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## Chapter 1

# Notices / News Releases

### 1.1 Notices

#### 1.1.1 Current Proceedings Before The Ontario Securities Commission

March 8, 2002

#### CURRENT PROCEEDINGS

BEFORE

#### ONTARIO SECURITIES COMMISSION

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

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

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

#### CDS

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Late Mail depository on the 19th Floor until 6:00 p.m.

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#### THE COMMISSIONERS

David A. Brown, Q.C., Chair	—	DAB
Paul M. Moore, Q.C., Vice-Chair	—	PMM
Howard I. Wetston, Q.C., Vice-Chair	—	HIW
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

### SCHEDULED OSC HEARINGS

March 5,7, 8, 19,21,22,28, 29/02 9:30 a.m.	YBM Magnex International Inc., Harry W. Antes, Jacob G. Bogatin, Kenneth E. Davies, Igor Fisherman, Daniel E. Gatti, Frank S. Greenwald, R. Owen Mitchell, David R. Peterson, Michael D. Schmidt, Lawrence D. Wilder, Griffiths McBurney & Partners, National Bank Financial Corp., (formerly known as First Marathon Securities Limited)
March 18 & 25, 2002 9:30 a.m. - 1:00 p.m.	
April 1, 2,4,5, 8, 11,12/02 9:30 a.m.	s.127
March 12 & 26/02 2:00 p.m.	K. Daniels/M. Code/J. Naster/I. Smith in attendance for staff.  Panel: HIW / DB / RWD
April 9/02 2:00 p.m.	
March 27, 2002 9:30 a.m.	<b>Frank Smeenk</b>  s. 144  I. Smith in attendance for Staff  Panel: TBA
April 15 - 19, 2002 9:30 a.m.	<b>Sohan Singh Koonar</b>  s. 127  J. Superina in attendance for Staff  Panel: PMM / KDA / RSP
April 22 - 26, 2002 10:00 a.m.	<b>Mark Bonham and Bonham &amp; Co. Inc.</b>  s. 127  M. Kennedy in attendance for staff  Panel: HIW / KDA /

ADJOURNED SINE DIE

May 1 - 3, 2002 **JAMES FREDERICK PINCOCK**  
10:00 a.m.

s. 127

J. Superina in attendance for staff

Panel: PMM / RSP / HLM

**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**

May 6, 2002 **Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.**  
10:00 a.m.

S. 127

Y. Chisholm in attendance for Staff

Panel: PMM

**DJL Capital Corp. and Dennis John Little**

May 13 - 17, 2002 **Yorkton Securities Inc., Gordon Scott Paterson, Piergiorgio Donnini, Roger Arnold Dent, Nelson Charles Smith and Alkarim Jivraj (Piergiorgio Donnini)**  
10:00 a.m.

s. 127(1) and s. 127.1

J. Superina in attendance for Staff

Panel: PMM / KDA /

**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**

June 12, 2002 **Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol**  
9:30 a.m.

s. 127

J. Superina in attendance for Staff

Panel: HIW

**Irvine James Dyck**

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

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

**Offshore Marketing Alliance and Warren English**

**Rampart Securities Inc.**

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

**1.2 Press Releases**

**1.2.1 OSC to Consider Settlements Between Staff and Ayres, Kiss, Krick, Masschaele and Vaughan**

FOR IMMEDIATE RELEASE  
March 1, 2002

**OSC TO CONSIDER SETTLEMENTS BETWEEN STAFF AND LARRY ALLEN AYRES, ERNEST KISS, ARTHUR KRICK, RON MASSCHAELE AND MICHAEL VAUGHAN**

**TORONTO** – On March 4, 2002 at 10:00 a.m., the Ontario Securities Commission (the “Commission”) will convene a hearing to consider settlements reached by Staff of the Commission (“Staff”) and the respondents Larry Allen Ayres, Ernst Kiss, Arthur Krick, Ron Masschaele and Michael Vaughan (collectively, the “Respondents”).

During the material time, the Respondents were not registered with the Commission to trade securities. The Respondents sold Saxton securities to Ontario investors. Staff alleges that the Respondents participated in an illegal distribution of securities and engaged in conduct contrary to the public interest.

The terms of the settlement agreements between Staff and the Respondents are confidential until approved by the Commission. Copies of the Notice of Hearing and Statement of Allegations are available on the Commission’s website [www.osc.gov.on.ca](http://www.osc.gov.on.ca) or from the Commission offices at 20 Queen Street West, 19<sup>th</sup> Floor, Toronto.

For Media Inquiries:

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416-593-8120

Michael Watson  
Director, Enforcement Branch  
416-593-8156

For Investor Inquiries:

OSC Contact Centre  
416-593-8314  
1-877-785-1555 (Toll Free)

**1.2.2 OSC Approves Settlements Between Staff and Ayres, Kiss, Krick, Masschaele and Vaughan**

FOR IMMEDIATE RELEASE  
March 4, 2002

**OSC APPROVES SETTLEMENTS BETWEEN STAFF AND LARRY ALLEN AYRES, ERNEST KISS, ARTHUR KRICK, RON MASSCHAELE AND MICHAEL VAUGHAN**

**TORONTO** – This morning, the Ontario Securities Commission (the “Commission”) convened a hearing to consider settlements reached by Staff of the Commission (“Staff”) and the respondents Larry Allen Ayres, Ernst Kiss, Arthur Krick, Ron Masschaele and Michael Vaughan (collectively, the “Respondents”). The Commission panel, chaired by Paul Moore, approved all five settlements.

