to exchange for or purchase the underlying security or on the automatic exchange of the exchangeable security or multiple convertible security, if the exchange issuer delivers to the Commission a written notice stating the date, amount, nature and conditions of the proposed trade, including the net proceeds to be derived by the exchange issuer if the underlying securities are fully taken up and either

- (a) the Commission has not informed the exchange issuer in writing within 10 days after the delivery of the notice that it objects to the proposed trade, or
- (b) the exchange issuer has delivered to the Commission information relating to the underlying security that is satisfactory to and accepted by the Commission.

**2.8 Exemption for a Trade on an Amalgamation, Arrangement or Specified Statutory Procedure** - Sections 25 and 53 of the Act do not apply to a trade in a security of an issuer in connection with

- (a) a statutory amalgamation or statutory arrangement; or
- (b) a statutory procedure under which one issuer takes title to the assets of another issuer that in turn loses its existence by operation of law or under which one issuer merges with one or more issuers, whether or not the securities are issued by the merged issuer.

**2.9 Exemption for a Trade in a Security under the Execution Act** - Sections 25 and 53 of the Act do not apply to a trade in a security by a sheriff under the Execution Act, if

- (a) there is no published market as defined in Part XX of the Act in respect of the security;
- (b) the aggregate acquisition cost to the purchaser is not more than \$25,000; and

- (c) each written notice to the public soliciting offers for the security or giving notice of the intended auction of the security is accompanied by a statement substantially as follows:

These securities are speculative. No representations are made concerning the securities, or the issuer of the securities. No prospectus is available and the protections, rights and remedies arising out of the prospectus provisions of the Securities Act, including statutory rights of rescission and damages, will not be available to the purchaser of these securities.

**2.10 Exemption for a Trade in Debt of Conseil Scolaire de L'île de Montréal** - Sections 25 and 53 of the Act do not apply to a trade if the security being traded is a bond, debenture or other evidence of indebtedness of the Conseil Scolaire de L'île de Montréal.

**2.11 Exemption for a Trade to a Registered Retirement Savings Plan or a Registered Retirement Income Fund** - Sections 25 and 53 of the Act do not apply to a trade in a security by an individual or an associate of an individual to a RRSP or a RRIF established by or for that individual or under which that individual is a beneficiary.

**2.12 Exemption for Certain Trades in a Security of a Mutual Fund or Non-Redeemable Investment Fund**

- (1) Sections 25 and 53 of the Act do not apply to a trade in a security of a mutual fund or non-redeemable investment fund that is not a reporting issuer if

- (a) the purchaser purchases as principal;
- (b) either (i) the security has an aggregate acquisition cost to the purchaser of not less than \$150,000 or (ii) the security is issued by a mutual fund or non-redeemable investment fund in which the purchaser then owns securities having either an aggregate acquisition cost or an aggregate net asset value of not less than \$150,000; and
- (c) the mutual fund or non-redeemable investment fund is managed by a portfolio adviser or a trust corporation registered under the Loan and Trust Corporations Act.

- (2) Sections 25 and 53 of the Act do not apply to a trade in a security of a mutual fund or non-redeemable investment fund that is not a reporting issuer if

- (a) the purchaser purchases as principal;

- (b) the security has an aggregate acquisition cost to the purchaser of not less than \$150,000; and
- (c) the mutual fund or non-redeemable investment fund is managed by a person or company, not ordinarily resident in Ontario, to whom the adviser registration requirement does not apply pursuant to Part 7 of Rule 35-502 *Non-Resident Advisers*.

**2.13 Exemption for a Trade by a Promoter or Issuer in a Government Incentive Security**

- (1) Sections 25 and 53 of the Act do not apply to a trade by an issuer or by a promoter of an issuer in a security of the issuer that is a government incentive security, if
  - (a) in the aggregate in all jurisdictions, not more than 75 prospective purchasers are solicited resulting in sales to not more than 50 purchasers;
  - (b) before entering into an agreement of purchase and sale, the prospective purchaser has been supplied with an offering memorandum that includes information
    - (i) identifying every officer and director of the issuer,
    - (ii) identifying every promoter of the issuer,
    - (iii) giving the particulars of the professional qualifications and associations during the five years before the date of the offering memorandum of each officer, director and promoter of the issuer that are relevant to the offering,
    - (iv) indicating each of the directors that will be devoting his or her full time to the affairs of the issuer, and
    - (v) describing the right of action referred to in section 130.1 of the Act that is applicable in respect of the offering memorandum;
  - (c) the prospective purchaser has access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide and
    - (i) because of net worth and investment experience or because of consultation with or advice from a person or company that is not a promoter of the issuer and that is an adviser or dealer registered under the Act, is able to evaluate the prospective investment on the basis of information about the

investment presented to the prospective purchaser by the issuer or selling securityholder, or

- (ii) is a senior officer or director of the issuer or of an affiliated entity of the issuer or a spouse or child of any director or senior officer of the issuer or of an affiliated entity of the issuer,

(d) the offer and sale of the security is not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred for the offer and sale, except for professional services or for services performed by a dealer registered under the Act; and

(e) the promoter, if any, has not acted as a promoter of any other issue of securities under this exemption within the calendar year.

(2) For the purpose of determining the number of purchasers or prospective purchasers under paragraph (1)(a), a corporation, partnership, trust or other entity shall be counted as one purchaser or prospective purchaser unless the entity has been created or is being used primarily for the purpose of purchasing a security of the issuer, in which event each beneficial owner of an equity interest in the entity or each beneficiary of the entity, as the case may be, shall be counted as a separate purchaser or prospective purchaser.

**2.14 Exemption for a Trade in a Security Distributed under Section 2.13** - Sections 25 and 53 of the Act do not apply to a trade in a security that was previously distributed under the exemption in section 2.13, if each of the parties to the trade is one of the not more than 50 purchasers.

**PART 3 REMOVAL OF CERTAIN EXEMPTIONS FROM THE REGISTRATION AND PROSPECTUS REQUIREMENTS**

**3.1 Removal of Certain Exemptions Generally** - The exemptions from the registration requirement in paragraphs 3, 4, 5, 18 and 21 of subsection 35(1) and paragraph 10 of subsection 35(2) of the Act and the exemptions from the prospectus requirement in clauses (a), (c), (d), (l) and (p) of subsection 72(1) and clause (a) of subsection 73(1) as it relates to paragraph 10 of subsection 35(2) of the Act are not available for a trade in a security.

**3.2 Removal of Exemptions for Bonds, Debentures and Other Evidences of Indebtedness** - The exemption from the registration requirement in subparagraph 1(c) of subsection 35(2) and the corresponding exemption from the prospectus requirement referred to in clause 73(1)(a) of the Act

are not available for a trade in a bond, debenture or other evidence of indebtedness that is subordinate in right of payment to deposits held by the issuer or guarantor of the bond, debenture or other evidence of indebtedness.

**3.3 Removal of Exemptions for Securities of a Private Mutual Fund with a Promoter or Manager** - The exemption from the registration requirement in paragraph 3 of subsection 35(2) and the corresponding exemption from the prospectus requirement referred to in clause 73(1)(a) of the Act are not available for trades in a security of a private mutual fund if it is administered by a trust company and there is a promoter or manager of the mutual fund other than the trust company.

**3.4 Removal of Registration Exemptions for Market Intermediaries**

- (1) The exemptions from the registration requirement in sections 2.1, 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9, 2.12, 2.13 and 2.14 are not available to a market intermediary.
- (2) A limited market dealer may act as a market intermediary in respect of a trade referred to in subsection (1).

**PART 4 OFFERING MEMORANDUM**

**4.1 Application of Statutory Right of Action** - The right of action referred to in section 130.1 of the Act shall apply in respect of an offering memorandum delivered to a prospective purchaser in connection with a trade made in reliance upon an exemption from the prospectus requirement in section 2.1, 2.3, 2.12 or 2.13.

**4.2 Description of Statutory Right of Action in Offering Memorandum** - If the seller delivers an offering memorandum to a prospective purchaser in connection with a trade made in reliance upon an exemption from the prospectus requirement in section 2.1, 2.3, 2.12 or 2.13, the right of action referred to in section 130.1 of the Act shall be described in the offering memorandum.

**4.3 Delivery of Offering Memorandum to Commission** - If an offering memorandum is provided to a purchaser of securities in respect of a trade made in reliance upon an exemption from the prospectus requirement in section 2.1, 2.3, 2.12 or 2.13, the seller shall deliver to the Commission a copy of the offering memorandum within 10 days of the date of the trade.

**PART 5 DEALER REGISTRATION**

**5.1 Removal of Exemption unless Dealer Registered for Trade Described in the Exemption** - An exemption from the registration requirement or from the prospectus requirement in the Act or the regulations that refers to a registered dealer is not available for a trade in a security unless the dealer is registered in a category that permits it to act as a dealer for the trade described in the exempting provision.

**PART 6 RESTRICTIONS ON RESALE OF SECURITIES DISTRIBUTED UNDER CERTAIN EXEMPTIONS**

**6.1 Resale of a Security Distributed to a Promoter Under Certain Exemptions** - If a security of an issuer is distributed to a promoter of the issuer under an exemption from the prospectus requirement in section 2.1, 2.3, 2.12, 2.13 or 2.14, the first trade in that security by that promoter is a distribution unless the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 are satisfied.

**6.2 Resale of a Security Distributed under Section 2.1** - If a security is distributed under the exemption from the prospectus requirement in section 2.1, the first trade in that security, other than a trade referred to in section 6.1, is subject to section 2.6 of MI 45-102.

**6.3 Resale of a Security Distributed under Section 2.3, 2.12, 2.13 or 2.14** - If a security is distributed under an exemption from the prospectus requirement in section 2.3, 2.12, 2.13 or 2.14, the first trade in that security, other than a trade referred to in section 6.1, is subject to section 2.5 of MI 45-102.

**6.4 Resale of a Security Distributed under Clause 72(1)(h) of the Act** - If a security is distributed under the exemption from the prospectus requirement in clause 72(1)(h) of the Act, the first trade in that security, other than a trade to which section 6.5 applies, is subject to section 2.6 of MI 45-102.

**6.5 Resale of an Underlying Security of a Multiple Convertible Security, Convertible Security or Exchangeable Security Distributed under Certain Exemptions** - If an underlying security is distributed under an exemption from the prospectus requirement on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade, the first trade in that underlying security is subject to section 2.5 of MI 45-102.

**6.6 Resale of a Security Distributed under Section 2.6 or 2.7** – If an underlying security is distributed under an exemption from the prospectus requirement in section 2.6 or 2.7 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired

- (a) in a Type 2 trade; or
- (b) under an exemption from the prospectus requirement in section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of Rule 45-503 *Trades to Employees, Executives and Consultants*, other than a trade by an associated consultant or investor consultant as defined in Rule 45-503 *Trades to Employees, Executives and Consultants*;

the first trade in that underlying security is subject to section 2.6 of MI 45-102.

**6.7 Resale of a Security Distributed under Section 2.5 or 2.8** - If a security is distributed under an exemption from the prospectus requirement in section 2.5 or 2.8, the first trade in that security is subject to section 2.6 of MI 45-102.

**6.8 Resale of a Security Distributed under Section 2.11** – If a security is distributed under the exemption from the prospectus requirement in section 2.11, the first trade in that security is subject to section 2.5 or 2.6 of MI 45-102, whichever section would have been applicable to a first trade in that security by the person or company making the exempt distribution under section 2.11.

**PART 7 FILING REQUIREMENTS AND FEES**

**7.1 Form 45-501F1** - Every report that is required to be filed under subsection 72(3) of the Act or subsection 7.5(1) shall be filed in duplicate and prepared in accordance with Form 45-501F1.

**7.2 Form 45-501F2** - Every report that is required to be filed under subsection 7.5(2) shall be filed in duplicate and prepared in accordance with Form 45-501F2.

**7.3 Fees for Form 45-501F1**

(1) A report filed in Form 45-501F1 shall be accompanied by a fee equal to the greater of

- (a) \$100; and
- (b) subject to subsection (2), the amount calculated using the formula,

$$A + B$$

where

“A” is 0.02 percent of the aggregate gross proceeds realized in Ontario from the distribution of securities, other than special warrants, for which the report filed in Form 45-501F1 is filed, and

“B” is 0.04 percent of the aggregate gross proceeds realized in Ontario from the distribution of special warrants for which the report filed in Form 45-501F1 is filed.

(2) The amount calculated under subsection (1) is considered to be \$100 if the report filed in Form 45-501F1 is filed for,

- (a) a trade in securities if there is no change in beneficial ownership of the securities as a result of the trade;
- (b) a subsequent trade in securities acquired under an exemption from the prospectus requirement in clause 72(1)(b) or (q) of the Act or section 2.3; or
- (c) a subsequent trade in securities acquired prior to November 30, 2001 under an exemption from the prospectus requirement in clause 72(1)(a), (c), (d), (l) or (p) of the Act or section 2.4, 2.5 or 2.11 of the Previous Rule.

**7.4 Fees for Form 45-501F2** - A report filed in Form 45-501F2 shall be accompanied by a fee of \$100.

**7.5 Exempt Trade Reports**

(1) Subject to subsections (7) and (8), if a trade is made in reliance upon an exemption from the prospectus requirement in section 2.3, 2.13 or 2.14, other than

- (a) a trade to a person or company referred to in paragraphs (p) through (s) of the definition of “accredited investor” in section 1.1, or
- (b) a trade to an entity referred to in paragraph (aa) if all of the owners of interests referred to in that paragraph are persons or companies referred to in paragraphs (p) through (s) of the definition of “accredited investor” in section 1.1,

the seller shall, within 10 days of the trade, file a report in accordance with section 7.1.

(2) If a trade is made in reliance upon the conditions in subsection (2) or (3) of section 2.5 of MI 45-102 being satisfied, the seller shall, within 10 days of the trade, file a report in accordance with section 7.2.

(3) If a trade is made in reliance upon the conditions in subsection (2) or (3) of section 2.8 of MI

45-102 being satisfied, the seller shall comply with the requirements of subsections (4) to (7) of that section.

- (4) If a trade is made under section 2.6, the issuer shall file the notice and pay the fees prescribed by section 20 of Schedule 1 to the Regulation as if the underlying security had been acquired in a distribution exempt from section 53 of the Act by subclause 72(1)(f)(iii) of the Act.
- (5) If a trade is made under section 2.7, the exchange issuer shall pay the fees prescribed by section 21 of Schedule 1 to the Regulation as if the security had been acquired in a distribution exempt from section 53 of the Act by clause 72(1)(h) of the Act.
- (6) If a trade is made under section 2.8, the issuer shall pay the fees prescribed by section 23 of Schedule 1 to the Regulation as if section 23 referred to section 2.8 instead of clause 72(1)(i) of the Act.
- (7) A report is not required under subsection (1) where, by a trade under section 2.3, a person or company referred to in paragraph (a), (b), (c) or (d) of section 1.1 acquires from a customer an evidence of indebtedness of the customer or an equity investment in the customer acquired concurrently with an evidence of indebtedness.
- (8) Despite subsection (1), a report in respect of a trade in a security of a mutual fund or non-redeemable investment fund made in reliance upon the exemption from the prospectus requirement in section 2.3 may be filed not later than 30 days after the financial year end of the mutual fund or non-redeemable investment fund.

**7.6 Fees for Accredited Investor Application** - An application for recognition, or for renewal of recognition, as an accredited investor shall be accompanied by a fee of \$500.

**7.7 Report of a Trade Made under Section 2.12** - If a trade is made in reliance upon an exemption from the prospectus requirement in section 2.12, the issuer shall, not later than thirty days after the financial year end of the issuer in which the trade occurred, file a report, in duplicate, prepared in accordance with Form 45-501F1 and the report shall be accompanied by a fee calculated in accordance with section 7.3.

## PART 8 TRANSITIONAL PROVISIONS

**8.1 Accredited Investor Definition Includes Exempt Purchaser** - The definition of "accredited investor" in section 1.1 includes, prior to November 30, 2002, a person or company that is recognized by the Commission as an exempt purchaser.

**8.2 Resale of a Security Distributed under Section 2.4, 2.5 or 2.11 of the Previous Rule** - If a security was distributed under an exemption from the prospectus requirement in section 2.4, 2.5 or 2.11 of the Previous Rule, the first trade in that security is subject to section 2.5 of MI 45-102.

**8.3 Resale of an Underlying Security of a Multiple Convertible Security, Convertible Security or Exchangeable Security Distributed under Certain Exemptions in the Previous Rule** - If an underlying security was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a distribution under an exemption from the prospectus requirement in section 2.4, 2.5 or 2.11 of the Previous Rule, the first trade in that underlying security is subject to Section 2.5 of MI 45-102.

**8.4 Resale of a Security Distributed to a Promoter under Section 2.3 or 2.15 of the Previous Rule** - If a security was distributed to a promoter under an exemption from the prospectus requirement in section 2.3 or 2.15 of the Previous Rule, the first trade in that security is a distribution unless the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 are satisfied.

**8.5 Resale of a Security Distributed under Section 2.9 or 2.10 of the Previous Rule** - If an underlying security was distributed under an exemption from the prospectus requirement in section 2.9 or 2.10 of the Previous Rule on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired by the holder in a Type 2 trade, the first trade in that underlying security is subject to section 2.6 of MI 45-102.

**8.6 Resale of a Security Distributed under Section 2.7, 2.8 or 2.17 or Subsection 2.18(1) of the Previous Rule** - If a security was distributed under an exemption from the prospectus requirement in section 2.7, 2.8 or 2.17 of the Previous Rule, or in subsection 2.18(1) of the Previous Rule after the issuer had ceased to be a private issuer for purposes of the Securities Act (British Columbia), the first trade in that security is subject to section 2.6 of MI 45-102.

## PART 9 EFFECTIVE DATE

**9.1 Effective Date** - This instrument shall come into force on November 30, 2001.

FORM 45-501F1

Securities Act (Ontario)

Report under Section 72(3) of the Act or Section 7.5(1) of Rule 45-501

(To be used for reports of trades made in reliance upon clause 72(1)(b) or (q) of the Act, or Section 2.3, 2.12, 2.13 or 2.14 of Rule 45-501)

- 1. Full name and address of the seller.
- 2. Full name and address of the issuer of the securities traded.
- 3. Description of the securities traded.
- 4. Date of the trade(s).
- 5. Particulars of the trade(s).

<u>Name of Purchaser and Municipality and Jurisdiction of Residence</u>	<u>Amount or Number of Securities Purchased</u>	<u>Purchaser Price</u>	<u>Total Purchase Price (Canadian \$)</u>	<u>Exemption Relied Upon</u>
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- 6. The seller has prepared and certified a statement containing the full legal name and the full residential address of each purchaser identified in section 5 and a certified true copy of the list will be provided to the Commission upon request.
- 7. State the name and address of any person acting as agent in connection with trade(s) and the compensation paid or to be paid to such agent.
- 8. Calculation of Fees payable upon filing Form 45-501F1: (See section 7.3 of Rule 45-501 Exempt Distributions).  
Total Fees payable: \$
- 9. Certificate of seller or agent of seller.

The undersigned seller hereby certifies, or the undersigned agent of the seller hereby certifies to the best of the agent's information and belief, that the statements made in this report are true and correct.

DATED at

this      day of                      , 20\_\_\_\_.

(Name of seller or agent - please print)

(Signature)

(Official capacity - please print)

(Please print name of individual whose signature appears above, if different from name of seller or agent printed above)



**Notice + Collection and Use of Personal Information**

The personal information prescribed by this form is collected on behalf of and used by the Ontario Securities Commission for purposes of administration and enforcement provisions of the securities legislation in Ontario. All of the information prescribed by this form, except for the information contained in the statement required to be prepared and certified by the seller under section 6 of this form, is made available to the public under the securities legislation of Ontario. If you have any questions about the collection and use of this information, contact the Ontario Securities Commission at the address below:

Ontario Securities Commission  
Suite 1903, Box 55,  
20 Queen Street West  
Toronto, Ontario M5H 3S8  
Attention: Administrative Assistant to the Director of Corporate Finance  
Telephone: (416) 593-8200  
Facsimile: (416) 593-8177

**Instructions:**

1. In answer to section 7 give the name of the person or company who has been or will be paid remuneration directly related to the trade(s), such as commissions, discounts or other fees or payments of a similar nature. It is not necessary to include payments for services incidental to the trade such as clerical, printing, legal or accounting services.
2. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referred to the relevant item and properly identified and signed by the person whose signature appears on the report.
3. Cheques must be made payable to the Ontario Securities Commission in the amount determined in section 8 above.
4. Please print or type and file two signed copies with:

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

FORM 45-501F2

Securities Act (Ontario)  
Report under section 7.5(2) of Rule 45-501

1. Full name and address of the seller.
2. Full name and address of reporting issuer whose securities were traded.
3. Particulars of the trade(s).

<u>Date of Trade</u>	<u>Type of Security</u>	<u>Amount or Number of Securities Traded</u>	<u>Selling Price</u>
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4. Full name and municipality of residence of the party from whom the seller acquired the securities and the date of acquisition.
5. Certificate of seller or agent of seller.

The undersigned seller hereby certifies, or the undersigned agent of the seller hereby certifies to the best of the agent's information and belief, that:

- (1) the information given in this report is true and correct, and
- (2) (a) no unusual effort has been made to prepare the market or create a demand for the securities, and  
(b) no extraordinary commission or consideration has been or has been agreed to be paid in respect of the trade covered by this report.

Instructions:

1. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referred to the relevant item and properly identified and signed by the person whose signature appears on the report.
2. Cheques must be made payable to the Ontario Securities Commission in the amount prescribed in section 7.4 of Rule 45-501 Exempt Distributions.
3. Please print or type and file two signed copies with:

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

DATED at

this     day of                     , 20\_\_\_\_.

(Name of seller or agent - please print)

(Signature)

(Official capacity - please print)

(Please print name of individual whose signature appears above, if different from name of seller or agent printed above)

**Notice + Collection and Use of Personal Information**

The personal information prescribed by this form is collected on behalf of and used by the Ontario Securities Commission for purposes of administration and enforcement provisions of the securities legislation in Ontario. All of the information prescribed by this form, except for the information contained in the statement required to be prepared and certified by the seller, is made available to the public under the securities legislation of Ontario. If you have any questions about the collection and use of this information, contact the Ontario Securities Commission at the address below:

Ontario Securities Commission  
Suite 1903, Box 55,  
20 Queen Street West  
Toronto, Ontario M5H 3S8  
Attention: Administrative Assistant to the Director of Corporate Finance  
Telephone: (416) 593-8200  
Facsimile: (416) 593-8177

FORM 45-501F3  
FORM OF INFORMATION STATEMENT

**Introduction**

Ontario securities laws have been relaxed to make it easier for small businesses to raise start-up capital from the public. Some potential investors may view this change in securities laws as an opportunity to "get in on the ground floor" of emerging businesses and to "hit it big" as these small businesses grow into large ones.

Statistically, most small businesses fail within a few years. Small business investments are among the most risky that investors can make. This information statement suggests matters for you to consider in deciding whether to make a small business investment.

**Risks and Investment Strategy**

A basic principle of investing in a small business is: **NEVER MAKE A SMALL BUSINESS INVESTMENT THAT YOU CANNOT AFFORD TO LOSE IN ITS ENTIRETY.** Never use funds that might be needed for other purposes, such as a post-secondary education, retirement, loan repayment or medical expenses, and never borrow money to make such an investment. Instead use funds that you already have set aside and that otherwise would be used for a consumer purchase, such as a vacation.

Never believe that the investment is not risky. Among other risk factors, small business investments generally are highly illiquid. In particular, until the company goes public there are significant restrictions on the resale of its securities. Even after a small business goes public there may be very little liquidity in its shares. This lack of liquidity means that, if the company takes a turn for the worse or if you suddenly need the funds you have invested in the company, you may not be able to sell your securities.

Also, it is important to realize that, just because the proposed offering of securities is permitted under Ontario securities law does not mean that the particular investment will be successful. Neither the Ontario Securities Commission nor any other government agency evaluates or endorses the merits of investments.

**Analyzing the Investment**

Although there is no magic formula for making successful investment decisions, certain factors are often considered particularly important by professional venture investors. Some questions to consider are as follows:

1. How long has the company been in business?
2. Is management putting itself in a position where it will be accountable to investors? For example, is management taking salaries or other benefits that are too large in light of the company's stage of development? Will outside investors have any voting power to elect representatives to the board of directors?

3. How much experience does management have in the industry and in operating a small business? How successful were the managers in previous businesses?
4. Do you know enough about the industry to be able to evaluate the company and make a wise investment?
5. Does the company have a realistic business plan? Does it have the resources to successfully market its product or service?
6. How reliable is the financial information, if any, that has been provided to you? Is the information audited?
7. Is the company subject to any lawsuits?
8. What are the restrictions on the resale of the securities?

There are many other questions to be answered, but you should be able to answer these before you consider investing. If you have not been provided with the information you need to answer these and any other questions you may have about the proposed investment, make sure that you obtain the information you need from people authorized to speak on the company's behalf (e.g., management or the directors) before you advance any funds or sign any commitment to advance funds to the company. It is generally a good idea to meet with management of the company face-to-face.

**Making Money on Your Investment**

There are two classic methods for making money on an investment in a small business: (1) through resale of the securities in the public securities markets following a public offering; and (2) by receiving cash or marketable securities in a merger or other acquisition of the company.

If the company is the type that is not likely to go public or be acquired within a reasonable time (i.e., a family-owned or closely-held corporation), it may not be a good investment for you irrespective of its prospects for success because of the lack of opportunity to cash in on the investment. Management of a successful private company may receive a return indefinitely through salaries and bonuses but it is unlikely that there will be profits sufficient to pay dividends commensurate with the risk of the investment.

**Conclusion**

When successful, small businesses enhance the economy and provide jobs for its citizens. They also provide investment opportunities. However, an opportunity to invest must be considered in light of the inherently risky nature of small business investments.

In considering a small business investment, you should proceed with caution and make an informed investment decision based on your circumstances and expectations. Above all, never invest more than you can afford to lose.

**COMPANION POLICY 45-501CP TO  
ONTARIO SECURITIES COMMISSION RULE 45-501  
EXEMPT DISTRIBUTIONS**

**PART 1 PURPOSE AND DEFINITIONS**

- 1.1 **Purpose** - This policy statement sets forth the views of the Commission as to the manner in which certain provisions of the Act and the rules relating to the exemptions from the prospectus and registration requirements are to be interpreted and applied.
- 1.2 **Definitions** - In this Policy, "private placement exemptions" means the prospectus and registration exemptions available for
- (a) sales of securities of closely-held issuers under section 2.1 of Rule 45-501; and
  - (b) sales of securities to accredited investors under section 2.3 of Rule 45-501.

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

- 2.1 **Interaction of Private Placement Exemptions** - The Commission recognizes that a seller of securities may, in connection with any distribution of securities, rely concurrently on more than one private placement exemption. The Commission notes that where the seller is paying or incurring selling or promotional expenses in connection with the distribution, other than for the services of a dealer registered under the Act, the seller may not be able to rely on the exemption in section 2.1. The Commission takes the view that expenses incurred in connection with the preparation and delivery of an offering memorandum do not constitute selling or promotional expenses in this context.
- 2.2 **Accredited Investor Status For Individuals**
- (1) Paragraph (m) of the "accredited investor" definition in section 1.1 of Rule 45-501 refers to an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate net realizable value that, before taxes but net of any related liabilities, exceeds \$1,000,000. As a general matter, it should not be difficult to determine whether financial assets are beneficially owned by an individual, an individual's spouse, or both, in any particular instance. However, financial assets held in a trust or in other types of investment vehicles for the benefit of an individual may raise questions as to whether the individual beneficially owns the financial assets in the circumstances. The Commission is of the view that the following factors are indicative of beneficial ownership of financial assets:

- (a) physical or a constructive possession of evidence of ownership of the financial asset;
- (b) entitlement to receipt of any income generated by the financial asset;
- (c) risk of loss of the value of the financial asset; and
- (d) the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

By way of example, securities held in a self-directed RRSP for the sole benefit of an individual would be beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for purposes of the threshold test because paragraph (m) takes into account financial assets owned beneficially by a spouse. However, financial assets held in a group RRSP under which the individual would not have the ability to acquire the financial assets and deal with them directly would not meet this beneficial ownership requirement.

- (2) The Commission notes that paragraphs (m) and (n) of the "accredited investor" definition are designed to treat spouses as an investing unit such that either spouse may qualify as an accredited investor if both spouses, taken together, beneficially own the requisite amount of financial assets or earn the requisite net income. As well, it is the Commission's view that the financial asset test and the net income test prescribed in paragraphs (m) and (n), respectively, are to be applied only at the time of the trade such that there is no obligation on the seller to monitor the purchaser's continuing qualification as an accredited investor after the completion of the trade. Furthermore, the Commission considers that the references to "years" and "current year" in paragraph (n) mean calendar years or current calendar year, as applicable.
- (3) Paragraph (q) of the "accredited investor" definition refers to certain family members of an officer or director of the issuer. The Commission notes that officers and directors of an issuer or its affiliated entities are, in effect, treated as accredited investors under Rule 45-503 Trades to Employees, Executives and Consultants.

**2.3 Closely-Held Issuer Exemption**

- (1) The exemption in section 2.1 relating to securities of closely-held issuers is available to the closely-held issuer itself in respect of an issue of its own securities and to any holder of the issuer's securities in respect of a sale of the securities. A closely-held issuer may issue its own securities in reliance upon the exemption in

section 2.1 so long as it is able to meet the criteria for the availability of the exemption in that section. In particular, a closely-held issuer may no longer use the closely-held issuer exemption once it has received aggregate proceeds of \$3,000,000 from trades made in reliance upon the exemption. However, a holder of securities of a closely-held issuer may rely upon the exemption in section 2.1 in connection with any resale of the securities so long as the issuer continues to be a closely-held issuer after the resale. The issuer does not cease to be a closely-held issuer solely because it has raised \$3,000,000 in aggregate proceeds using the exemption.

- (2) The Commission notes that a closely-held issuer will generally be in a position to facilitate the use of the exemption in section 2.1 for the resale of its securities by limiting the number of its security holders through, among other things, use of the share transfer restrictions in its constating documents or in an agreement with its shareholders. Once the issuer no longer meets the closely-held issuer definition, a resale of securities distributed under the exemption in section 2.1 may only be made in reliance upon another exemption or by complying with the relevant provisions of Multilateral Instrument 45-102 Resale of Securities ("MI 45-102").
- (3) The Commission notes that the limitation on the use of the closely-held issuer exemption in paragraph (a) of subsection 2.1(1), which refers to aggregate proceeds of \$3,000,000, is based on the aggregate of all proceeds received by the issuer at any time from trades made in reliance upon the exemption in section 2.1. Proceeds received by the issuer from trades made in reliance upon other exemptions, including exemptions available prior to the date when the exemption in section 2.1 first became available, are not relevant. In particular, the proceeds realized by the issuer from trades to accredited investors need not be included in determining whether the \$3,000,000 threshold would be exceeded in respect of any proposed trade under section 2.1. However, if the issuer has not filed a report on Form 45-501F1 in respect of a trade with an accredited investor where such a filing is required, it will be presumed that the trade was made in reliance upon section 2.1, in which case the proceeds of that trade must be counted for purposes of the aggregate proceeds limit.
- (4) The Commission notes that the term "common enterprise" in paragraph (a) of subsection 2.1(1) is intended to operate as an anti-avoidance mechanism to the extent that multiple business entities are organized for the purposes of financing what is essentially a single business enterprise in order to benefit from continued or excessive use of the closely-held issuer exemption. The Commission takes the view that

commonality of ownership combined with commonality of business plans will be particularly indicative of a "common enterprise".

- (5) The Commission considers that the reference to "the date of the trade" for purposes of the information statement delivery requirement in subsection 2.1(2) means the settlement date or closing date of the trade, as applicable.

**2.4 Sunset of Pooled Fund Rulings** – Prior to the implementation of Rule 45-501 on November 30, 2001, the Commission has granted numerous rulings under subsection 74(1) of the Act providing exemptive relief from the prospectus and registration requirements to pooled fund issuers in respect of, among other things, the sale of additional pooled fund interests to investors that previously purchased pooled fund interests under an exemption. In general, these rulings contained a "sunset" provision stating that the ruling would terminate following the adoption of a rule regarding trades in securities of pooled funds. Rule 45-501 contains a "transitional" exemption in section 2.12 that exempts the sale of securities of a private pooled fund to an investor acquiring at least \$150,000 of such securities and, if the fund's adviser is registered under the Act, the sale of additional securities of the same fund to such an investor. The Commission considers that this transitional pooled fund exemption, together with the accredited investor exemption in section 2.3 of Rule 45-501 which exempts sales of securities to certain types of accredited investors, provide adequate transitional relief from the prospectus and registration requirements for trades in pooled fund interests to investors. OSC Rule 81-501 Mutual Fund Reinvestment Plans also continues to apply to securities of pooled funds that are issued to investors under reinvestment plans whereby distributions of income, capital or capital gains to investors are reinvested in additional securities of that pooled fund. Accordingly, the Commission takes the view that the rulings described above expire upon implementation of Rule 45-501. The Commission considers that section 2.12 is a "transitional" exemption that maintains the status quo for pooled funds until such time as the Commission determines the appropriate regulatory regime for pooled funds.

**2.5 Trades on an Amalgamation, Arrangement or Specified Statutory Procedure** - Clause 72(1)(i) of the Act and section 2.8 of Rule 45-501 provide exemptions for trades in securities in connection with a statutory amalgamation or arrangement or other statutory procedure. The Commission is of the view that the references to statute in these provisions refer to any statute of a jurisdiction or foreign jurisdiction under which the entities involved have been incorporated or created and exist or under which the transaction is taking place.

**2.6 Three-Cornered Amalgamations** - Certain corporate statutes permit a so-called "three-cornered merger or amalgamation" under which two companies will amalgamate or merge and security

holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. Section 2.8 of Rule 45-501 exempts these trades as the exemption applies to any trade made in connection with an amalgamation or merger.

**2.7 Other Exemptions** - There are various other exemptions from the prospectus and registration requirements that are available to sellers of securities in prescribed circumstances, including Rule 45-503 Trades to Employees, Executives and Consultants which exempts sales of securities of an issuer to its employees and executives, among others. The Commission notes, in particular, that certain exemptions previously contained in Rule 45-501 as it read when it was originally adopted are now contained in MI 45-102. Market participants engaged in the purchase and sale of securities under exemptions from the prospectus and registration requirements should read MI 45-102 together with Rule 45-501 to ensure that they have duly considered all regulatory requirements applicable to exempt distributions of securities in Ontario.