The Respondents were not registered with the Commission to trade securities. The Respondents sold Saxton securities to Ontario investors. By so doing, the Respondents participated in an illegal distribution of securities and engaged in conduct contrary to the public interest.

In its oral reasons, the Commission noted, among other things, that although the Respondents sought advice as to the propriety of their proposed conduct, they sought it from persons involved in the scheme, and not from independent legal advisors who were not in a conflict position. In approving the sanctions as in the public interest, the Commission found that each of the Respondents had “learned his lesson”. The Commission made Orders prohibiting Messrs. Ayres, Kiss, Krick and Vaughan from trading in any securities for 90 days. Mr. Masschaele is subject to a 6 month trading ban. All the Respondents were reprimanded by the Commission.

Copies of the Notice of Hearing, Statement of Allegations and settlement agreements are available on the Commission’s website, [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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1-877-785-1555 (Toll Free)

### 1.2.3 OSC Announces New Publishing Relationship

FOR IMMEDIATE RELEASE  
March 5, 2002

#### NEW PUBLISHING RELATIONSHIP

**Toronto** - The Ontario Securities Commission is pleased to announce that it has established a relationship with Carswell, a Thomson business, for publishing OSC information.

The weekly OSC Bulletin will be the initial focus of Carswell's services. The OSC Bulletin is an important part of the OSC's communication plan that also delivers information through the OSC website, at [www.osc.gov.on.ca](http://www.osc.gov.on.ca), and provides assistance through the OSC Contact Centre. The Bulletin provides a formal record of the OSC's regulatory activities. It will continue to be produced in multiple print and electronic formats to meet consumer needs.

"We are excited about this new relationship, as it teams us with a publishing partner clearly recognized as a leader in the industry", said Frank Switzer, Director of OSC Communications. "We envision more accessible and better organized information that supports our diverse marketplace."

Carswell ([www.carswell.com](http://www.carswell.com)) is Canada's leading provider of specialized information and electronic research solutions to the legal, finance and human resources markets. Since 1864, Carswell has provided integrated information in a range of formats including books, looseleaf services, journals, newsletters, CD-ROMs and online. The Thomson Corporation ([www.thomson.com](http://www.thomson.com)) is a leading provider of integrated information solutions to business and professional markets worldwide.

Current subscribers to the OSC Bulletin will soon receive detailed subscription information by mail from the OSC and Carswell. We invite those interested in finding out more about our securities publications and products to contact:

Ontario Securities Commission  
Inquiries & Contact Centre  
416-593-8314 or  
1-877-785-1555 (Toll Free)  
email: [inquiries@osc.gov.on.ca](mailto:inquiries@osc.gov.on.ca)

Carswell  
Carswell Customer Relations  
416-609-3800 or  
1-800-387-5164 (Toll Free)  
email: [customerrelations@carswell.com](mailto:customerrelations@carswell.com)

OSC website:  
[www.osc.gov.on.ca](http://www.osc.gov.on.ca)

Carswell website:  
[www.carswell.com](http://www.carswell.com)

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## 1.2.4 Securities Regulators Propose New Framework for the Regulation of Mutual Funds - CSA

For Immediate Release  
February 28, 2002

### SECURITIES REGULATORS PROPOSE NEW FRAMEWORK FOR THE REGULATION OF MUTUAL FUNDS

**Toronto** – Securities regulators are seeking public comment on a proposal that would reshape mutual fund regulation in Canada by establishing a comprehensive system to better protect investors while still responding to the needs of the \$427 billion mutual fund industry.

A concept proposal on a new framework for regulating the mutual fund industry will be published for comment on March 1, 2002 by the Canadian Securities Administrators (CSA), an umbrella group representing the thirteen provincial and territorial securities regulators, following extensive research and industry consultations.

“The proposal represents a forward-looking solution to the potential conflicts of interest inherent in most mutual fund structures,” said Rebecca Cowdery, Chair of the CSA staff working group responsible for drafting the proposal. “This is not about layering new regulation on top of old. It is a seamless package that offers fund managers the flexibility of operating within a broader set of regulatory principles, rather than conforming to detailed, prescriptive rules and wide-ranging prohibitions.”

The centrepiece of the new framework is a requirement for mutual funds to establish a governance agency to oversee the actions of the mutual fund manager. Composed of three or more individuals, a majority of whom are independent of the fund manager, the governance agency would owe its allegiance to investors and would be responsible for ensuring that the fund manager acts in the best interests of investors.