**2.8 Applications for Accredited Investor Recognition** - Paragraph (u) of the "accredited investor" definition in section 1.1 of Rule 45-501 contemplates that a person or company may apply to be recognized by the Commission as an accredited investor. The Commission will consider applications for accredited investor recognition submitted by or on behalf of investors that do not meet any of the other criteria for accredited investor status but nevertheless have the requisite sophistication or financial resources. The Commission has not adopted any specific criteria for granting accredited investor recognition to applicants as the Commission believes that the "accredited investor" definition generally covers all of the types of investors that do not require the protection of the prospectus and registration requirements under the Act. If the Commission considers it appropriate in the circumstances, it may grant accredited investor recognition to an investor on terms and conditions, including a requirement that the investor apply annually for renewal of accredited investor recognition. The Commission notes that section 8.1 of Rule 45-501 provides, as a transitional matter, that a person or company recognized by the Commission as an exempt purchaser will be considered an accredited investor for the remaining term of the recognition order up to one year from the effective date of Rule 45-501. The Commission believes that a person or company previously recognized as an exempt purchaser should have little difficulty qualifying as an accredited investor under Rule 45-501 after its exempt purchaser recognition expires, unless the person or company has experienced a change in its financial circumstances.

## PART 3 CERTIFICATION OF FACTUAL MATTERS

**3.1 Seller's Due Diligence** - It is the seller's responsibility to ensure that its trades in securities are made in compliance with applicable securities laws. In the case of a seller's reliance upon exemptions from the prospectus and registration requirements, the Commission expects that the seller will exercise reasonable diligence for the purposes of determining the availability of the exemption used in any particular circumstances. The Commission will normally be satisfied that a seller has exercised reasonable diligence in relying upon a particular exemption if the seller has obtained statutory declarations or written certifications from the purchasers, unless the seller has knowledge that any facts set out in the declarations or certifications are incorrect. In circumstances where a seller has recently obtained a statutory declaration or a written certification from a purchaser with whom a further trade is being made on an exempt basis, the seller may continue to rely upon the recently obtained statutory declaration or certification unless the seller has reason to believe that the statutory declaration or certification is no longer valid in the circumstances.

## PART 4 OFFERING MEMORANDA

**4.1 Use of Offering Memoranda in Connection with Private Placements**

- (1) Part 4 of Rule 45-501 provides for the application of the statutory right of action referred to in section 130.1 of the Act if an offering memorandum is delivered to a prospective investor in connection with a trade made in reliance upon a prospectus exemption in section 2.1, 2.3, 2.12 or 2.13 of Rule 45-501. In this case, the statutory right of action must be described in the offering memorandum and a copy of the offering memorandum must be delivered to the Commission. With the exception of the government incentive security exemption in section 2.13, there is no obligation to prepare an offering memorandum for use in connection with a trade made in reliance upon the above-noted prospectus exemptions. However, business practice may dictate the preparation of offering material that is delivered voluntarily to purchasers in connection with exempt trades under section 2.1, 2.3, or 2.12. This offering material may constitute an "offering memorandum" as defined in Ontario securities law. The statutory right of rescission or damages applies when the offering memorandum is provided mandatorily in connection with an exempt trade made under section 2.13, or voluntarily in connection with exempt trades made under section 2.1, 2.3 or 2.12, including an exempt trade made under section 2.3 to a government or financial institution that is an accredited investor. However, a document delivered in connection with a sale of securities made otherwise than in reliance upon the above-noted exemptions does

not give rise to the statutory right of action or subject the seller to the requirements of Part 4.

- (2) With the exception of an offering memorandum that is provided in respect of a trade in government incentive securities made under the exemption in section 2.13, Ontario securities law generally does not prescribe what an offering memorandum should contain.
- (3) The Commission cautions against the practice of providing preliminary offering material to certain prospective investors before furnishing a "final" offering memorandum unless the material contains a description of the statutory right of action available to purchasers in situations when the statutory right of action applies and a description is required. The only material prepared in connection with the private placement for delivery to investors, other than a "term sheet" (representing a skeletal outline of the features of an issue without dealing extensively with the business and affairs of the issuer), should consist of an offering memorandum describing the statutory right of action and complying in all other respects with Ontario securities law.

staff becomes aware of an offering memorandum that fails to disclose material information relating to the securities that are the subject of the transaction, staff may seek to intervene to effect remedial action.

## **PART 5 RESTRICTIONS ON RESALE OF SECURITIES**

- 5.1 Incorporation of Multilateral Instrument 45-102 Resale of Securities** - Parts 6 and 8 of the Rule imposes resale restrictions on the first trades in securities distributed under certain exemptions from the prospectus requirements. Different types of resale restrictions are imposed depending upon the nature of the prospectus exemption under which the securities were distributed. In each case, the applicable resale restrictions are incorporated by reference to a specific section of MI 45-102. Sellers of securities are reminded that these resale restrictions need not apply if the seller is able to rely upon another prospectus exemption in the Act or in a Commission rule in respect of the resale of the securities in question.

## **PART 6 COMMISSION REVIEW**

- 6.1 Review of Offering Material** - Although sellers of securities who rely upon the private placement exemptions are required to deliver to the Commission copies of offering material that they use in connection with the exempt trades if the offering material constitutes an "offering memorandum" as defined in Ontario securities law, the offering material is not generally reviewed or commented upon by Commission staff.
- 6.2 Other Regulatory Approvals** - Given the self-policing nature of exempt distributions and the fact that offering memoranda are not routinely reviewed by Commission staff, the decision relating to the appropriate disclosure in an offering memorandum rests with the issuer, the selling securityholder and their advisors. If Commission



**5.1.2 Multilateral Instrument 45-102: Resale of Securities**

**MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES**

**PART 1 DEFINITIONS**

**1.1 Definitions - In this Instrument**

"AIF" means an annual information form of an issuer;

"approved rating" means, for a security, a rating at or above one of the following rating categories issued by an approved rating organization for the security or a rating category that preceded or replaces a category listed below:

Approved Rating Organization	Long Term Debt	Short Term Debt	Preferred Shares
Dominion Bond Rating Service Limited	BBB	R-2	Pfd-3
Fitch, Inc.	BBB	F3	BBB
Moody's Investors Service, Inc.	Baa	Prime-3	baa
Standard & Poor's Corporation	BBB	A-3	BBB

"approved rating organization" means each of Dominion Bond Rating Service Limited, Fitch, Inc., Moody's Investors Service, Inc., Standard & Poor's Corporation, and any of their predecessors or successors;

"control distribution" means a trade described in the provisions of securities legislation listed in Appendix A;

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

"CPC" means a capital pool company as defined in a CPC instrument and, in Manitoba, a keystone company as defined in Manitoba Securities Commission Rule 44-501 Keystone Companies;

"CPC information circular" means an information circular filed by an issuer and accepted under a CPC instrument in connection with a qualifying transaction;

"CPC instrument" means a rule or regulation of a jurisdiction, or a rule, regulation or policy of an exchange in Canada, that applies only to CPCs;

"current AIF" means

- a) an AIF that is a current AIF filed under NI 44-101 in at least one of the jurisdictions listed in Appendix B,
- b) an AIF that is a "Current AIF" as defined in NP 47 filed under NP 47 in at least one of the jurisdictions listed in Appendix B,
- c) an AIF in the form required by Form 44-101F1 filed in at least one of the jurisdictions listed in Appendix B by an issuer not eligible to use NI 44-101 and containing audited financial statements for the issuer's most recently completed financial year,
- d) an AIF that is a current AIF filed under British Columbia Instrument 45-506 or Alberta Rule 45-501,
- e) a prospectus which has been filed in any jurisdiction that includes audited financial statements for the issuer's most recently completed financial year, other than
  - (i) a short form prospectus filed under NI 44-101,
  - (ii) a short form prospectus filed under NP 47, or
  - (iii) a prospectus filed under a CPC instrument,
- f) a CPC information circular filed in any jurisdiction that includes
  - (i) audited financial statements for the issuer's most recently completed financial year,
  - (ii) audited financial statements for the target issuer's most recently completed financial year, and
  - (iii) a pro forma balance sheet that gives effect to the qualifying transaction accompanied by a compilation report of an auditor, and
- g) a current annual report on Form 10-K or Form 20-F under the 1934 Act for the issuer's most recently completed financial year filed in any jurisdiction by an issuer that has securities registered under section 12 of the 1934 Act or has a reporting obligation under subsection 15(d) of the 1934 Act;

"distribution date" means

- (a) in respect of a trade that is not a control distribution, the date the security that is the subject of the trade was distributed in reliance on an exemption from the prospectus requirement by the issuer or, in the case of a control distribution, by the selling security holder,

- (b) in respect of a trade that is a control distribution, the date the security that is the subject of the trade was acquired by the selling security holder,
- (c) in respect of a trade of an underlying security that is not a control distribution, the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed in reliance on an exemption from the prospectus requirement by the issuer or, in the case of a control distribution, by the selling security holder, or
- (d) in respect of a trade of an underlying security that is a control distribution, the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was acquired by the selling security holder;

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

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

"NI 13-101" means National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);

"NI 43-101" means National Instrument 43-101 Standards of Disclosure for Mineral Projects;

"NI 44-101" means National Instrument 44-101 Short Form Prospectus Distributions;

"NP 47" means National Policy Statement No. 47 Prompt Offering Qualification System;

"NP 2-B" means National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators in the form in place on the effective date of this Instrument;

"private company" has the meaning ascribed to that term in securities legislation;

"private issuer" has the meaning ascribed to that term in securities legislation except in Ontario where "private issuer" means a person that

- (a) is not a reporting issuer or a mutual fund,

- (b) is an issuer all of whose issued and outstanding shares
  - (i) are subject to restrictions on transfer contained in the constating documents of the issuer or one or more agreements among the issuer and the holders of its securities; and
  - (ii) are beneficially owned, directly or indirectly, by not more than 50 persons or companies, counting any two or more joint registered holders as one beneficial owner, exclusive of persons
    - (A) that are employed by the issuer or an affiliated entity of the issuer, or
    - (B) that beneficially owned, directly or indirectly, shares of the issuer while employed by it or an affiliated entity of it and at all times since ceasing to be so employed have continued to beneficially own, directly or indirectly, at least one share of the issuer, and
- (c) has not distributed any securities to the public;

"qualified market" means any of

- (a) The Toronto Stock Exchange Inc.,
- (b) Tier 1 or Tier 2 of the Canadian Venture Exchange Inc.,
- (c) Bourse de Montréal Inc.,
- (d) the American Stock Exchange,
- (e) Nasdaq National Market,
- (f) Nasdaq SmallCap Market,
- (g) the New York Stock Exchange,
- (h) the London Stock Exchange Limited, and
- (i) any predecessor or successor to any of the entities referred to in paragraphs (a) through (h);

"qualifying issuer" means an issuer

- (a) that is a reporting issuer in a jurisdiction listed in Appendix B,
- (b) that is an electronic filer under NI 13-101,
- (c) that has a current AIF filed on SEDAR,
- (d) that
  - (i) has a class of equity securities listed or quoted on a qualified market, has not been notified by the qualified market that it does not meet the requirements to maintain that

listing or quotation and is not designated inactive, suspended or the equivalent, or

- (ii) has a class of securities outstanding that has an approved rating,
- (e) if it is not qualified to file a short form prospectus under NI 44-101, or prior to the effective date of NI 44-101 was not qualified to file a short form prospectus under NP 47, and has a mineral project or oil and gas producing activities, including exploration, that has filed with its current AIF, as if the current AIF were a prospectus, technical reports in accordance with NI 43-101 if the current AIF was filed after the effective date of NI 43-101, or a technical report and certificate prepared in accordance with NP 2-B,
- (f) that, if it has received a notice in writing from any regulator that its current AIF, including any technical reports, is unacceptable, has satisfied the regulator that its current AIF is acceptable, and
- (g) that, if it is a CPC, has filed a CPC information circular;

"qualifying transaction" means a transaction that, if completed, would result in the issuer no longer being a CPC;

"SEDAR" has the meaning ascribed to that term in NI 13-101; and

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

## PART 2 FIRST TRADES

- 2.1 **Application** - Except for sections 2.1, 2.8 and 2.9, this Part does not apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.
- 2.2 **Removal of Resale Provisions** - The provisions in securities legislation listed in Appendix C do not apply.
- 2.3 **Section 2.5 Applies** - If a security was distributed under any of the provisions listed in Appendix D, the first trade of that security is subject to section 2.5.
- 2.4 **Section 2.6 Applies** - If a security was distributed under any of the provisions listed in Appendix E, the first trade of that security is subject to section 2.6.
- 2.5 **Restricted Period**
  - (1) Unless the conditions in subsection (2) or (3) are satisfied, a trade that is specified by section 2.3

or other securities legislation to be subject to this section is a distribution.

- (2) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:
  - 1. The issuer is and has been a reporting issuer in a jurisdiction listed in Appendix B for the four months immediately preceding the trade.
  - 2. At least four months have elapsed from the distribution date.
  - 3. If the distribution date is on or after the effective date of this Instrument, a certificate representing the securities was issued that carried a legend stating:

"Unless permitted under securities legislation, the holder of the securities shall not trade the securities before [insert the date that is four months and a day after the distribution date]."
  - 4. The trade is not a control distribution.
  - 5. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
  - 6. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
  - 7. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.
- (3) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:
  - 1. The issuer is and has been a reporting issuer for the 12 months immediately preceding the trade
    - (a) in a jurisdiction listed in Appendix B, if the issuer is an electronic filer under NI 13-101; or
    - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101.
  - 2. At least 12 months have elapsed from the distribution date.
  - 3. If the distribution date is on or after the effective date of this Instrument, a certificate representing the securities was issued that carried a legend

- (a) if the issuer is a reporting issuer in a jurisdiction listed in Appendix B and is an electronic filer under NI 13-101 on the distribution date, stating:

"Unless permitted under securities legislation, the holder of the securities shall not trade the securities before [insert the date that is 12 months and a day after the distribution date]."; or

- (b) if the issuer is not a reporting issuer in a jurisdiction listed in Appendix B at the distribution date, stating:

"Unless permitted under securities legislation, the holder of the securities shall not trade the securities before the earlier of (i) the date that is 12 months and a day after the date the issuer first became a reporting issuer in any of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan, if the issuer is a SEDAR filer; and (ii) the date that is 12 months and a day after the later of (A) the distribution date, and (B) the date the issuer became a reporting issuer in the local jurisdiction of the purchaser of the securities that are the subject of the trade."

4. The trade is not a control distribution.
5. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
6. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
7. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

## 2.6 Seasoning Period

- (1) Unless the conditions in subsection (3), (4) or (5) are satisfied, a trade that is specified by section 2.4 or other securities legislation to be subject to this section is a distribution.
- (2) The first trade of securities issued by a private company or private issuer made after the issuer has ceased to be a private company or private issuer is a distribution unless the conditions in subsection (4) are satisfied.

- (3) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer in a jurisdiction listed in Appendix B for the four months immediately preceding the trade.
2. The trade is not a control distribution.
3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
5. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

- (4) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer for the 12 months immediately preceding the trade
  - (a) in a jurisdiction listed in Appendix B, if the issuer is an electronic filer under NI 13-101; or
  - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101.
2. The trade is not a control distribution.
3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
5. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

- (5) Despite subsection (4), if

- (a) the selling security holder acquired the securities under any of the provisions listed in Appendix F or a provision of securities legislation that specifies that the first trade of securities distributed to an employee, executive, consultant or administrator is subject to this section, and

- (b) the issuer of the securities became a qualifying issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class of its equity securities on a qualified market,

the conditions are the issuer is and has been a reporting issuer in a jurisdiction listed in Appendix B for the four months immediately preceding the trade and the conditions in items (4)2., 3., 4. and 5.

**2.7 Filing of Forms 45-102F1 and 45-102F2**

- (1) If an issuer ceases to be a private company or private issuer on or after the effective date of this Instrument, the issuer shall file Form 45-102F1.

(2) If

- (a) an issuer, or a selling security holder in the case of a control distribution, has distributed securities under any of the provisions listed in Appendix D or E or a provision of securities legislation that specifies that the first trade of the securities is subject to section 2.5 or 2.6,
- (b) the distribution date is on or after the effective date of this Instrument, and
- (c) the issuer was a qualifying issuer on the distribution date,

the issuer, or the selling security holder in the case of a control distribution, shall file Form 45-102F2 on or before the tenth day after the distribution date.

(3) If

- (a) an issuer has distributed securities under any of the provisions listed in Appendix F or a provision of securities legislation that specifies that the first trade of securities distributed to an employee, executive, consultant or administrator is subject to section 2.6,
- (b) the issuer was not a qualifying issuer on the distribution date, and
- (c) the issuer becomes a qualifying issuer on or after the effective date of this Instrument by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class of its equity securities on a qualified market,

the issuer shall file Form 45-102F2.

- (4) The issuer, or the selling security holder in the case of a control distribution, shall file Form 45-102F2 on SEDAR.

**2.8 Exemption for a Trade by a Control Person**

- (1) The prospectus requirement does not apply to a control distribution, or a distribution by a lender, pledgee, mortgagee or other encumbrancer for the purpose of liquidating a debt made in good faith by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt if the security was acquired by the lender, pledgee, mortgagee or other encumbrancer in a control distribution, if the conditions in subsections (2) or (3) are satisfied.

- (2) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer in a jurisdiction listed in Appendix B for the four months immediately preceding the trade.
2. The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt, has held the securities for at least four months.
3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
5. The selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

- (3) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer for the 12 months immediately preceding the trade
  - (a) in a jurisdiction listed in Appendix B, if the issuer is an electronic filer under NI 13-101; or
  - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101.
2. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
3. No extraordinary commission or consideration is paid to a person or company in respect of the trade.

4. The selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.
5. The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt has held the securities for
  - (a) at least 12 months, if the securities were distributed to the selling security holder under any of the provisions listed in Appendix D or a provision of securities legislation that specifies that the first trade of the securities is subject to section 2.5, and
  - (b) in all other cases, at least six months.
- (4) The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt, under subsection (2) or (3) shall
  - (a) sign and file Form 45-102F3 at the times set out in subsections (6) and (7), and
  - (b) file, within three days after the completion of any trade, a report of the trade in the form required to be filed by a person or company in order to comply with the insider reporting requirements.
- (5) A person or company required to file Form 45-102F3 shall sign the form no earlier than one business day before its filing.
- (6) Subject to subsections (7) and (8), a person or company required to file Form 45-102F3 shall file the form
  - (a) at least seven days and not more than 14 days before the first trade that forms part of the distribution,
  - (b) on the 60th day after the date of filing under paragraph (a), and
  - (c) thereafter at the end of each 28 day period.
- (7) Subject to subsection (8), if a person or company has filed a Form 23 Notice of Intention to Distribute Securities or equivalent form before the effective date of this Instrument, the person or company shall file Form 45-102F3
  - (a) on the 60th day after the date of filing of the Form 23 or equivalent form, and thereafter at the end of each 28 day period, or
  - (b) on the 28th day after the date of filing of the renewal Form 23 or equivalent form, and thereafter at the end of each 28 day period, if a renewal form has been filed before the effective date of this Instrument.

- (8) A person or company is not required to file Form 45-102F3 under paragraph 6(b), 6(c), 7(a) or 7(b) if
  - (a) all of the securities specified under the original form have been sold, or
  - (b) a notice has been filed in the jurisdictions in which a Form 45-102F3 would otherwise have been filed, which states that the securities specified under the original form, or the unsold part, are no longer for sale.

## 2.9 Determining Time Periods

- (1) In determining the period of time that an issuer has been a reporting issuer for the purposes of section 2.6 or 2.8, in the case of securities distributed under any of the provisions listed in Appendix G, the period of time that one of the amalgamating, merging or continuing issuers was a reporting issuer immediately before the amalgamation, merger or continuation may be included.
- (2) In determining the period of time that a selling security holder has held a security for the purposes of section 2.5 or 2.8, if the security was acquired by the selling security holder from an affiliate of the selling security holder, the period of time that the security had been held by the affiliate before the transfer to the selling security holder may be included.
- (3) In determining the period of time that a selling security holder has held an underlying security for the purposes of section 2.8, the period of time the selling security holder has held the convertible security, exchangeable security or multiple convertible security may be included.
- (4) In determining the period of time that a lender, pledgee, mortgagee or other encumbrancer has held a security under item 2.8(2)2. or 2.8(3)5., the period of time the security has been held by the debtor may be included.
- (5) In determining the period of time that a lender, pledgee, mortgagee or other encumbrancer has held an underlying security under item 2.8(2)2. or 2.8(3)5., the period of time the convertible security, exchangeable security or multiple convertible security has been held by the debtor may be included.

## 2.10 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Prospectus - Section 2.6 does not apply to a trade in an underlying security issued or transferred under the terms of a convertible security, exchangeable security or multiple convertible security if

- (a) a receipt was obtained for a prospectus qualifying the distribution of the convertible

security, exchangeable security or multiple convertible security;

- (b) the trade is not a control distribution; and
- (c) the issuer of the underlying security is a reporting issuer at the time of the trade.

**2.11 Exemption for a Trade in a Security Acquired in a Take-over Bid or Issuer Bid** - Section 2.6 does not apply to a trade of a security of an offeror acquired by the selling security holder upon the exchange by or for the account of the offeror with the security holders of the offeree issuer in connection with a take-over bid or issuer bid if

- (a) when the exemption from the prospectus requirement was relied upon, a securities exchange take-over bid circular or securities exchange issuer bid circular relating to the distribution of the securities was filed by the offeror on SEDAR;
- (b) the trade is not a control distribution; and
- (c) the offeror was a reporting issuer on the date securities of the offeree issuer are first taken up under the take-over bid or issuer bid.

**2.12 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Securities Exchange Take-over Bid Circular or Issuer Bid Circular** - Section 2.6 does not apply to a trade in an underlying security issued or transferred under the terms of a convertible security, exchangeable security or multiple convertible security if

- (a) when the exemption from the prospectus requirement was relied upon, a securities exchange take-over bid circular or a securities exchange issuer bid circular relating to the distribution of the convertible security, exchangeable security or multiple convertible security was filed by the offeror on SEDAR;
- (b) the trade is not a control distribution;
- (c) the offeror was a reporting issuer on the date securities of the offeree issuer are first taken up under the take-over bid or issuer bid; and
- (d) the issuer of the underlying security is a reporting issuer at the time of the trade.

**2.13 Trades by Underwriters** - A trade by an underwriter of securities distributed under any of the provisions listed in Appendix H is a distribution.

**2.14 First Trades in Securities of a Non-Reporting Issuer Distributed under a Prospectus Exemption**

(1) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if

- (a) the issuer of the security was not a reporting issuer in any jurisdiction at the distribution date;
- (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
  - (i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and
  - (ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series; and
- (c) the trade is made
  - (i) through an exchange, or a market, outside of Canada, or
  - (ii) to a person or company outside of Canada;

(2) The prospectus requirement does not apply to the first trade of an underlying security if

- (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;
- (b) the issuer of the underlying security was not a reporting issuer in any jurisdiction at the distribution date of the convertible security, exchangeable security or multiple convertible security;
- (c) the conditions in paragraph (1)(b) would have been satisfied for the underlying security at the time of the initial distribution of the convertible security, exchangeable security or multiple convertible security; and
- (d) the condition in paragraph (1)(c) is satisfied.

### PART 3 CURRENT AIF FILING REQUIREMENTS

#### 3.1 Current AIF

- (1) An issuer that has not filed an AIF
  - (a) under NI 44-101, or
  - (b) prior to the effective date of NI 44-101, under NP 47

may file a current AIF under this Instrument at any time.

- (2) An issuer filing a current AIF as defined in paragraphs (c), (d), (e), (f) or (g) of the definition of current AIF shall file a notice on SEDAR
  - (a) advising that it has filed a current AIF, and
  - (b) identifying the SEDAR project number under which the current AIF was filed.

### PART 4 EXEMPTION

#### 4.1 Exemption

- (1) The regulator or the 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.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

### PART 5 EFFECTIVE DATE

**Effective Date** - This Instrument comes into force on November 30, 2001.



APPENDIX A  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES

CONTROL DISTRIBUTIONS

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Sections 1(c.2) and 1(f)(iii) of the <i>Securities Act</i> (Alberta)
British Columbia	Paragraph (c) of the definition of "distribution" contained in section 1(1) of the <i>Securities Act</i> (British Columbia)
Manitoba	Paragraph (b) of the definition of "primary distribution to the public" contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
Newfoundland	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Newfoundland)
Northwest Territories	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Nova Scotia	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Ontario	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
Saskatchewan	Subclauses 2(1)(r)(iii), (iv) and (v) of <i>The Securities Act, 1988</i> (Saskatchewan)

**APPENDIX B  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES**

**REPORTING ISSUER JURISDICTIONS:**

Alberta

British Columbia

Manitoba

Nova Scotia

Ontario

Quebec

Saskatchewan

APPENDIX C  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES

NON-APPLICABLE RESALE PROVISIONS  
(Section 2.2)

**JURISDICTION    SECURITIES LEGISLATION REFERENCE**

Alberta	Sections 109, 109.1, 110, 110.1, 110.2, 111 with respect to underwriters and 112 of the <i>Securities Act</i> (Alberta)
Nova Scotia	Subsections 77(5), 77(6), 77(7), 77(7A), 77(7B), 77(8), 77(9), 77(10)(a) and 77(11) of the <i>Securities Act</i> (Nova Scotia)
Ontario	Subsections 72(4) (except as referred to in Rule 45-503 Trades to Employees, Executives and Consultants), 72(5), 72(6) as it relates to clause 72(1)(r), and 72(7) of the <i>Securities Act</i> (Ontario)

**APPENDIX D  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES**

**RESTRICTED PERIOD TRADES  
(Section 2.3)**

Sections 107(1)(a), (b), (c), (d), (l), (m), (p), (q), (t), (t.1), (u) and (z) of the *Securities Act* (Alberta), and section 107(1)(f)(iii) of the *Securities Act* (Alberta) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Alberta).

Sections 74(2)(1) to (6), (16), (18), (19), (23) and (25) of the *Securities Act* (British Columbia)

Sections 128(a), (b), (c), (e), (f) and (h) of the *Securities Rules* (British Columbia)

Sections 74(2)(11)(ii) and 74(2)(13) of the *Securities Act* (British Columbia) if the security acquired by the selling security holder was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), or the *Securities Rules* (British Columbia) referred to in this Appendix

Section 74(2)(12) of the *Securities Act* (British Columbia) if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia) or the *Securities Rules* (British Columbia) referred to in this Appendix

Clauses 73(1)(a), (b), (c), (d), (l), (m), (p) and (q) of the *Securities Act* (Newfoundland) and subclause 73(1)(f)(iii) of the *Securities Act* (Newfoundland) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Newfoundland)

Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z), and clause 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories)

Clauses 77(1)(a), (b), (c), (d), (l), (m), (p), (q), (u), (w), (y), (ab) and (ad) of the *Securities Act* (Nova Scotia), and subclause 77(1)(f)(iii) of the *Securities Act* (Nova Scotia) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Nova Scotia)

Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z), and clause 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Nunavut)

Clauses 72(1)(a), (b), (c), (d), (l), (m), (p) and (q) of the *Securities Act* (Ontario) and subclause 72(1)(f)(iii) of the *Securities Act* (Ontario) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Ontario)

Clauses 81(1)(a), (b), (c), (d), (m), (n), (s), (t), (v), (w), (z), (bb) and (ee) of *The Securities Act, 1988* (Saskatchewan)

Subclauses 81(1)(f)(iii) and (iv) of *The Securities Act, 1988* (Saskatchewan) if the convertible security, exchangeable security or multiple convertible security was acquired under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) referred to in this Appendix

Clause 81(1)(e) of *The Securities Act, 1988* (Saskatchewan) if the person or company from whom the securities were acquired obtained the securities under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) referred to in this Appendix.

**APPENDIX E  
TO  
MULTILATERAL INSTRUMENT 45-102  
RE SALE OF SECURITIES**

**SEASONING PERIOD TRADES  
(Section 2.4)**

Sections 107(1)(f) if not included in Appendix D of this Instrument, (i), (j), (j.1), (k), (k.1) prior to its repeal by section 5 of the *Securities Amendment Act, 1989* (Alberta), and (n) of the *Securities Act* (Alberta)

Sections 74(2)(7) to (11), (13), (22) and (24) of the *Securities Act* (British Columbia)

Section 128(g) of the *Securities Rules* (British Columbia)

Section 74(2)(12) of the *Securities Act* (British Columbia), if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia) or the *Securities Rules* (British Columbia) referred to in this Appendix

Clauses 73(1)(f) if not included in Appendix D of this Instrument, (i), (j), (k) and (n) of the *Securities Act* (Newfoundland)

Clauses 3(e)(i) and (ii) and paragraphs 3(f), (g), (h), (i), (n), (x), (y) and (mm) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories)

Clause 77(1)(f) of the *Securities Act* (Nova Scotia) if not included in Appendix D of this Instrument, and clauses 77(1)(h), (i), (j), (k), (n), (v), (va), (ac), (ae) and (af) of the *Securities Act* (Nova Scotia), and clause 78(1)(a) of the *Securities Act* (Nova Scotia) as it relates to clause 41(2)(j) of the *Securities Act* (Nova Scotia) and Blanket Order No. 5A

Clauses 3(e)(i) and (ii) and paragraphs 3(f), (g), (h), (i), (n), (x), (y) and (mrn) of Blanket Order No. 1 of the Registrar of Securities (Nunavut)

Clauses 72(1)(f), (i), (j), (k) and (n) of the *Securities Act* (Ontario), except for a trade made under subclause 72(1)(f)(iii) of the *Securities Act* (Ontario) that is

- (i) included in Appendix D of this Instrument,
- (ii) to an associated consultant or investor consultant as defined in Ontario Securities Commission Rule 45-503 Trades to Employees, Executives and Consultants, or
- (iii) contemplated by section 6.5 of Ontario Securities Commission Rule 45-501 Exempt Distributions

Clauses 81(1)(a.1), (e) if not included in Appendix D of this Instrument, (f) if not included in Appendix D of this Instrument, (f.1), (g), (h), (i), (i.1), (j), (k), (o), (cc) and (dd) of *The Securities Act, 1988* (Saskatchewan)

**APPENDIX F  
TO  
MULTILATERAL INSTRUMENT 45-102  
RE SALE OF SECURITIES**

**EMPLOYEE TRADES  
(Section 2.6)**

Sections 107(1)(f)(iii) (if the convertible security was distributed under section 107(1)(n)) and (n) of the *Securities Act* (Alberta)

Sections 74(2)(9) and 74(2)(11)(iii) (if the convertible security was distributed under section 74(2)(9) of the *Securities Act* (British Columbia) or under British Columbia Instrument 45-507 Trades to Employees, Executives and Consultants (other than to an associated consultant or investor consultant)) of the *Securities Act* (British Columbia)

Sections 73(1)(f)(iii) (if the convertible security was distributed under section 73(1)(n)) and (n) of the *Securities Act* (Newfoundland)

Paragraphs 3(e) (if the convertible security was distributed under paragraph 3(n)) and (n) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories)

Subclause 77(1)(f)(iii) (if the convertible security was distributed under clause 77(1)(n)) and clause 77(1)(n) of the *Securities Act* (Nova Scotia) and Blanket Order No. 5A

Paragraphs 3(e) (if the convertible security was distributed under paragraph 3(n)) and (n) of Blanket Order No. 1 of the Registrar of Securities (Nunavut)

Subclause 72(1)(f)(iii) (if the convertible security was distributed under clause 72(1)(n) of the *Securities Act* (Ontario) or under Ontario Securities Commission Rule 45-503 Trades to Employees, Executives and Consultants (other than to an associated consultant or investor consultant)) and clause 72(1)(n) of the *Securities Act* (Ontario)

Subclause 81(1)(f)(iii) (if the convertible security was distributed under clause 81(1)(o)) and clause 81(1)(o) of *The Securities Act, 1988* (Saskatchewan)

APPENDIX G  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES

AMALGAMATIONS OR MERGERS  
(Section 2.9)

Section 107(1)(i) of the *Securities Act* (Alberta)

Section 74(2)(8) of the *Securities Act* (British Columbia)

Clause 58(1)(b) of the *Securities Act* (Manitoba)

Clause 73(1)(i) of the *Securities Act* (Newfoundland)

Paragraph 3(g) of Blanket Order No.1 of the Registrar of Securities (Northwest Territories)

Clause 77(1)(i) of the *Securities Act* (Nova Scotia)

Paragraph 3(g) of Blanket Order No. 1 of the Registrar of Securities (Nunavut)

Clause 72(1)(i) of the *Securities Act* (Ontario) and section 2.8 of Rule 45-501 Exempt Distributions

Clause 2(3)(k) of the *Securities Act* (Prince Edward Island)

Clause 81(1)(i) of *The Securities Act, 1988* (Saskatchewan)

APPENDIX H  
TO  
MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES

UNDERWRITERS  
(Section 2.13)

Section 107(1)(u.1) of the *Securities Act* (Alberta)

Section 74(2)(15) of the *Securities Act* (British Columbia)

Clause 73(1)(r) of the *Securities Act* (Newfoundland)

Paragraph 3(v) of Blanket Order No.1 of the Registrar of Securities (Northwest Territories)

Clause 77(1)(r) of the *Securities Act* (Nova Scotia)

Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Nunavut)

Clause 72(1)(r) of the *Securities Act* (Ontario)

Clause 81(1)(u) of *The Securities Act, 1988* (Saskatchewan)

FORM 45-102F1

Report Made under Subsection 2.7(1) of Multilateral Instrument 45-102 Resale of Securities with respect to an Issuer that has Ceased to be a Private Company or Private Issuer

- 1. Name and address of the issuer that has ceased to be a private company or private issuer.
- 2. Date when the issuer ceased to be a private company or private issuer.
- 3. Jurisdiction of incorporation, organization or continuation of the issuer.
- 4. List, as of the time immediately before the issuer ceased to be a private company or private issuer, the number or amount and designation of the authorized and outstanding securities of each class of securities of the issuer.
- 5. Particulars of the outstanding securities.