“Most Canadian mutual fund investors currently have neither the resources nor the inclination to effectively oversee fund managers. For this reason, the market is increasingly demanding independent oversight,” said Cowdery. A number of Canadian mutual funds have already instituted fund governance systems, but the practice is voluntary and there are no consistent industry-wide standards. Canada is one of the only developed countries that does not mandate some form of independent mutual fund governance.

Other elements of the proposed framework include the following:

- the creation of a new registration category for mutual fund managers, with minimum standards imposed through conditions of registration that are tailored to the business of managing mutual funds;
- streamlined product regulation for mutual funds, with detailed restrictions replaced by broader principles or guidelines, and compliance monitored by the governance agency;

- a review of investor rights, and the continuation of existing disclosure requirements; and
- an enhanced regulatory presence, including increased on-site compliance examinations and desk reviews expanded beyond the prospectus to continuous disclosure and sales communication documents.

The CSA concept proposal raises questions on the proposed framework and on some possible alternative approaches to regulation of mutual funds. CSA members will accept public comments on the proposal until June 7, 2002.

The concept proposal, titled “Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers,” will be available on the British Columbia Securities Commission website at [www.bcsc.bc.ca](http://www.bcsc.bc.ca), the Alberta Securities Commission website at [www.albertasecurities.com](http://www.albertasecurities.com), the Manitoba Securities Commission website at [www.msc.gov.mb.ca](http://www.msc.gov.mb.ca), the Ontario Securities Commission website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca), and the Commission des valeurs mobilières du Québec website at [www.cvmq.com](http://www.cvmq.com).

For more information:

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Frank Switzer  
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416-593-8120

Denis Dubé  
Commission des valeurs mobilières du Québec  
514-940-2199 ext. 4441  
1-800-361-5072 (Quebec only)

**1.2.5 OSC to Consider Settlement in Matter of Wayne S. Umetsu**

FOR IMMEDIATE RELEASE  
March 5, 2002

**OSC TO CONSIDER A SETTLEMENT  
IN THE MATTER OF WAYNE S. UMETSU**

**TORONTO** – On March 6, 2002 at 2:45 p.m., the Ontario Securities Commission (the “Commission”) will convene a hearing to consider a settlement reached by Staff of the Commission (“Staff”) and the respondent, Wayne S. Umetsu (“Umetsu”).

Umetsu was registered with the Commission as a salesperson with FC Canada Investments Inc. between April 8, 1997 and May 2, 1997 and between December 16, 1997 and February 28, 1998. Umetsu has not been registered with the Commission in any capacity since February 28, 1998. Staff alleges that by holding himself out as being registered to trade futures contracts when he was not registered, trading future contracts without being registered to do so and diverting monies provided to him for investment purposes for his own personal use, Umetsu contravened the Commodity Futures Act and engaged in conduct contrary to the public interest.

The terms of the Settlement Agreement between Staff and Umetsu are confidential until approved by the Commission. Copies of the Notice of Hearing and Amended Statement of Allegations are available on the Commission’s website, [www.osc.gov.on.ca](http://www.osc.gov.on.ca) or from the Commission offices at 20 Queen Street West, 19<sup>th</sup> Floor, Toronto.

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**1.2.6 OSC Approves Settlement Between Staff and Wayne S. Umetsu**

FOR IMMEDIATE RELEASE  
March 7, 2002

**ONTARIO SECURITIES COMMISSION APPROVES  
SETTLEMENT BETWEEN STAFF  
AND WAYNE S. UMETSU**

**TORONTO** – Late yesterday afternoon, the Ontario Securities Commission (the “Commission”) convened a hearing to consider a settlement reached by Staff of the Commission and the respondent Wayne S. Umetsu (“Umetsu”). The Commission panel, chaired by Howard Wetston, approved the settlement.

Between 1997 and 1998, the respondent held himself out as being registered to trade futures contracts when he was not registered, traded future contracts without being registered to do so and diverted monies provided to him for investment purposes for his own personal use. The respondent agreed that his conduct contravened the Commodity Futures Act and was contrary to the public interest.

The Commission reprimanded Umetsu and ordered that:

- (a) the exemptions contained in commodity futures law permanently do not apply to the respondent;
- (b) the respondent is prohibited permanently from trading in any securities with the exception that after one year from the date of the approval of this settlement the respondent is permitted to trade securities for the account of his registered retirement savings plan (as defined in the Income Tax Act (Canada));
- (c) the respondent is prohibited permanently from acting as an officer or director of any issuer; and
- (d) the respondent pay costs of \$10,000.

In approving the settlement, the Commission found, among other things, that the settlement and proposed sanctions were consistent and commensurate with the seriousness of Umetsu’s conduct.

Copies of the Amended Notice of Hearing, Amended Statement of Allegations of Staff of the Commission and approved Settlement Agreement is available on the Commission’s website or from the Commission offices at 20 Queen Street West, Toronto.