Name of Owner of Securities and Municipality and Jurisdiction of Residence	Number or Amount	Designation of Securities
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If, after reasonable effort, it was not possible to identify the beneficial owner, explain why and disclose the registered owner.

- 6. The issuer has prepared, certified and delivered to the securities regulatory authority a statement containing the full legal name of, the full residential address of, and the number or amount and designation of securities of the issuer held by, each person or company who was a beneficial owner of securities of the issuer immediately before the issuer ceased to be a private company or private issuer and, if, after reasonable effort, it was not possible to identify the beneficial owner at the time the statement was delivered, has explained why.

(Make certain the totals as to beneficial and as to registered owners given in this item reconcile, in each case, with the totals given in items 4 and 5.)

- 7. The undersigned certifies that the information given in this report is true and complete in every respect.

Date .....

.....  
(name of issuer that has ceased to be a private company or private issuer)

By:.....  
(signature)

.....  
(official capacity)

.....  
(name of individual whose signature appears above)

**INSTRUCTION:**

If the issuer ceases to be a private company or private issuer on or after the effective date of Multilateral Instrument 45-102, file this form with the securities regulatory authority in each jurisdiction in which the issuer has ceased to be a private company or private issuer and section 2.7 of Multilateral Instrument 45-102 has been implemented. Section 2.7 has been implemented in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan.

## Notice - Collection and Use of Personal Information

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities set out below for the purposes of the administration and enforcement of the securities legislation in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan. All of the information required under this form, except for the information contained in the statement required under item 6, is made available to the public pursuant to Multilateral Instrument 45-102 and the securities legislation in each of the jurisdictions indicated above. If you have any questions about the collection and use of this information, contact the securities regulatory authorities in the jurisdiction(s) in which the form is filed, at the address(es) set out below.

### Alberta Securities Commission

4th Floor, 300 - 4th Avenue SW  
Calgary, AB T2P 3C4  
Attention: Information Officer  
Telephone: (403) 297-6454  
Facsimile: (403) 297-6156

### British Columbia Securities Commission

P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, B.C. V7Y 1L2  
Attention: Manager, Financial and Insider Reporting  
Telephone: (604) 899-6730 or (800) 373-6393 (in B.C.)  
Facsimile: (604) 899-6506

### Securities Commission of Newfoundland

P.O. Box 8700  
2nd Floor, West Block  
Confederation Building  
75 O'Leary Avenue  
St. John's NFLD A1B 4J6  
Attention: Director of Securities  
Telephone: (709) 729-4189  
Facsimile: (709) 729-6187

### Department of Justice, Northwest Territories

Legal Registries  
P.O. Box 1320  
1st Floor, 5009-49th Street  
Yellowknife, NWT X1A 2L9  
Attention: Director, Legal Registries  
Telephone: (867) 873-7490  
Facsimile: (867) 873-0243

### Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building  
1690 Hollis Street  
Halifax, NS B3J 3J9  
Attention: Corporate Finance  
Telephone: (902) 424-7768  
Facsimile: (902) 424-4625

### Department of Justice, Nunavut

Legal Registries Division  
P.O. Box 1000 - Station 570  
1st Floor, Brown Building  
Iqaluit, NT X0A 0H0  
Attention: Director, Legal Registries Division  
Telephone: (867) 975-6190  
Facsimile: (867) 975-6194

### Ontario Securities Commission

Suite 1903, Box 55  
20 Queen Street West  
Toronto, ON M5H 3S8  
Attention: Administrative Assistant to the Director of Corporate Finance  
Telephone: (416) 593-8200  
Facsimile: (416) 593-8177

### Saskatchewan Securities Commission

800 - 1920 Broad Street  
Regina, SK S4P 3V7  
Attention: Deputy Director, Legal  
Telephone: (306) 787-5879  
Facsimile: (306) 787-5899



FORM 45-102F2

**Certificate under Subsection 2.7(2) or (3) of  
Multilateral Instrument 45-102 Resale of Securities**

Complete 1. or 2.

1. [Name of Issuer or Selling Security Holder] has distributed securities under a provision listed in Appendix D or E to Multilateral Instrument 45-102 or a provision of securities legislation that specifies that the first trade of the securities is subject to section 2.5 or 2.6 of Multilateral Instrument 45-102 and hereby certifies that in respect of a distribution on [date] of [amount or number and type of securities] of [Name of Issuer], [Name of Issuer] was a qualifying issuer within the meaning of Multilateral Instrument 45-102 Resale of Securities at the distribution date.
2. [Name of Issuer] has distributed securities under a provision listed in Appendix F to Multilateral Instrument 45-102 or a provision of securities legislation that specifies that the first trade of securities distributed to an employee, executive, consultant or administrator is subject to section 2.6 of Multilateral Instrument 45-102 and hereby certifies that in respect of a distribution on [date] of [amount or number and type of securities] of [Name of Issuer], [Name of Issuer] became after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B to Multilateral Instrument 45-102 and listing or quoting a class of its equity securities on a qualified market, and now is, a qualifying issuer within the meaning of Multilateral Instrument 45-102.

DATED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2\_\_.

[Name of Issuer or Selling Security Holder]

By: \_\_\_\_\_  
[type name]  
[title]

**INSTRUCTIONS:**

1. If the distribution date is on or after the effective date of Multilateral Instrument 45-102 and the issuer or selling security holder has completed 1. above, file this form on or before the tenth day after the distribution date with the securities regulatory authority in each jurisdiction in which a purchaser of the securities is located and section 2.7 of Multilateral Instrument 45-102 has been implemented. Section 2.7 has been implemented in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan.
2. If the issuer has completed 2. above, file this form with the securities regulatory authority in each jurisdiction in which a purchaser of the securities is located and section 2.7 of Multilateral Instrument 45-102 has been implemented.

FORM 45-102F3

Notice of Intention to Distribute Securities and Accompanying  
Declaration under Section 2.8 of Multilateral Instrument 45-102 Resale of Securities

1. Name and address of reporting issuer
2. Date and jurisdictions where issuer became a reporting issuer  

<u>Date</u>	<u>Jurisdiction</u>
.....	.....
.....	.....
3. Name and address of the selling security holder
4. State whether the selling security holder is an insider or officer of the issuer. (if an officer state title).
5. Amount or number and designation of securities of the issuer beneficially owned, directly or indirectly, by the selling security holder.
6. Amount or number and designation of securities of the issuer proposed to be sold by the selling security holder.
7. State, to the extent known to the selling security holder, the following particulars about the control position of the issuer: name(s), securities of the issuer held, offices or positions with the issuer or selling security holder and any other material particular regarding such control position.
8. State whether the securities will be distributed privately or on an exchange or a market (state name of exchange or market).
9. Proposed date of sale or date of commencement of sale.
10. If the selling security holder is a lender, pledgee, mortgagee or other encumbrancer selling securities distributed under an exemption in securities legislation from the prospectus requirement for a trade to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person for the purpose of giving collateral for a debt made in good faith, state the date and amount of the loan, pledge, mortgage or other encumbrance, reasons for liquidating the debt and the circumstances of default.
11. State the date that the selling security holder or lender, pledgee, mortgagee or other encumbrancer acquired the securities.
12. If this Form is not an initial filing, provide the following information:
  - (a) date of filing of the initial Form 45-102F3
  - (b) date of the most recently filed renewal Form 45-102F3
  - (c) number of securities proposed to be sold as stated in the initial Form 45-102F3
  - (d) number of securities sold from the date of the initial Form 45-102F3 to the date of this renewal Form 45-102F3
  - (e) number of securities proposed to be sold, as stated in the initial Form 45-102F3, that are no longer for sale
  - (f) number of securities remaining for sale

*Declaration, Certificate and Undertaking*

The selling security holder for whose account the securities are to be sold, and to which this certificate relates, hereby:

- (1) declares that the selling security holder has no knowledge of a material fact or material change with respect to the issuer of the securities that has not been generally disclosed;
- (2) declares that to the best of the selling security holder's information and belief:
  - (a) no unusual effort has been made to prepare the market or to create a demand for the securities to be sold and no extraordinary commission or other consideration has been paid in respect of such trade,
  - (b) the transaction to which this notice of intention and declaration relate is an arm's length transaction made in good faith, and

**Rules and Policies**

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- (c) the securities have been held for the period of time required under section 2.8 of Multilateral Instrument 45-102 Resale of Securities and the other conditions of the applicable subsection of that section have been met;
- (3) undertakes that no unusual effort will be made to prepare the market or to create a demand for the securities to be sold and no extraordinary commission or other consideration will be paid in respect of such trade;
- (4) undertakes that this Form will be renewed and filed on the 60th day after the date of filing this Form and thereafter at the end of each 28 day period; and
- (5) certifies that the information given in the answers to the questions in this Form are true.

Date .....

.....  
(name of selling security holder)

By:.....  
(signature of selling security holder, and if a company, signature of authorised signatory)

.....  
(name and office of authorised signatory)

**INSTRUCTION:**

File this form with the securities regulatory authority in each jurisdiction in which the securities are being distributed and with the exchange in Canada on which the securities that are the subject of the distribution are listed.

## Notice - Collection and Use of Personal Information

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities set out below for the purposes of the administration and enforcement of the securities legislation in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan. All of the information required under this form is made available to the public pursuant to Multilateral Instrument 45-102 and the securities legislation in each of the jurisdictions indicated above. If you have any questions about the collection and use of this information, contact the securities regulatory authorities in the jurisdiction(s) in which the form is filed, at the address(es) set out below.

### Alberta Securities Commission

4th Floor, 300 - 4th Avenue SW  
Calgary, AB T2P 3C4  
Attention: Information Officer  
Telephone: (403) 297-6454  
Facsimile: (403) 297-6156

### Ontario Securities Commission

Suite 1903, Box 55  
20 Queen Street West  
Toronto, ON M5H 3S8  
Attention: Administrative Assistant to the Director of Corporate Finance  
Telephone: (416) 593-8200  
Facsimile: (416) 593-8177

### British Columbia Securities Commission

P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, B.C. V7Y 1L2  
Attention: Manager, Financial and Insider Reporting  
Telephone: (604) 899-6730 or (800) 373-6393 (in B.C.)  
Facsimile: (604) 899-6506

### Saskatchewan Securities Commission

800 - 1920 Broad Street  
Regina, SK S4P 3V7  
Attention: Deputy Director, Legal  
Telephone: (306) 787-5879  
Facsimile: (306) 787-5899

### Securities Commission of Newfoundland

P.O. Box 8700  
2nd Floor, West Block  
Confederation Building  
75 O'Leary Avenue  
St. John's NFLD A1B 4J6  
Attention: Director of Securities  
Telephone: (709) 729-4189  
Facsimile: (709) 729-6187

### Department of Justice, Northwest Territories

#### Legal Registries

P.O. Box 1320  
1st Floor, 5009-49th Street  
Yellowknife, NWT X1A 2L9  
Attention: Director, Legal Registries  
Telephone: (867) 873-7490  
Facsimile: (867) 873-0243

### Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building  
1690 Hollis Street  
Halifax, NS B3J 3J9  
Attention: Corporate Finance  
Telephone: (902) 424-7768  
Facsimile: (902) 424-4625

### Department of Justice, Nunavut

#### Legal Registries Division

P.O. Box 1000 - Station 570  
1st Floor, Brown Building  
Iqaluit, NT X0A 0H0  
Attention: Director, Legal Registries Division  
Telephone: (867) 975-6190  
Facsimile: (867) 975-6194

**COMPANION POLICY 45-102CP  
TO MULTILATERAL INSTRUMENT 45-102  
RESALE OF SECURITIES**

**PART 1 APPLICATION**

**1.1 Application**

- (1) Multilateral Instrument 45-102 ("MI 45-102") has been implemented in all jurisdictions except Quebec.
- (2) Except for sections 2.1, 2.8 and 2.9, Part 2 of MI 45-102 does not apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.

**1.2 Purpose**

- (1) MI 45-102 provides that first trades of securities distributed under certain exemptions from the prospectus requirement are distributions unless certain conditions are met. The conditions impose restrictions on the resale of the securities. If the securities were distributed under any of the provisions listed in Appendix D to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a seasoning period and that a restricted period has elapsed from the date of the initial distribution. If the securities were distributed under any of the provisions listed in Appendix E to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a seasoning period. If the issuer is a qualifying issuer, MI 45-102 reduces the restricted period and seasoning period. MI 45-102 also provides an exemption for a control distribution and a sale by a pledgee of pledged securities if the sale would be a distribution for the purposes of securities legislation.
- (2) Nothing in MI 45-102 is intended to restrict the ability of a purchaser to resell securities during the restricted period or seasoning period in reliance upon a prospectus or an exemption from the prospectus requirement.

**1.3 Transition**

- (1) Part 2 of MI 45-102 applies to first trades of securities made on or after the effective date of this Instrument, even if the securities were distributed, or acquired by the selling security holder in the case of a trade that is a control distribution, prior to the effective date of this Instrument. As a result, in determining whether the restricted period in section 2.5 or 2.8 of MI 45-102 or the seasoning period in subsection 2.6(3) or (4) or subsection 2.8(2) or (3) of MI 45-102 has expired, a seller making a first trade must determine whether the issuer was a qualifying issuer at the date the security that is the subject of the trade was distributed or, in the case of a trade that is a control distribution, the

date the security that is the subject of the trade was acquired by the control person selling the security. In the case of a trade of an underlying security, the seller must determine whether the issuer of the underlying security was a qualifying issuer at the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed.

- (2) Items 2.5(2)3. and 2.5(3)3. of MI 45-102 impose a condition that if the security that is the subject of the trade was distributed on or after the effective date of MI 45-102, the certificate representing the securities must carry a legend disclosing the resale restriction. Certificates representing securities distributed prior to the effective date of MI 45-102 do not have to be legended under MI 45-102.
- (3) Form 45-102F1 is required to be filed under subsection 2.7(1) of MI 45-102 if an issuer ceases to be a private company or a private issuer on or after the effective date of MI 45-102. Similarly, Form 45-102F2 is filed under subsection 2.7(2) of MI 45-102 if the issuer of the securities is a qualifying issuer and the distribution date is on or after the effective date of MI 45-102. Form 45-102F2 is filed under subsection 2.7(3) of MI 45-102 if the issuer becomes a qualifying issuer in certain circumstances on or after the effective date of MI 45-102.

**1.4 Open System Jurisdictions** - Sections 2.5 and 2.6 of MI 45-102 do not apply in the provinces of Manitoba, New Brunswick and Prince Edward Island and in the Yukon Territory as those jurisdictions do not impose restrictions on first trades in securities distributed under an exemption from the prospectus requirement in those jurisdictions unless the trade is a control distribution.

**1.5 Example of Application of Section 2.5** - If an issuer distributes securities to a purchaser in British Columbia, the issuer must file a prospectus or rely upon a prospectus exemption under the securities legislation of British Columbia. If the issuer relies upon a British Columbia prospectus exemption listed in Appendix D to MI 45-102, section 2.3 of MI 45-102 applies and the first trade of the securities is subject to section 2.5 of MI 45-102. Section 2.5 provides that the first trade is a distribution unless, among other conditions, a four or 12 month restricted period has elapsed. If the British Columbia purchaser seeks to resell the securities into Ontario, a prospectus must be filed in Ontario or a prospectus exemption relied upon unless the conditions in subsection 2.5(2) or (3) of MI 45-102 are satisfied.

**1.6 Reporting Issuer History** - If an issuer is a SEDAR filer, reporting issuer history in any of the jurisdictions listed in Appendix B will satisfy the reporting issuer history requirements in sections 2.5, 2.6 and 2.8 of

MI 45-102. If the issuer is not a SEDAR filer, the reporting issuer history must be in the jurisdiction of the purchaser of the securities that are the subject of the trade.

1.7 **Eligibility** - Securities that were distributed when an issuer had a current AIF and met the other eligibility requirements of a qualifying issuer may be sold in accordance with subsection 2.5(2) or 2.6(3) of MI 45-102, even if the issuer is no longer a qualifying issuer at the time of the trade. However, if the issuer subsequently distributes securities at a time when it is not a qualifying issuer, purchasers of those securities may not rely upon the reduced restricted period or seasoning period in subsection 2.5(2) or 2.6(3) of MI 45-102.

1.8 **Legending of Securities** - Items 2.5(2)3. and 2.5(3)3. of MI 45-102 require that, for securities distributed under any of the provisions listed in Appendix D to MI 45-102 or another prospectus exemption subject to the resale restrictions in section 2.5 of MI 45-102, if the distribution date is on or after the effective date of MI 45-102 a certificate representing the securities must have been issued that carried a legend stating that, unless permitted under securities legislation, the holder of the securities shall not trade the securities before the expiry of the applicable restricted period. Placing a restricted period legend on a share certificate is the most practical manner of providing certainty as to the applicable restricted period and of ensuring more effective regulation of the exempt market in the closed system jurisdictions.

1.9 **Calculation of Restricted Periods** - The restricted periods in items 2.5(2)2. and 2.5(3)2. of MI 45-102 are calculated from the distribution date, that is, the date the securities were distributed in reliance on an exemption from the prospectus requirement by the issuer or a control person. For example, if an issuer or control person distributes securities under a private placement exemption to a purchaser in Saskatchewan and the private placee resells the securities during the restricted period to a purchaser in Alberta under a further private placement exemption, upon resale by the Alberta purchaser, that purchaser will determine whether the restricted period has expired by calculating the time period from the date the issuer or control person distributed the securities to the Saskatchewan purchaser.

In the case of a trade that is a control distribution, the restricted periods in items 2.8(2)2. and 2.8(3)5. of MI 45-102 are calculated from the distribution date, that is, the date the securities were acquired by the control person that is selling the securities.

1.10 **Underlying Securities** - The restricted period or seasoning period applicable to trades in underlying securities is calculated from the distribution date of the convertible security, exchangeable security or multiple convertible security.

1.11 **Employees** - Section 2.6 of MI 45-102 provides that the first trade of securities distributed under an exemption from the prospectus requirement for employees is a distribution unless certain conditions are met. If the issuer is a qualifying issuer at the distribution date, the conditions include a seasoning period of four months. If the issuer is not a qualifying issuer at the distribution date, the seasoning period is 12 months. However, if the securities were distributed under an employee exemption or exercise of an option exemption at a time when the issuer was not a qualifying issuer and the issuer of the securities subsequently becomes a qualifying issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class of its equity securities on a qualified market, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period.

1.12 **Control Block Distributions** - In addition to the provisions of MI 45-102, in particular section 2.8, the provisions of National Instrument 62-101 Control Block Distribution Issues may also apply to a trade of securities that is a control block distribution by an institutional investor.

1.13 **Securities Exchange Take-over Bid or Issuer Bid** - Section 2.11 of MI 45-102 provides relief from the seasoning requirement for a trade of securities issued in connection with a securities exchange take-over bid or securities exchange issuer bid in circumstances in which, among other things, a securities exchange take-over bid circular or securities exchange issuer bid circular is filed by the offeror under securities legislation of the local jurisdiction. The basis for this exemption is that a securities exchange take-over bid circular or securities exchange issuer bid circular for a formal bid is required to contain prospectus disclosure for the offeror or other issuer whose securities are being offered in exchange for the securities of the offeree issuer. In the view of the securities regulatory authority, if a take-over bid circular or issuer bid circular is prepared in connection with an exempt bid, the circular must meet the disclosure standards in securities legislation relating to the form and content of a take-over bid circular or issuer bid circular, as the case may be, for a formal bid in order for the exemption in section 2.11 to be available. If a take-over bid circular or issuer bid circular is prepared in connection with a formal bid, the circular must be filed under the take-over bid or issuer bid requirements of securities legislation. If the circular is prepared in connection with an exempt bid, the circular must be filed by the offeror on SEDAR.

1.14 **Resales of Securities of a Non-Reporting Issuer**

(1) For the purposes of section 2.14 of MI 45-102, it is the view of the securities regulatory authority that, in determining the percentage of the outstanding securities of the class or series that are directly or indirectly owned by residents of Canada and the number of owners directly or

indirectly that are residents of Canada, an issuer should use reasonable efforts to

- (a) determine securities held of record by a broker, dealer, bank, trust company or nominee for any of them for the accounts of customers resident in Canada;
- (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership; and
- (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

(2) Lists of beneficial owners of securities maintained by intermediaries pursuant to SEC Rule 14a-13 under the 1934 Act or other securities law analogous to proposed National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer may be useful in determining the percentages referred to in subsection (1).

#### 1.15 Filing of Forms 45-102F1, 45-102F2 and 45-102F3

- (1) Subsection 2.6(2) of MI 45-102 provides that the first trade of securities issued by a private company or private issuer made after the issuer has ceased to be a private company or private issuer is a distribution unless the conditions in subsection 2.6(4) are satisfied. Subsection 2.7(1) of MI 45-102 requires an issuer to file Form 45-102F1 if the issuer ceases to be a private company or private issuer on or after the effective date of MI 45-102. Form 45-102F1 must be filed in each jurisdiction in which the issuer has ceased to be a private company or private issuer and section 2.7 of MI 45-102 has been implemented. Section 2.7 has been implemented in Alberta, British Columbia, Newfoundland, Nova Scotia, Nunavut, Ontario and Saskatchewan.
- (2) Subsection 2.7(2) of MI 45-102 provides that if an issuer, or a selling security holder in the case of a control distribution, has distributed securities under a provision listed in Appendix D or E or a provision of securities legislation that specifies that the first trade of the securities is subject to section 2.5 or 2.6 of MI 45-102, Form 45-102F2 must be filed on or before the tenth day after the distribution date if the issuer is a qualifying issuer. However, if an issuer has distributed securities under a provision listed in Appendix F or a provision of securities legislation that specifies that the first trade of securities distributed to an employee, executive, consultant or administrator is subject to section 2.6 of MI 45-102, and the issuer becomes a qualifying

issuer after the distribution date by filing a prospectus and listing or quoting equity securities on a qualified market, the issuer must file Form 45-102F2 even though the issuer was not a qualifying issuer at the distribution date. Form 45-102F2 must be filed in the jurisdictions of the purchasers of the securities in which section 2.7 of MI 45-102 has been implemented, being Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan. Form 45-102F2 should be filed on SEDAR under the issuer's profile under "Continuous Disclosure - SHAI F - Other" until the SEDAR filer manual is updated to include MI 45-102 filings. Purchasers of securities will be able to determine whether the applicable restricted period or seasoning period is four months or 12 months from a review of SEDAR filings.

(3) Section 2.8 of MI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in subsection (2) or (3) of section 2.8 are met. Subsection 2.8(4) requires a person or company selling securities under subsection 2.8(2) or (3) of MI 45-102 to file Form 45-102F3. Form 45-102F3 must be filed whether the distribution date is before or after the effective date of MI 45-102.

1.16 **Filings in the Local Jurisdiction** - Sections 2.10, 2.11 and 2.12 of MI 45-102 state that section 2.6 of MI 45-102 does not apply to a trade in an underlying security if the convertible security, exchangeable security or multiple convertible security is qualified by a prospectus, a trade of a security issued in connection with a take-over bid or issuer bid and a trade in an underlying security if the convertible security, exchangeable security or multiple convertible security is qualified by a securities exchange take-over bid circular or issuer bid circular, respectively. Each of the exemptions from section 2.6 is subject to a condition that a take-over bid circular, an issuer bid circular or a prospectus was filed under securities legislation of the local jurisdiction of the person or company relying upon the exemption from section 2.6. Similarly, the exemptions in sections 2.10 and 2.12 of MI 45-102 require that the issuer of the underlying security be a reporting issuer in the local jurisdiction at the time of the trade. The exemptions in sections 2.11 and 2.12 of MI 45-102 are subject to a condition that the offeror was a reporting issuer in the local jurisdiction on the date securities of the offeree issuer are first taken up under the take-over bid or issuer bid.

## PART 2 AIF REQUIREMENTS

2.1 **Filing of Current AIF** - Issuers that want to enable their security holders to take advantage of a provision of MI 45-102 that requires an issuer to have a current AIF may file a current AIF at any time. An issuer filing a current AIF for the purposes of MI 45-102 should file the notice and the current AIF, if not already filed, under "Continuous Disclosure - SHAI F"

on SEDAR selecting the appropriate filing subtype/document type (i.e. either an AIF, amended AIF or notice) until the SEDAR filer manual is updated to include MI 45-102 filings. A filer that elects to use a current AIF that has previously been filed on SEDAR is not required to refile the document for the purposes of MI 45-102.

- 2.2 Most Recent Financial Year** - Issuers wishing to file a current AIF before they have filed their audited financial statements for the most recently completed financial year may include the audited financial statements for the financial year preceding the most recently completed financial year. For example, an issuer with a December 31 financial year end could continue to use a current AIF containing or incorporating by reference audited annual financial statements for the year ended December 31, 2000 during the first 139 days of 2002, until such time as annual audited financial statements for the year ended December 31, 2001 have been prepared and filed in accordance with securities legislation.
- 2.3 Review of Current AIF** - An issuer's current AIF may be reviewed at any time and, as a result of this review, changes may need to be made to the current AIF. If an issuer is advised by any regulator that its current AIF does not comply with securities legislation, any of a wide range of compliance actions may be taken by the securities regulatory authorities, from requiring the next AIF to be filed correctly, or a clarifying press release to be issued, to more serious actions such as issuing a cease trade order against the issuer's securities, or initiating appropriate enforcement proceedings against the issuer and its directors and officers.
- 2.4 Review before Distribution** - If the current AIF is reviewed before a distribution of securities and an issuer is advised by any regulator that its current AIF is unacceptable, an issuer will not be a qualifying issuer at the distribution date unless the issuer has made the necessary changes to the current AIF. Security holders that acquire securities under the distribution will not be able to take advantage of subsection 2.5(2), 2.6(3) or 2.8(2) of MI 45-102.
- 2.5 Review after Distribution** - If the current AIF is reviewed after a distribution of securities, and an issuer is advised by any regulator that its current AIF is unacceptable, securities that were distributed while the issuer was a qualifying issuer may be sold in accordance with subsection 2.5(2), 2.6(3) or 2.8(2) of MI 45-102 if the other conditions in the relevant subsection are met.

### **PART 3 FEES**

- 3.1 Fees** - An issuer filing a current AIF under section 3.1 of MI 45-102 must pay the filing fees for the AIF required by securities legislation, unless the current AIF is in the form of a prospectus for which the regulator has issued a receipt.



## Chapter 6

# Request for Comments

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IN THIS ISSUE

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## Chapter 7

# Insider Reporting

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This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see [www.carswell.com](http://www.carswell.com)).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website ([www.sedi.ca](http://www.sedi.ca)).

## Chapter 8

# Notice of Exempt Financings

### Exempt Financings

The Ontario Securities Commission reminds issuers and other parties relying on exemptions that they are responsible for the completeness, accuracy, and timely filing of Forms 45-501F1 and 45-501F2, and any other relevant form, pursuant to section 72 of the *Securities Act* and OSC Rule 45-501 ("Exempt Distributions").

### Reports of Trades Submitted on Form 45-501f1

<u>Trans. Date</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
02Nov01	3958981 Canada Inc. - Variable Rate Exchangeable Debentures, Series 2001, due November 2, 2026	46,017,600	46,017,600
22Oct01 to 02Nov01	724 Solutions Inc. - Common Shares	552,726	205,500
01Nov01	ABC Fully-Managed Fund - Units	285,000	40,093
01Nov01	ABC Fundamental-Value Fund - Units	135,000	11,465
31Oct01	AGII RRSP Growth Fund - Units	92,535	13,196
26Oct01	Arrow North American MultiManager II Fund - Class I Trust Units	497,506	5,086
26Oct01	Arrow North American MultiManager II Fund - Class I Trust Units	500,000	5,111
01Nov01	Aspect Diversified Fund Limited - Non-Voting Participating Redeemable Shares	US\$1,000,000	1,000,000
06Nov01	BeIAir Energy Corporation - Flow-Through Shares	3,489,800	1,666,667
01Nov01	Beta Hedge International I - Participating Shares	US\$2,000,000	2,000,000
09Nov01	Bloomen Limited Partnership - Class A Units	337,500	27
06Nov01	Borealis Financial Technology Limited Partnership - Limited Partnership Units	382,082	382,082
15Oct01	Burgundy Japan Fund -	150,000	9,408
01Nov01	Burgundy Japan Fund -	845,000	53,025
29Oct01	Burgundy Japan Fund -	500,000	30,959
01Nov01	Burgundy Small Cap Value Fund -	340,000	8,549
29Oct01	Burgundy Small Cap Value Fund -	250,000	5,084
05Nov01	Burgundy Small Cap Value Fund -	1,000,000	25,166
19Oct01	Burgundy Smaller Companies Fund -	150,000	7,618
01Nov01	Burgundy Smaller Companies Fund -	425,000	21,132
29Oct01	Burgundy Smaller Companies Fund -	250,000	12,340
15Oct01	C-Com Satellite Systems Inc. - Common Shares	255,335	2,127,794
06Nov01	CanAlaska Ventures Ltd. - Property Acquisition	900	10,000
30Oct01	CC&L American Equity Fund -	2,640	329
30Oct01	CC&L Global Growth Fund -	7,200	959
29Oct01	CC&L Money Market Fund -	10,264	1,026
29Oct01	CC&L Private Client PCJ Canadian Small Capitalization Fund -	300	35
01Nov01	CC&L Private Client Bond Fund -	200	18
30Oct01	CC&L Private Client PCJ Canadian Small Capitalization Fund -	2,160	258

Notice of Exempt Financings

<u>Trans. Date</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
24Jul01	ChanneLogics, Inc. - Bridge Loan/Convertible Promissory Note (Series A Convertible Preferred Stock)	US\$450,000	450,000
01Nov01	Cogeco Cable Inc. - US\$6.83% Series A Senior Secured Notes due October 31, 2008	US\$7,500,000	7,500,000
08Nov01	Cogient Corp. - Special Warrants	389,149	1,111,857
31Oct01	Del Roca Energy Ltd. - Special Warrants, Flow-Through Special Warrants, Flow-Through Common Shares and Broker Special Warrants	2,141,999	2,216,666, 1,160,000, 285,714, 210,368 Resp.
07Nov01	Digital Matter Corporation - Special Warrants	151,250	86,429
01Aug01	Digital Rooster.com Inc. - Common Shares	200,000	1,000,000
02Nov01	Efia OSS Solutions Inc. - Secured Convertible Promissory Notes	278,928	278,928
08Aug01	eNunciate Limited Partnership - Units of Limited Partnership	400,000	4,000
31Oct01	Equity International Investment Trust - Units	20,307,958	14,907
31Oct01	Excalibur Harvest Canadian Fund - Units	725,000	69,866
31Oct01	Fleming Canada Offshore Select Trust - Units	300,000	1,422
31Oct01	FloorMaster Holdings Inc. - Special Warrants	149,000	298,000
07Nov01	Garrison Road, Inc. - 6.94% Series 1 Bond	3,700,000	3,700,000
26Oct01	Global Health Care Opportunity - Class C Shares - Amended	315,040	315,040
31Oct01	Greentree Gas & Oil Ltd. - Common Shares	623,532	328,175
01Nov01	HELIX Convertible Opportunities Fund Ltd. - Voting Shares	US\$2,000,000	2,000,000
02Aug01	Hyatt Financial Corporation Ltd. - Units	20,000	20,000
25Oct01	iFuture.com Inc. - Common Shares	35,616	178,081
01Nov01	IKOS - Equity Fund Shares	US\$2,000,000	2,000,000
31Oct01	Intergold Ltd. - Special Warrants	600,000	400,000
26Oct01	Ketch Energy Ltd. - Common Shares	8,950,000	1,790,000
01Nov01	King Pharmaceutical, Inc. - Convertible Debentures due November 15,2021	797,850	US\$500,000
01Nov01	Martin Currie Absolute Return Funds Limited - Japan Fund \$ Class Shares	US\$1,500,000	1,500,000
31Oct01	Meadowbrook Retirement Village Limited Partnership - Limited Partnership Units	275,000	110
31Oct01	Mercury Equity Arbitrage Fund Limited - Shares	2,364,000	13,665
01Nov01	Millagate International Ltd. - Class A Common Shares	US\$1,000,000	1,000,000
29Oct01	Normiska Corporation - Common Shares	999,999	1,428,571
06Nov01	Odey European Inc. - Common Shares	US\$1,000,000	1,000,000
30Oct01	# Odyssey HealthCare, Inc. - Common Stock	US\$75,000	5,000
31Oct01	Ontrea Inc. - Series A Debentures	277,092,025	277,300,000
06Nov01	OPTI Canada Inc. - Class A Common Shares	117,519	21
01Nov01	Orbis Optimal (US\$) Funds Limited - Shares	US\$250,000	5,601
12Nov01	Orezone Resources Inc. - Class A Shares	16,000	200,000
31Oct01	Ozz Corporation - Common Shares	750,000	750,000
24Sep01	Parian XV Real Estate Limited Partnership -	200,000	200
31Oct01	Performance Group #1 Limited Partnership - Limited Partnership Units	260,000	227
31Oct01	PGM Ventures Corporation - Common Shares	8,000	40,000
31Oct01	PGM Ventures Corporation - Common Shares	108,333	291,855
01Nov01	# Pogo Producing Company - Common Stock	US\$2,550,000	100,000
12Oct01	Pool Financing Helsinki Oy -Ordinary Shares With Voting Rights	3,329	630
12Oct01	Pool Acquisition Netherlands B.V. - Ordinary Shares With Voting Rights	1,997	1,401
15Oct01	Pool Acquisition Luxembourg I S.A. - Ordinary Voting Shares	3,496	1,226
12Oct01	Pool Acquisition Helsinki Oy - Ordinary Shares With Voting Rights	15,541,256	2,179,389
05Nov01	Rubicon Minerals Corporation - Flow-Through Shares	450,750	1,287,858
01Nov01	Sebago Partners Offshore, Ltd. - Participating Shares	745,000	500
02Nov01	Sinopia Alternative Funds - Long Short Global Bond 300 USD Class I Shares	US\$1,500,000	1,500,000
06Nov01	Stacey Investment Limited Partnership - Limited Partnership Units	500,001	22,645

**Notice of Exempt Financings**

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<u>Trans. Date</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
01Nov01	The McElvaine Investment Trust - Units	125,000	8,431
01Nov01	The Gluskin Sheff Fund - Units in Limited Partnership	633,943	8,709
01Nov01	The K2 Arbitrage Fund L.P. - Limited Partnership Units	175,000	175
19Nov01	Trident Global Opportunities Fund - Units	229,990	2,145
01Nov01	Vector Quant Fund, Ltd. - Class A Participating Shares	US\$1,500,000	1,500,000
31Oct01	Vertex Fund Limited Partnership - Units	150,000	5,769
02Nov01	Western Oil Sands Inc. - Non-Voting Convertible Class B Equity Shares	2,595,000	150,000
01Nov01	Whitney New Japan Investors, Ltd. - Shares	US\$1,500,000	1,500,000

**Notice of Intention to Distribute Securities Pursuant to Subsection 7 of Section 72 - (Form 23)**

<u>Seller</u>	<u>Security</u>	<u>Amount</u>
Brompton Financial Limited	Acclaim Energy Trust -Trust Units	817,714
Paros Enterprises Limited	Acktion Corporation - Common Shares	2,000,000
Rooterberg, Alan	Talware Network Inc. - Common Shares	300,000

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## Chapter 9

# Legislation

### 9.1 Legislation

#### 9.1.1 Amending Reg. 1015 of R.R.O 1990 - MI 45-102 Resale of Securities

Amendment to Regulation 1015 - Re: MI 45-102  
reg2001.0108.e

**ONTARIO REGULATION**  
made under the  
**SECURITIES ACT**

Amending Reg. 1015 of R.R.O. 1990  
(General)

Note: Since the end of 2000, Regulation 1015 has been amended by Ontario Regulations 67/01, 91/01, 126/01 and 273/01. Previous amendments are listed in the Table of Regulations published in *The Ontario Gazette* dated January 20, 2001.