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## 1.2.7 OSC Issues Temporary Cease Trading Orders Against Web Site Operators

FOR IMMEDIATE RELEASE  
March 6, 2002

### OSC ISSUES TEMPORARY CEASE TRADING ORDERS AGAINST WEB SITE OPERATORS

**Toronto** - On February 26, 2002, the Ontario Securities Commission (the "Commission") issued a Temporary Cease Trading Order against Gerhard R. Mohr, and his company, Black Bean Communications Ltd. Gerhard R. Mohr is a resident of Mississauga, Ontario. Staff alleges that they are operating a Web site, [www.bbean.com](http://www.bbean.com), which is in violation of s.25 of the *Securities Act* and contains investments contrary to the public interest, including prime bank instruments and Nigerian investment opportunities. The order was also issued against John Fenner for acting as a securities broker-dealer for various investments offered on the Web site. John Fenner is currently residing in Saint Joseph, Missouri. Gerhard R. Mohr, Black Bean Communications Ltd., and John Fenner are not registered with the Commission.

The next hearing date has been set for Friday, March 8, 2002 at 10:00 AM.

On February 26, 2002, the Commission also issued a Temporary Cease Trading Order against Ronald Etherington, and his company Create-a-fund Incorporated. Ronald Etherington is a resident of Burlington, Ontario. Staff alleges that they are operating a Web site at [www.createafund.com](http://www.createafund.com) which is in violation of Ontario's securities laws. The Web site purports to offer investment services such as portfolio customizing and investment monitoring. Staff alleges that these services require registration. Ronald Etherington and Create-a-fund Incorporated are not registered with the Commission.

The hearing date has been set for Friday, March 8, 2002 at 11:00 AM.

Copies of the Notices of Hearing, Statements of Allegations and Temporary Orders are available on the Commission's website, [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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416-593-8314  
1-877-785-1555 (Toll Free)

**1.3 Notices of Hearing**

**1.3.1 Black Bean Communications Ltd. et al. - ss. 127, 127.1**

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

**AND**

**IN THE MATTER OF  
BLACK BEAN COMMUNICATIONS LTD.  
GERHARD ("GARY") R. MOHR, and JOHN FENNER**

**NOTICE OF HEARING  
(Sections 127 and 127.1)**

**WHEREAS** on the 26<sup>th</sup> day of February, 2002, the Ontario Securities Commission (the "Commission") ordered, pursuant to clause 2 and 3 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), that Black Bean Communications Ltd., Gerhard R. Mohr (also known as Gary Mohr), and John Fenner cease all trading in securities and that any exemptions contained in Ontario securities law do not apply to the respondents;

**AND WHEREAS** the Commission further ordered that pursuant to clause 6 of subsection 127(1) of the Act that the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commission;

**TAKE NOTICE** that the Commission will hold a hearing pursuant to section 127 of the Act at its offices on the 17<sup>th</sup> Floor, 20 Queen Street West, Toronto, Ontario commencing on Friday, the 8<sup>th</sup> day of March, 2002, at 10:00 a.m. or as soon thereafter as the hearing can be held:

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

- (a) to make an order to extend the Temporary Order until this hearing is concluded;
- (b) to make an order that the respondents cease trading in securities, permanently or for such time as the Commission may direct;
- (c) to make an order that any exemptions contained in Ontario securities law do not apply to the respondents permanently, or for such period as specified by the Commission;
- (d) to make an order that the respondents be prohibited from becoming or acting as a director or officer of any issuer;
- (e) to make an order that the respondents be reprimanded;
- (f) to make an order that the respondents pay the costs of Staff's investigation in relation to the matters subject to this proceeding;
- (g) to make an order that the respondents pay the costs of this proceeding incurred by or on behalf of the Commission; and/or
- (h) to make such other order as the Commission may deem appropriate.

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

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

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

February 27, 2002.

"John Stevenson"

**TO:** Black Bean Communications Ltd.

**AND TO:** Gerhard R. Mohr

**AND TO:** John Fenner

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

**AND**

**IN THE MATTER OF  
BLACK BEAN COMMUNICATIONS LTD.,  
GERHARD ("GARY") R. MOHR, and JOHN FENNER**

**STATEMENT OF ALLEGATIONS**

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

1. Black Bean Communications Ltd. ("Black Bean") is incorporated under the laws of Ontario and located in Mississauga, Ontario.
2. Gerhard R. Mohr ("Mohr") is a resident of Mississauga, Ontario and is the sole principal of Black Bean.
3. John Fenner ("Fenner"), previously of Ottawa and London, Ontario, currently resides in St. Joseph, Missouri.
4. Black Bean operates a Web site at [www.bbean.com](http://www.bbean.com) relating to securities investment opportunities and services.
5. Black Bean and Mohr posts investments on the Web site which are contrary to the public interest, including prime bank instruments and Nigerian investment opportunities.
6. Fenner acts as Black Bean's broker for such investments as "high yield" and currency trading.
7. Black Bean, Mohr, and Fenner are not registered with the Ontario Securities Commission in any capacity.
8. Black Bean, Mohr, and Fenner are trading in securities without being registered, contrary to s.25 of the *Securities Act*, RSO 1990, c.S-5, as amended. This conduct is also contrary to the public interest.
9. Such allegations as Staff may submit and the Commission may permit.

February 27, 2002.

**1.3.2 Create-a-Fund Incorporated and Ronald L. Etherington - ss. 127 and 127.1**

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

**AND**

**IN THE MATTER OF  
CREATE-A-FUND INCORPORATED  
and RONALD L. ETHERINGTON**

**NOTICE OF HEARING  
(Sections 127 and 127.1)**

**WHEREAS** on the 26<sup>th</sup> day of February, 2002, the Ontario Securities Commission (the "Commission") ordered, pursuant to clause 2 and 3 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), that Create-a-fund Incorporated ("Create-a-fund") and Ronald L. Etherington ("Etherington") cease all trading in securities and that any exemptions contained in Ontario securities law do not apply to these respondents;

**AND WHEREAS** the Commission further ordered that pursuant to clause 6 of subsection 127(1) of the Act that the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commission;

**TAKE NOTICE** that the Commission will hold a hearing pursuant to section 127 of the Act at its offices on the 17<sup>th</sup> Floor, 20 Queen Street West, Toronto, Ontario commencing on Friday, the 8<sup>th</sup> day of March, 2002, at 11:00 a.m. or as soon thereafter as the hearing can be held:

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

- (a) to make an order to extend the Temporary Order until this hearing is concluded;
- (b) to make an order that Create-a-fund and Etherington cease trading in securities, permanently or for such time as the Commission may direct;
- (c) to make an order that any exemptions contained in Ontario securities law do not apply to Create-a-fund and Etherington permanently, or for such period as specified by the Commission;
- (d) to make an order that Etherington is prohibited from becoming or acting as a director or officer of any issuer;
- (e) to make an order that Create-a-fund and Etherington be reprimanded;
- (f) to make an order that Create-a-fund and Etherington jointly pay the costs of Staff's

investigation in relation to the matters subject to this proceeding;

- (g) to make an order that Create-a-fund and Etherington jointly pay the costs of this proceeding incurred by or on behalf of the Commission; and/or
- (h) to make such other order as the Commission may deem appropriate.

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

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

**AND TAKE FURTHER NOTICE** that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.  
February 27, 2002.

"John Stevenson"

**TO:** Create-a-fund Incorporated

**AND TO:** Ronald L. Etherington

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

**AND**

**IN THE MATTER OF  
CREATE-A-FUND INCORPORATED  
AND RONALD L. ETHERINGTON**

**STATEMENT OF ALLEGATIONS**

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

1. Create-a-fund Incorporated ("Create-a-fund"), also known as Createafund Inc., is incorporated under the laws of Ontario, and located in Burlington, Ontario.
2. Ronald L. Etherington ("Etherington") is a resident of Burlington, Ontario and the sole officer or director of Create-a-fund.
3. Create-a-fund and Etherington operate a Web site at [www.createafund.com](http://www.createafund.com) relating to securities investment opportunities and services.
4. Through the Web site, Create-a-fund and Etherington provided services, including portfolio customizing and investment monitoring, with interested investors directly.
5. Create-a-fund and Etherington were never registered with the Ontario Securities Commission in any capacity.
6. Create-a-fund and Etherington are advising and trading in securities without being registered, contrary to s.25 of the Securities Act, RSO 1990, c.S-5, as amended. This conduct is also contrary to the public interest.
7. Such additional allegations as Staff may submit and the Commission may permit.

February 27, 2002.

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## Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 First Capital Realty Inc.

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications — exemption from eligibility requirements under National Instrument 44-101 and National Instrument 44-102 in order to conduct rights offering and qualify exercise of long term warrants — issuer has substantial market following

#### Applicable Ontario Statutes

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

#### Applicable Ontario Rules

National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.2(3), 2.9 15.1

National Instrument 44-102 Shelf Distributions, ss. 2.1, 2.2(1), 2.2(3)(b)(ii), 11.1

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

**AND**

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

**AND**

**IN THE MATTER OF  
FIRST CAPITAL REALTY INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "Jurisdictions") has received an application from First Capital Realty Inc. ("First Capital") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that First Capital be exempt from the requirements of:

- (a) subsection 2.2(3) of National Instrument 44-101 Short Form Prospectus Distributions ("44-101") that the aggregate market value of its equity securities be \$75,000,000 or more on certain dates;
- (b) section 2.1 of National Instrument 44-102 Shelf Distributions ("44-102") that it only file a short form prospectus that is a base shelf prospectus in certain circumstances; and
- (c) subsection 2.2(1) of 44-102 that it meet the qualification criteria under section 2.2 of 44-101 in order to qualify to file a preliminary short form prospectus that is a preliminary base shelf prospectus,

(collectively, the "Eligibility Requirements") so that it may (i) distribute rights ("Rights") to all holders of its common shares ("Common Shares") to subscribe for common share purchase warrants ("Warrants") of First Capital pursuant to a short form prospectus, and (ii) qualify the Common Shares issuable upon the exercise of the Warrants under a base shelf prospectus, all as further described below;