1. Subsection 69 (1) of Regulation 1015 of the Revised Regulations of Ontario, 1990 is revoked.

2. Section 70 of the Regulation is revoked.

3. Section 247 of the Regulation is amended by striking out "sections 67 and 68, subsection 69 (1)".

4. (1) Sections 26 and 27 of Schedule 1 to the Regulation are revoked and the following substituted:

26. Each of the following documents must be accompanied by a fee of \$250:

1. A report in Form 45-102F1 of Multilateral Instrument 45-102 *Resale of Securities*.

2. A notice of intention and declaration in Form 45-102F3 of Multilateral Instrument 45-102 *Resale of Securities*.

(2) Subsection 28 (3) of Schedule 1 to the Regulation is revoked and the following substituted:

(3) No fee is payable under subsection (2) in respect of a ruling made under section 74 of the Act that a trade that is a distribution under section 2.5 or 2.6 of Multilateral Instrument 45-102 *Resale of Securities* is not subject to section 53 of the Act.

5. Forms 22 and 23 to the Regulation are revoked.

6. This Regulation comes into force on the day that the rule made by the Ontario Securities Commission on

September 12, 2001 entitled "Multilateral Instrument 45-102 *Resale of Securities*" comes into force.

Ontario Securities Commission:

"Howard Wetston"

"R.S. Paddon"

September 12, 2001.

Note: The rule made by the Ontario Securities Commission on September 12, 2001 entitled "Multilateral Instrument 45-102 *Resale of Securities*" comes into force on November 30, 2001.



**9.1.2 Amending Reg. 1015 of R.R.O. 1990 - Rule 45-501 Exempt Distributions**

**ONTARIO REGULATION**  
made under the  
**SECURITIES ACT**

Amending Reg. 1015 of R.R.O. 1990  
(General)

**Note:** The rule made by the Ontario Securities Commission on September 12, 2001 entitled "Ontario Securities Commission Rule 45-501 *Exempt Distributions*" comes into force on November 30, 2001.

Note: Since the end of 2000, Regulation 1015 has been amended by Ontario Regulations 67/01, 91/01, 126/01 and 273/01. Previous amendments are listed in the Table of Regulations published in *The Ontario Gazette* dated January 20, 2001.

**1. Section 149 of Regulation 1015 of the Revised Regulations of Ontario, 1990 is revoked.**

**2. The definition of "COATS security" in section 152 of the Regulation is amended by striking out "or" at the end of clause (d) and adding the following clause:**

(d.1) a security of a closely-held issuer as defined in section 1.1 of Ontario Securities Commission Rule 45-501 *Exempt Distributions*, or

**3. Clause 154 (1) (c) of the Regulation is revoked and the following substituted:**

(c) a trade made in reliance on an exemption set out in section 2.3 of Ontario Securities Commission Rule 45-501 *Exempt Distributions*.

**4. Clause (i) of the definition of "designated institution" in subsection 204 (1) of the Regulation is revoked and the following substituted:**

(i) a company or person, other than an individual, that is an accredited investor as defined in section 1.1 of Ontario Securities Commission Rule 45-501 *Exempt Distributions*,

**5. Section 45 of Schedule 1 to the Regulation is revoked.**

**6. Form 11 of the Regulation is revoked.**

**7. This Regulation comes into force on the day the rule made by the Ontario Securities Commission on September 12, 2001 entitled "Ontario Securities Commission Rule 45-501 *Exempt Distributions*" comes into force.**

Ontario Securities Commission:

"Howard I. Wetston"

"R. Stephen Paddon"

September 12, 2001.

## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

407 International Inc.

Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated November 16th, 2001

Mutual Reliance Review System Receipt dated November 19th, 2001

**Offering Price and Description:**

\$ \* Subordinated Bonds, Series 01-C2, Due \* , \*

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.

RBC Dominion Securities Inc.

Merrill Lynch Canada Inc.

Scotia Capital Inc.

National Bank Financial Inc.

**Promoter(s):**

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Project #402133

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**Issuer Name:**

Bema Gold Corporation

Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated November 21st, 2001

Mutual Reliance Review System Receipt dated November 21st, 2001

**Offering Price and Description:**

Cdn\$\* - \* Units @ Cdn\$\* per Unit

**Underwriter(s) or Distributor(s):**

Canaccord Capital Corporation

Haywood Securities Inc.

**Promoter(s):**

-

Project #403283

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**Issuer Name:**

Canadian Revolving Auto Floorplan Trust

Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated November 14th, 2001

Mutual Reliance Review System Receipt dated November 16th, 2001

**Offering Price and Description:**

% Dealer Floorplan Receivables-Backed Notes, Series 2001-A  
Expected Final Payment Date of \*

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.

**Promoter(s):**

Daimlerchrysler Financial Services (debis) Canada Inc.

Project #401422

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**Issuer Name:**

COGIENT CORP.

**Type and Date:**

Preliminary Prospectus dated November 15th, 2001

Receipt dated November 15th, 2001

**Offering Price and Description:**

\* Units issuable upon the exercise of \* previously issued  
Special Warrants

**Underwriter(s) or Distributor(s):**

Standard Securities Capital Corporation

Renaissance Securities Inc.

**Promoter(s):**

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Project #401612

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**Issuer Name:**

ENERGY CONVERSION TECHNOLOGIES INC.

**Type and Date:**

Preliminary Prospectus dated November 21st, 2001

Receipt dated November 22nd, 2001

**Offering Price and Description:**

Minimum Offering : \* Units or \$ \* , 000

Maximum Offering: \* Units or \$3,000,000 (Each Unit consists  
of one Common Share and one-half Class A Warrant)

@ \$ \* per Unit

**Underwriter(s) or Distributor(s):**

Standard Securities Capital Corporation

**Promoter(s):**

Ervin Weisz

Project #403285

---

**Issuer Name:**

Enervest Diversified Income Trust

Principal Regulator - Alberta

**Type and Date:**

Amendment #1 dated November 9th, 2001 to Preliminary Short  
Form Prospectus dated

October 17th, 2001

Mutual Reliance Review System Receipt dated November  
12th, 2001

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

Research Capital Corporation

**Promoter(s):**

-

Project #394913

---

**Issuer Name:**

Gabriel Resources Ltd.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated November 15th, 2001

Mutual Reliance Review System Receipt dated November 16th, 2001

**Offering Price and Description:**

\$ \* - \* Common Shares @ \$ \* per Common Share

**Underwriter(s) or Distributor(s):**

HSBC Securities (Canada) Inc.  
Canaccord Capital Corporation  
Dundee Securities Corporation

**Promoter(s):**

V. Frank Timis

Project #401794

---

**Issuer Name:**

GGOF Guardian Dividend Growth Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated November 19th, 2001

Mutual Reliance Review System Receipt dated November 20th, 2001

**Offering Price and Description:**

F Class Units

**Underwriter(s) or Distributor(s):**

Guardian Group of Funds Ltd.

**Promoter(s):**

Guardian Group of Funds Ltd.

Project #402625

---

**Issuer Name:**

IPC US Income Commercial Real Estate Investment Trust  
(Formerly IPC US Income Real Estate Investment Trust)

Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Preliminary Prospectus dated November 20<sup>th</sup>, 2001

Mutual Reliance Review System Receipt dated November 21st, 2001

**Offering Price and Description:**

Cdn. \$ \*

(U.S. \$ \*)

\* Units . Price Cdn. \$10.00 (U.S. \$ \*) per Unit

**Underwriter(s) or Distributor(s):**

CIBC World Markets Inc.  
HSBC Securities (Canada) Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.

BMO Nesbitt Burns Inc.

National Bank Financial Inc.

Raymond James Ltd.

**Promoter(s):**

PRF Holdings Inc.

Project #400756

---

**Issuer Name:**

Kingsway Financial Services Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form PREP Prospectus dated November 20th, 2001

Mutual Reliance Review System Receipt dated November 21st, 2001

**Offering Price and Description:**

7,500,000 Common Shares @ \$ \* per Common Share

**Underwriter(s) or Distributor(s):**

HSBC Securities (Canada) Inc.  
CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.

National Bank Financial Inc.

**Promoter(s):**

-  
Project #403109

---

**Issuer Name:**

Merrill Lynch Financial Assets Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form PREP Prospectus dated November 16th, 2001

Mutual Reliance Review System Receipt dated November 16th, 2001

**Offering Price and Description:**

\$236,954,000 (Approximate) - Commercial Mortgage Pass-Through Certificates, Series 2001- Canada 6

**Underwriter(s) or Distributor(s):**

Merrill Lynch Canada Inc.

**Promoter(s):**

-  
Project #401900

---

**Issuer Name:**

Platinum Communications Corporation  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Prospectus dated November 16th, 2001

Mutual Reliance Review System Receipt dated November 19th, 2001

**Offering Price and Description:**

\$1,500,000 - 3,000,000 Units @ \$0.50 per Unit

**Underwriter(s) or Distributor(s):**

Pacific International Securities Inc.

**Promoter(s):**

Trevor Alyn Perraton

Allen G. Stretton

Ronald J. Cargo

Wayne I. Bobye

John R. Perraton

Project #402570

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**Issuer Name:**

SHAW COMMUNICATIONS INC.

Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Shelf Prospectus dated November 19th, 2001

Mutual Reliance Review System Receipt dated November 19th, 2001

**Offering Price and Description:**

\$800,000,000 - Debt Securities

Class B Non-Voting Participating Shares

Class 1 Preferred Shares

Class 2 Preferred Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

Project #402713

---

**Issuer Name:**

Talvest U.S. Equity Value Fund

Talvest Global Financial Services RSP Fund

Talvest Global Resource RSP Fund

Talvest Global Sector Multi Management RSP Fund

Talvest Global Telecommunication RSP Fund

Talvest U.S. Equity Value RSP Fund

Talvest Global Financial Services Fund

Talvest Global Resource Fund

Talvest Global Sector Multi Management Fund

Talvest Global Telecommunication Fund

Principal Regulator - Quebec

**Type and Date:**

Preliminary Simplified Prospectus dated November 15th, 2001

Mutual Reliance Review System Receipt dated November 16th, 2001

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

Talvest Fund Management Inc.

**Promoter(s):**

-

Project #401987

---

**Issuer Name:**

TransAlta Corporation

Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated November 15th, 2001

Mutual Reliance Review System Receipt dated November 15th, 2001

**Offering Price and Description:**

\$150,000,000 - 7.75% Preferred Securities due December 31st, 2050

(\$25.00 principal amount per Security)

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.

Scotia Capital Inc.

CIBC World Markets Inc.

Merrill Lynch Canada Inc.

TD Securities Inc.

BMO Nesbitt Burns Inc.

National Bank Financial Inc.

Canaccord Capital Corporation

Raymond James Ltd.

**Promoter(s):**

-

Project #401700

---

**Issuer Name:**

United Grain Growers Limited

Principal Regulator - Manitoba

**Type and Date:**

Preliminary Short Form PREP Prospectus dated November 21<sup>st</sup>, 2001

Mutual Reliance Review System Receipt dated November 21<sup>st</sup>, 2001

**Offering Price and Description:**

\$ \* - \* Limited Voting Common Shares @ \$ \* per Limited Voting Common Share

**Underwriter(s) or Distributor(s):**

Scotia Capital Inc.

National Bank Financial Inc.

CIBC World Markets Inc.

RBC Dominion Securities Inc.

HSBC Securities (Canada) Inc.

Pollitt & Co. Inc.

Wellington West Capital Inc.

**Promoter(s):**

-

Project #403249

---

**Issuer Name:**

Dataradio Inc.

Principal Regulator - Quebec

**Type and Date:**

Preliminary Prospectus dated October 20<sup>th</sup>, 2000

Closed 21<sup>st</sup> day of November, 2001

**Offering Price and Description:**

**Underwriter(s) or Distributor(s):**

**Promoter(s):**

Project #305902

---

**Issuer Name:**

Keystone Sceptre Equity Fund  
Keystone Sceptre International Equity Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated November 8<sup>th</sup>, 2001 to Simplified Prospectus and Annual Information Form dated December 21<sup>st</sup>, 2000

Mutual Reliance Review System Receipt dated 15<sup>th</sup> day of November, 2001

**Offering Price and Description:**

**Underwriter(s) or Distributor(s):**

**Promoter(s):**

Project #310547

---

**Issuer Name:**

Stone & Co. Flagship Money Market Fund Canada  
Stone & Co. Flagship Growth & Income Fund Canada  
Stone & Co. Flagship Stock Fund Canada  
Stone & Co. Flagship Global Growth Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated November 9th, 2001 to Simplified Prospectus and Annual Information Form dated July 12th, 2001

Mutual Reliance Review System Receipt dated 16<sup>th</sup> day of November, 2001

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

**Underwriter(s) or Distributor(s):**

Stone & Co. Limited

**Promoter(s):**

Stone & Co. Limited

Project #366377

---

**Issuer Name:**

Tradex Bond Fund  
Tradex Canadian Growth Fund  
Tradex Equity Fund Limited  
Tradex Global Equity Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated November 12th, 2001 to Simplified Prospectus and Annual Information Form dated May 16th, 2001

Mutual Reliance Review System Receipt dated 16<sup>th</sup> day of November, 2001

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

**Underwriter(s) or Distributor(s):**

Tradex Management Inc.

**Promoter(s):**

Tradex Management Inc.

Project #345811

---

**Issuer Name:**

Ascot Energy Resources Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Final Prospectus dated November 19th, 2001

Mutual Reliance Review System Receipt dated 20<sup>th</sup> day of November, 2001

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

FirstEnergy Capital Corp.

**Promoter(s):**

-

Project #393537

---

**Issuer Name:**

Asquith Resources Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated November 14th, 2001

Mutual Reliance Review System Receipt dated 15<sup>th</sup> day of November, 2001

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

Haywood Securities Inc.

Loewen, Ondaatje McCutcheon Limited

Canaccord Capital Corporation

**Promoter(s):**

-

Project #392557

---

**Issuer Name:**

Phoenix Technology Services Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Final Prospectus dated November 16th, 2001

Mutual Reliance Review System Receipt dated 16<sup>th</sup> day of November, 2001

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

FirstEnergy Capital Corp.

Loewen, Ondaatje, McCutcheon Limited

TD Securities Inc.

Peters & Co. Limited

**Promoter(s):**

John M. Hooks

Project #397538

**Issuer Name:**

THE FRIEDBERG FUTURES FUND

Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated November 16th, 2001

Mutual Reliance Review System Receipt dated 19<sup>th</sup> day of November, 2001

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

Friedberg Mercantile Group

**Promoter(s):**

-

**Project #394342**

**Issuer Name:**

BCE EMERGIS INC.

Principal Regulator - Quebec

**Type and Date:**

Final Short Form Prospectus dated November 15th, 2001

Mutual Reliance Review System Receipt dated 15<sup>th</sup> day of November, 2001

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.

CIBC World Markets Inc.

National Bank Financial Inc.

TD Securities Inc.

Scotia Capital Inc.

BMO Nesbitt Burns Inc.

Raymond James Ltd.

Yorkton Securities Inc.

Thomas Kernaghan & Co. Limited

**Promoter(s):**

-

**Project #400036**

**Issuer Name:**

Enervest Diversified Income Trust

Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated November 16th, 2001

Mutual Reliance Review System Receipt dated 16<sup>th</sup> day of November, 2001

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

Research Capital Corporation

**Promoter(s):**

-

**Project #394913**

**Issuer Name:**

Great-West Lifeco Inc.

Principal Regulator - Manitoba

**Type and Date:**

Final Short Form Prospectus dated November 15th, 2001

Mutual Reliance Review System Receipt dated 15<sup>th</sup> day of November, 2001

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.

CIBC World Markets Inc.

RBC Dominion Securities Inc.

Scotia Capital Inc.

TD Securities Inc.