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

**AND WHEREAS** First Capital has represented to the Decision Makers that:

1. First Capital is a corporation incorporated under the laws of Ontario and is a reporting issuer under the Legislation and is not in default of any requirements of the Legislation.
2. First Capital is a growth-oriented real estate investment company that concentrates on the ownership of neighbourhood and community shopping centres.
3. The authorized capital of First Capital consists of an unlimited number of Preference Shares, issuable in series, and an unlimited number of Common Shares. As of February 6, 2002, there were no Preference Shares and 15,377,024 Common Shares issued and outstanding. In addition, as of February 6, 2002, First Capital had outstanding: (i) \$57,441,000 principal amount of 8.5% convertible unsecured subordinated debentures (the "8.5% Debentures"), convertible into Common Shares at any time prior to redemption or maturity at a price of \$15.50 per Common Share; (ii) \$97,522,000 principal amount of 7.875% convertible unsecured subordinated debentures (the "7.875% Debentures"), convertible into Common Shares at any time prior to redemption or maturity at \$17.00 per Common Share; (iii) \$99,999,100 principal amount of 7.0% convertible unsecured subordinated debentures

- (the "7.0% Debentures"), convertible into Common Shares at any time prior to redemption or maturity at \$23.50 per Common Share; (iv) \$100,000,000 principal amount of 7.25% convertible unsecured subordinated debentures (the "7.25% Debentures"), convertible into Common Shares at any time prior to redemption or maturity at \$25.25 per Common Share; and (v) \$38,166,000 principal amount of 7.5% secured subordinated debentures (the "7.5% Debentures") (the 8.5% Debentures, 7.875% Debentures, 7.0% Debentures, 7.25% Debentures and the 7.5% Debentures are collectively referred to as the "Debentures").
4. The Common Shares and the Debentures are listed on The Toronto Stock Exchange (the "TSE").
  5. First Capital has been a reporting issuer in each of the Provinces of Ontario, Newfoundland and Labrador, Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, Alberta and British Columbia since its initial public offering in March 1994, and a reporting issuer in Quebec since November 1996.
  6. First Capital completed an initial public offering in 1994 of 1,908,300 Common Shares and an aggregate principal amount of \$38,166,000 of 7.5% Debentures for total gross proceeds of approximately \$57 million pursuant to a special debenture transaction.
  7. Subsequent to its initial public offering, First Capital has completed:
    - (i) an offering of 2,941,180 Common Shares for gross proceeds of approximately \$25 million pursuant to a special warrant transaction which was completed in July 1995;
    - (ii) a public offering of 5,250,000 Common Shares for total gross proceeds of approximately \$55 million in February 1996;
    - (iii) a public offering of the 8.5% Debentures for total gross proceeds of approximately \$60 million in November 1996;
    - (iv) a public offering of the 7.875% Debentures for total gross proceeds of approximately \$100 million in February 1997;
    - (v) a public offering of the 7.0% Debentures for total gross proceeds of approximately \$100 million in February 1998; and
    - (vi) a public offering of the 7.25% Debentures for total gross proceeds of approximately \$100 million in June 1998.
  8. First Capital intends to carry out a rights offering (the "Rights Offering") in which it will offer Rights to all holders of its Common Shares to subscribe for the Warrants.
  9. Under the terms of the Warrants, First Capital will be required to maintain a prospectus during certain periods
  10. First Capital intends to file a short form base shelf prospectus (the "Base Shelf Prospectus") and, prior to the commencement of each Exercise Period, a prospectus supplement, in order to qualify the Common Shares issuable upon the exercise of the Warrants during such Exercise Period.
  11. As of February 6, 2002, First Capital's principal shareholder, Gazit-Globe (1982) Ltd., through its indirect wholly-owned Canadian subsidiaries, Gazit (1997) Inc. and 2000386 Ontario Limited (collectively, "Gazit"), owned 10,466,500 Common Shares representing approximately 68.07% of the outstanding Common Shares. In addition, as of February 6, 2002, Gazit owned an aggregate principal amount of \$13,412,000 of 7.5% Debentures, an aggregate principal amount of \$9,393,000 of 8.5% Debentures, an aggregate principal amount of \$31,930,000 of 7.875% Debentures, an aggregate principal amount of \$28,980,600 of 7.0% Debentures and an aggregate principal amount of \$32,049,000 of 7.25% Debentures. If all such Debentures (excluding the 7.5% Debentures which are not convertible) were converted into Common Shares, Gazit would hold an additional 4,986,720 Common Shares and would hold approximately 75.88% of the outstanding Common Shares.
  12. As of February 6, 2002, Alony-Hetz Properties & Investments Ltd. ("Alony-Hetz"), through its wholly-owned subsidiary A. H. Canada Holdings Ltd. ("AH Canada"), owned 2,931,824 Common Shares representing approximately 19.07% of the outstanding Common Shares. In addition, as of February 6, 2002, AH Canada owned an aggregate principal amount of \$3,800,000 of 7.5% Debentures, an aggregate principal amount of \$2,335,000 of 8.5% Debentures, an aggregate principal amount of \$8,556,000 of 7.875% Debentures, an aggregate principal amount of \$8,031,000 of 7.0% Debentures and an aggregate principal amount of \$8,921,000 of 7.25% Debentures. If all such Debentures (excluding the 7.5% Debentures which are not convertible) were converted into Common Shares, AH Canada would hold an additional 1,348,991 Common Shares and would hold approximately 25.6% of the outstanding Common Shares. Alony-Hetz is a significant institutional investor in First Capital but does not act jointly or in concert with Gazit.
  13. First Capital would, but for the requirement contained in paragraph 3 of section 2.2 of 44-101 (the "Public Float Test"), be qualified to file a prospectus in the form of a short form prospectus under 44-101. In this regard, the aggregate market value (the "Public Float ") of First Capital's equity securities that are listed and posted for trading on the TSE, calculated in the manner contemplated by section 2.9 of 44-101 which requires the exclusion of the Common Shares held by Gazit and