Merrill Lynch Canada Inc.

National Bank Financial Inc.

Casgrain & Company Limited

**Promoter(s):**

-

**Project #399973**

**Issuer Name:**

Microcell Telecommunications Inc.

Principal Regulator - Quebec

**Type and Date:**

Final Short Form Prospectus dated November 19th, 2001

Mutual Reliance Review System Receipt dated 20<sup>th</sup> day of November, 2001

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #400586**

**Issuer Name:**

NCE Petrofund

Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated November 16th, 2001

Mutual Reliance Review System Receipt dated 16<sup>th</sup> day of November, 2001

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

National Bank Financial Inc.

CIBC World Markets Inc.

TD Securities Inc.

Canaccord Capital Corporation

Raymond James Ltd.

Yorkton Securities Inc.

**Promoter(s):**

-

**Project #399767**

**Issuer Name:**

Power Corporation of Canada  
Principal Regulator - Quebec

**Type and Date:**

Final Short Form Prospectus dated November 16th, 2001  
Mutual Reliance Review System Receipt dated 16<sup>th</sup> day of  
November, 2001

**Offering Price and Description:**

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
National Bank Financial Inc.  
Merrill Lynch Canada Inc.

**Promoter(s):**

-  
Project #399917

**Issuer Name:**

Power Financial Corporation  
Principal Regulator - Quebec

**Type and Date:**

Final Short Form Prospectus dated November 20th, 2001  
Mutual Reliance Review System Receipt dated 20<sup>th</sup> day of  
November, 2001

**Offering Price and Description:**

**Underwriter(s) or Distributor(s):**

Scotia Capital Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
National Bank Financial Inc.  
Merrill Lynch Canada Inc.

**Promoter(s):**

-  
Project #400737

**Issuer Name:**

Western Oil Sands Inc.  
Principal Regulator- Alberta

**Type and Date:**

Final Short Form Prospectus dated November 19<sup>th</sup>, 2001  
Mutual Reliance Review System Receipt dated 20<sup>th</sup> day of  
November, 2001

**Offering Price and Description:**

**Underwriter(s) or Distributor(s):**

**Promoter(s):**

-  
Project #399637

**Issuer Name:**

Fidelity Global Opportunities Fund  
Series A and Series F units  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form  
dated November 15th, 2001  
Mutual Reliance Review System Receipt dated 20<sup>th</sup> day of  
November, 2001

**Offering Price and Description:**

**Underwriter(s) or Distributor(s):**

Fidelity Investments Canada Limited

**Promoter(s):**

-  
Project #394460

**Issuer Name:**

RBC Investments Focus List Trust, 2001 Portfolio  
(Series A and Series F Units)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form  
dated November 14th, 2001  
Mutual Reliance Review System Receipt dated 16<sup>th</sup> day of  
November, 2001

**Offering Price and Description:**

**Underwriter(s) or Distributor(s):**

First Defined Portfolio Management Inc.

**Promoter(s):**

-  
Project #394617

## Chapter 12

# Registrations

### 12.1.1 Securities

Type	Company	Category of Registration	Effective Date
New Registration	Evangeline Securities Limited Attention: Trevor Hughes 535 Albert Street Windsor NS B0N 2T0	Mutual Fund Dealer	Nov 14/01
Change of Name	Strategicnova Investment Management Ltd. Attention: Steven Reinhard Wippersteg 220 Bay Street Suite 400 Toronto ON M5J 2W4	From: Nova Bancorp Investment Management Ltd.  To: Strategicnova Investment Management Ltd.	Oct 25/01
Change of Name	DBS Vickers Securities (USA) Inc. c/o Fasken Martineau Dumoulin Attention: Garth J. Foster Toronto Dominion Bank Tower Box 20, Suite 4200 Toronto ON M5K 1N6	From: Vickers Ballas (USA) Inc.  To: DBS Vickers Securities (USA) Inc.	Oct 04/01



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## Chapter 13

# SRO Notices and Disciplinary Proceedings

### 13.1.1 IDA Amendment to Association By-law 3.8 Relating to Underwriting Levies

#### INVESTMENT DEALERS ASSOCIATION OF CANADA

#### AMENDMENT TO ASSOCIATION BY-LAW NO. 3.8 RELATING TO UNDERWRITING LEVIES TO INCLUDE NEW OFFERINGS AND UPDATE DEFINITION LANGUAGE

##### I OVERVIEW

Association By-law 3.8 provides Member firms with instructions on the payment of levies on public and private offerings for the purpose of raising revenues to support the self-regulatory process. In recent years there has been a proliferation of new innovative financial products tailored to meet the needs of corporate issuers and investors. These products are in the main structured notes and derivative instruments such as asset backed securities and special warrants. The Association has undertaken a comprehensive overhaul of By-law No. 3.8 to address the increasing obsolescence of the original by-law language and remove the confusion and uncertainty of Member firms in complying with the by-law instructions.

##### A. CURRENT RULES

The current rules set out in By-law No. 3.8 are intended to capture all public offerings, private placements, except rights, money market obligations, securities issued by way of "tap" loans and securities of the Government of Canada for levy assessment if the aggregate amount of the offering is \$1 million dollars or more. The offering also has to be distributed in Canada.

##### B. THE ISSUE

The current rules do not explicitly address the applicability of the instructions for certain complex securities such as structured debt offerings, certificates of deposit, asset backed securities, pass through mortgage backed notes, collateralized mortgage obligations and deposit notes. Further the rules do not specifically address the treatment of "best efforts financing" and agent-principal transactions.

##### C. OBJECTIVE

The objective of this by-law amendment is to provide member firms with a clearer understanding of the securities offerings that attract IDA levies and the computation of the levy for such securities.

##### D. PROPOSED RULE AMENDMENT

The revised By-law No. 3.8 will yield the following significant benefits to Member firms and the Association:

- (i) Increased efficiency in raising revenues subject to levy by promoting a better understanding of the applicability of levies to innovative securities.
- (ii) Increased fairness by promoting standardization in the interpretation of the by-law.
- (iii) Clarify which securities are eligible for levy and the applicability of the levies on the securities.

This will promote the greater efficiency of the levy collection process.

##### E. EFFECT OF PROPOSED RULES

A reduction in cost of compliance as when rules are clarified they allow for more effective delegation of administrative duties downward and lessen the involvement of legal and senior staff in the levy process both at Member firms and at the IDA. The proposed rule does not alter the rates of assessment for any class of securities assessed under this by-law.

##### II 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

As previously stated it is believed that the making of the proposed amendments will be effective in improving the understanding and efficiency of the levy collection process.

##### C. PROCESS

This amendment was reviewed and approved by the Association's Board of Directors.

##### III SOURCES

IDA By-law No. 3.8

##### IV OSC REQUIREMENT TO PUBLISH FOR COMMENT

The IDA is required to publish for comment the accompanying by-law amendment so that the issue referred to above may be considered by OSC staff.

The Association has determined that the entry into force of the proposed amendments would be considered housekeeping in nature since they relate to member fees, an item explicitly identified in the Association's recognition order [sub-paragraph 14(b)(i)] as not being 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 Ian Russell, 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:

Ian Russell  
Senior Vice President,  
Capital Markets  
Investment Dealers Association of Canada  
(416) 865-3036  
[irussell@ida.ca](mailto:irussell@ida.ca)

## INVESTMENT DEALERS ASSOCIATION OF CANADA

### UNDERWRITING LEVIES

By-laws 3.8, 3.9 and 3.10 of the Association are repealed and new By-laws 3.8, 3.9 and 3.10 are enacted as follows:

"3.8 In By-laws 3.8, 3.9 and 3.10 the expression:

**"Canadian public offering"** means a distribution of securities of a corporation, partnership or a trust if a prospectus or similar offering document is required to be filed with any securities commission in Canada, other than a private placement or distribution of Government of Canada securities, provincial securities, municipal securities or not-for-profit securities;

**"distribution"** means a distribution of securities in Canada by way of Canadian public offering or private placement, or a distribution of Government of Canada securities, provincial securities, municipal securities or not-for-profit securities, whether underwritten on a firm (including bought deals) or best efforts basis by the Member, as principal or agent, and as a member of the underwriting or selling groups; provided no such distribution shall be a distribution for the purposes of this definition if the securities are:

- (a) money market obligations;
- (b) Government of Canada securities which are distributed by way of auction by or on behalf of the Government of Canada;
- (c) rights to acquire securities issued to holders of previously distributed securities;
- (d) continuous offerings of debt securities with terms to maturity of not less than 1 year pursuant to a shelf prospectus or similar offering document;
- (e) debt securities in respect of which the aggregate principal amount is less than \$1,000,000; or
- (f) any securities (other than debt securities) in respect of which the maximum aggregate offering price is less than \$1,000,000

**"Government of Canada securities"** means securities of, or guaranteed by, the Government of Canada;

**"municipal securities"** means securities of, or guaranteed by, any municipal corporation in Canada;

**"not for profit securities"** means securities of any school or school board, hospital or other not-for-profit organization;

**"private placement"** means a distribution of securities of a corporation, partnership or trust if a prospectus or similar offering document is not required to be filed with any securities commission in Canada, provided that a distribution of Government of Canada securities, provincial securities, municipal securities or not-for-profit securities shall not be a private placement for the purposes of this definition;

"provincial securities" means securities of, or guaranteed by, any province or territory of Canada;

"responsible dealer" means the Member, if any, which is responsible on behalf of more than one Member for the bookkeeping and accounting in a distribution;

"security" means any property that is a "security" for the purposes of any securities legislation in Canada, and shall include, without limitation, warrants, debt-like derivatives, structured notes and asset-backed instruments, provided that the Board of Directors may from time to time determine whether any particular property is to be included or excluded from such definition, which determination shall be final and conclusive;

3.9 Each Member shall pay to the Association a levy with respect to the proportionate participation in any distribution in Canada underwritten by the Member or any affiliate of the Member as follows:

- (a) for a Canadian public offering, in the case of debt securities, 1/100th of 1% of the aggregate principal amount of the offering or, in any other case 1/100th of 1% of the maximum aggregate price at which the securities are offered;
- (b) for a private placement, in the case of debt securities, 1/200th of 1% of the aggregate principal amount of the offering or, in any other case, 1/200th of 1% of the maximum aggregate price at which the securities are offered;
- (c) for a distribution of Government of Canada securities, 1/300th of 1% of the aggregate principal amount of the offering;
- (d) for a distribution of provincial securities, in the case of debt securities, (other than bonds of or guaranteed by any province or territory in Canada distributed by auction), 1/200th of 1% of the aggregate principal amount of the offering or, in any other case, 1/200th of 1% of the maximum aggregate price at which the securities are offered;
- (e) for a distribution of municipal securities, in the case of debt securities, 1/300th of 1% of the aggregate principal amount of the offering or, in any other case, 1/300th of 1% of the maximum aggregate price at which the securities are offered;
- (f) for a distribution of not-for-profit securities, in the case of debt securities, 1/200th of 1% of the aggregate principal amount of the offering or, in any other case, 1/200th of 1% of the maximum aggregate price at which the securities are offered.

be calculated according to the paragraph which provides the highest levy.

3.10 Each Member or, if there is a responsible dealer in respect of a distribution involving more than one Member, the responsible dealer shall:

- (a) calculate the amount of the levy to be paid by each Member in respect of the distribution;
- (b) pay and, in the case of a responsible dealer, collect from the other Members and remit to the Association the amount of the levy within 30 days of the date on which the first closing of the transaction occurs; and
- (c) deliver to the Association on or before the time of payment of the levy pursuant to paragraph (b) copies of any and all forms, notices and calculations relating to the size or amount of the distribution as are required to be filed with any securities commission or stock exchange in Canada in respect of the distribution.

Each levy shall be calculated in Canadian dollars or in the Canadian dollar equivalent of the currency of the distribution as of the date on which the first closing of the transaction occurs. If the levy for an offering may be calculated according to more than one of paragraphs (a) to (f) above, the levy shall

**13.1.2 TSE Notice to Participating Organizations -  
Approved Person Disciplined**

**TSE Regulation Services  
November 19, 2001**

2001-293

**APPROVED PERSON DISCIPLINED**

**Person Disciplined**

On November 6, 2001, a Hearing Committee Panel (the "Panel") of the Toronto Stock Exchange (the "Exchange") found William Snowie in violation of Section 11.26(1) of the General By-law and Ruling XIV of the Rulings and Directions of the Board. Mr. Snowie was an Approved Person employed as a Registered Trader with W.D. Latimer Co. Limited, a Participating Organization of the Exchange. Mr. Snowie did not appear at the hearing.

**Rule Violated**

The Panel found that Mr. Snowie had committed the following infraction:

Between September 1 and November 30, 1999, William Snowie, while an Approved Person employed as a Registered Trader with W.D. Latimer Co. Limited, a Participating Organization of the Exchange, entered bids to execute a trade on behalf of a principal or a non-client account when the effect of such action was to establish an artificial quotation in the listed security.

**Penalty Assessed**

The Panel imposed the following penalty:

- a) a fine of \$15,000;
- b) payment of \$3,500 towards the cost of the Exchange's investigation; and
- c) if Mr. Snowie seeks to re-enter the securities profession in any capacity, he must pass the Traders' Training course prior to receiving Exchange approval to enter orders on the Exchange and, if Mr. Snowie re-enters the securities industry, he must serve a one-month suspension.

**Summary of Facts**

Between September 1 and November 30, 1999, Mr. Snowie entered 44 bids for his registered trading account in three of his stocks of responsibility which:

- were entered in the last five minutes of trading;
- were the last bid of the day;
- set the bid closing price for the day;
- were higher than the previous bid;
- expired unfilled at the end of the trading day;
- improved Mr. Snowie's daily valuation of his inventory account; and
- improved the month-end valuation of his inventory account by \$7,132.10.

Following a review of the findings of the Exchange's investigation, the Exchange has determined that there are no grounds for any disciplinary proceedings against W.D. Latimer Co. Limited.

*Participating Organizations which require additional information should direct their questions to Marie Oswald, Director, Investigations and Enforcement, Regulation Services at 416-947-4376.*

ALEX DASCHKO  
DIRECTOR, MARKET POLICY OPERATIONS & GENERAL  
COUNSEL

**Chapter 25**  
**Other Information**

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THERE IS NO MATERIAL FOR THIS CHAPTER  
IN THIS ISSUE

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# Index

<b>Arlington Securities Inc.</b>		<b>ML Alternative Strategies Absolute Returns Ltd.</b>	
News Releases.....	6967	MRRS Decision .....	6986
<b>Atlas Cold Storage Income Trust</b>		<b>Multilateral Instrument 45-102</b>	
MRRS Decision .....	6969	Notices.....	6965
<b>BC Gas Inc.</b>		Rules and Policies .....	7029
MRRS Decision .....	6978	<b>National Registration Database</b>	
<b>Bourgon, Michael Omer</b>		News Releases.....	6968
Order - s. 127 .....	6999	<b>Nova Bancorp Investment Management Ltd.</b>	
<b>Causeway Energy Corporation</b>		Change of Name .....	7097
MRRS Decision .....	6982	<b>OSC Rule 45-501 Exempt Distributions</b>	
<b>Certain Reporting Issuers</b>		Rules and Policies .....	7011
Order - s. 144 .....	6999	<b>Primewest Energy Trust</b>	
<b>Citicorp and Associates Capital Corporation of Canada</b>		MRRS Decision .....	6979
MRRS Decision .....	6973	<b>Resale of Securities</b>	
<b>CMP 2001 II Resource Limited Partnership</b>		Notices.....	6965
MRRS Decision .....	6984	Rules and Policies .....	7029
<b>Current Proceedings Before The Ontario Securities Commission</b>		<b>Snowie, William</b>	
Notices.....	6961	SRO Notices and Disciplinary Proceedings .....	7102
<b>DBS Vickers Securities (USA) Inc.</b>		<b>Strategicnova Investment Management Ltd.</b>	
Change of Name .....	7097	Change of Name .....	7097
<b>Evangeline Securities Limited</b>		<b>System Retail Systems Inc.</b>	
New Registration .....	7097	Ruling - s. 74(1) .....	7002
<b>Exempt Distributions</b>		<b>TD TSE 300 Capped Index Fund</b>	
Notices.....	6964	MRRS Decision .....	6993
Rules and Policies .....	7011	<b>TD TSE 300 Index Fund</b>	
<b>Expatriate Resources Ltd.</b>		MRRS Decision .....	6993
Order - s. 83.1(1) .....	7000	<b>Vickers Ballas (USA) Inc.</b>	
<b>First Commercial Bank</b>		Change of Name .....	7097
MRRS Decision .....	6990	<b>XSTM Holdings (2000) Inc.</b>	
<b>Goldman Sachs &amp; Co.</b>		MRRS Decision .....	6989
MRRS Decision .....	6995		
<b>Great-West Lifeco Inc.</b>			
MRRS Decision .....	6971		
<b>Harrowston Inc.</b>			
MRRS Decision .....	6983		
<b>IDA By-Law No. 22</b>			
Notices.....	6966		
<b>IDA By-laws 10.1 and 10.15</b>			
Notices.....	6965		
<b>IDA By-laws 3.8, 3.9, 3.10</b>			
Notices.....	6964		
SRO Notices and Disciplinary Proceedings .....	7099		
<b>Milne, Samuel Arthur Brian</b>			
News Releases.....	6967		