Alony-Hetz, is \$24,733,750, being less than the \$75,000,000 requirement of the Public Float Test.

14. First Capital had been eligible to participate in the POP System under former National Policy 47 since 1996 and undertook the offerings referred to in clauses (iii) through (vi) in paragraph 7 above by way of a short-form prospectus. First Capital became ineligible to use the POP System upon the acquisition of control of First Capital by Gazit in August 2000 and the increase by Alony-Hetz of its investment in First Capital following the acquisition of control of First Capital by Gazit, which resulted in a reduction in the aggregate market value of its Public Float. Since that time, First Capital has continued to comply with the other requirements of the former National Policy 47 and now 44-101.
15. First Capital has a substantial market following and is closely followed by analysts and investment advisors from several Canadian securities dealers. In addition, First Capital has been the subject of numerous articles in the press and receives significant media attention.

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

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

**THE DECISION** of the Decision Makers under the Legislation is that First Capital be exempt from the Eligibility Requirements in connection with the filing of a short form prospectus that qualifies the distribution of the Rights and Warrants pursuant to the Rights Offering in the manner set out in paragraphs 8 through 10 above, provided that First Capital otherwise complies with all of the requirements and procedures set out in 44-101;

**AND THE FURTHER DECISION** of the Decision Makers under the Legislation is that First Capital be exempt from the Eligibility Requirements in connection with the filing of the Base Shelf Prospectus and related prospectus supplements that qualify the Common Shares issuable upon the exercise of the Warrants in the manner set out in paragraphs 8 through 10 above, provided that:

1. the Base Shelf Prospectus qualifies only the issuance of Common Shares upon the exercise of the Warrants;
2. First Capital otherwise complies with all the requirements and procedures set out in 44-101 and 44-102;
3. the receipt issued for the Base Shelf Prospectus in reliance upon this Decision is effective until the earliest of:
  - (a) the date 25 months from the date of its issue;
  - (b) the time immediately before entering into of an agreement of purchase and sale for a security to

be sold under the Base Shelf Prospectus, if at that time

- (i) First Capital does not have a current AIF, or
  - (ii) the aggregate of (i) the aggregate principal amount of the Debentures listed on the TSE, excluding the Debentures held by Gazit and Alony-Hetz and (ii) First Capital's Public Float, has not been \$200,000,000 or more on a date within 60 days before the date of the agreement; and
  - (c) the lapse date, if any, prescribed by the Legislation if relief has not been granted to First Capital extending the lapse date for the distribution; and
4. the relief provided by this Decision shall expire on the earlier of:
- (a) the date that is 25 months from the date on which the final receipt is issued for the Base Shelf Prospectus; and
  - (b) the time immediately before the filing of a subsequent base shelf prospectus filed to qualify the distribution of Common Shares upon the exercise of the Warrants.

February 26, 2002.

"Margo Paul"



**2.1.2 Cee Gee Financial Services Trust - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration and prospectus requirements in connection with issuance of Corporation Notes and Trust Notes to partners and to parties related to partners, provided that no one other than partners and their spouses contribute assets or assume liability - revocation of previous Decision due to inclusion of Trust Notes in structure.

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am. ss.25, 53, 74 (1) and 144.

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

**AND**

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

**AND**

**IN THE MATTER OF  
CEE GEE FINANCIAL SERVICES LTD.**

**AND**

**IN THE MATTER OF  
CEE GEE FINANCIAL SERVICES TRUST**

**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, Prince Edward Island, Newfoundland, Yukon, Northwest Territories and Nunavut (the "Jurisdictions") has received an application from Cee Gee Financial Services Ltd. (the "Corporation") and Cee Gee Financial Services Trust (the "Trust") for a decision pursuant to the securities legislation and securities directions of the Jurisdictions (the "Legislation") that the requirements under the Legislation to be registered to trade in a security (the "Registration Requirement") and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirement") not apply to the issue from time to time by the Corporation of promissory notes (the "Corporation Notes") and the issue from time to time by the Trust of promissory notes (the "Trust Notes") and revoking the decision of certain of the Decision Makers dated March 23, 1999 in Re Cee Gee Financial Services Ltd. and Ernst & Young LLP (the "Prior Decision");

**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 Corporation and the Trust have represented to the Decision Makers that:

1. The Corporation exists under the laws of the Province of Ontario. The Corporation is not, nor is it intended that the Corporation become, a reporting issuer or its equivalent under the Legislation.
2. All of the outstanding common shares of the Corporation are owned by Cee Gee Educational Trust, a trust established by a former partner of Ernst & Young LLP ("E&Y").
3. The Trust was established under the laws of the Province of Ontario by a partner of E&Y and each of the trustees of the Trust is a partner of E&Y. It is not intended that the Trust become a reporting issuer or its equivalent under the Legislation.
4. E&Y is a limited liability partnership existing under the laws of the Province of Ontario. E&Y carries on business as a chartered accountancy and related professional services practice. E&Y also engages, through affiliated corporations and partnerships (each an "Affiliate") which are wholly-owned, directly or indirectly, either by E&Y or by one or more Partners, as defined below, in other businesses including, among others, an insolvency practice, a corporate finance services practice, an electronic publishing practice and the acquisition or lease of premises and equipment for lease to E&Y.
5. Ernst & Young Advisory Services ("E&YAS") is a partnership existing under the laws of the Province of Ontario. E&YAS provides certain professional services to E&Y and the Affiliates. E&YAS and E&Y are collectively referred to as the "Firm".
6. The Firm is wholly-owned by its Canadian partners (the "Partners"), each of whom is a partner in E&YAS. Those Partners who are chartered accountants are also partners in E&Y.
7. The Corporation and the Trust will issue Corporation Notes and Trust Notes, respectively, only to:
  - (a) Partners;
  - (b) spouses of Partners;
  - (c) corporations controlled by Partners (each a "Partner Corporation"), where a Partner is an officer and a director of the corporation and where all of the shares of the corporation are beneficially owned by the Partner, the spouse of the Partner, the children of the Partner and/or of the Partner's spouse (or trusts therefor), the nieces and nephews of the Partner and/or of the Partner's spouse, the parents and grandparents of the Partner and/or of the Partner's spouse, or

the grandchildren of the Partner and/or of the Partner's spouse, or any combination thereof; and

- (d) trusts (each a "Partner Trust"), where the beneficiaries of the trust are the Partner, the spouse of the Partner, the children of the Partner and/or of the Partner's spouse, the nieces and nephews of the Partner and/or of the Partner's spouse, the parents and grandparents of the Partner and/or of the Partner's spouse, or the grandchildren of the Partner and/or of the Partner's spouse, or any combination thereof, and where at least one of the trustees of the trust is the Partner;

such persons, corporations and trusts being referred to collectively as "Eligible Persons".

- 8. The Corporation Notes and the Trust Notes will not be transferable except:

- (a) with the consent of the directors of the Corporation or the trustees of the Trust, as the case may be, between a Partner and other Eligible Persons connected with or related to such Partner;
- (b) by way of pledge or other security by an Eligible Person to a lender for the purpose of giving collateral for indebtedness incurred for the purpose of acquiring one or more Corporation Notes or Trust Notes; and
- (c) to the Corporation or the Trust, as the case may be, for cancellation.

- 9. Substantially all of the proceeds from the Corporation Notes and the Trust Notes will be loaned by the Corporation or by the Trust, as the case may be, to E&Y and/or to one or more of the Affiliates, and may in turn be loaned among E&Y, such Affiliates and one or more other Affiliates, for the purpose of funding the Firm and the Affiliates. Such loans will be evidenced by non-transferable promissory notes which will be payable upon demand.

- 10. Prior to an Eligible Person advancing monies to the Corporation or the Trust to purchase one or more Corporation Notes or Trust Notes, as the case may be, the Eligible Person will be provided with:

- (a) the most recent financial statements of the Corporation or the Trust, as the case may be;
- (b) for the most recent financial year of the Firm, a balance sheet dated as at the end of the financial year and related notes accompanied by calculations showing interest coverage for the financial year and asset coverage as at the end of the financial year, in each case for the Corporation Notes, the Trust Notes, bank debt and long-term debt (the "Financial Information") or, if the Financial Information for the most recent financial year of the Firm is not available and not more than 140 days have elapsed since

the end of such financial year, for the previous financial year of the Firm; and

- (c) a copy of this decision document.

- 11. Prior to or contemporaneous with the advancement of monies by an Eligible Person to the Corporation or the Trust to purchase one or more Corporation Notes or Trust Notes, as the case may be, the Eligible Person will provide an acknowledgement of the receipt of a copy of the decision of the Decision Makers applied for herein and an acknowledgement that the protections of the applicable Legislation, including statutory rights of rescission and damages and continuous disclosure, will not be available in respect of the purchase of such promissory notes.

- 12. Within 140 days of the end of each financial year of the Firm, the Corporation or the Trust, as the case may be, will provide to each holder of one or more Corporation Notes or Trust Notes a copy of the Financial Information for such financial year and a copy of the most recent financial statements of the Corporation or the Trust, as the case may be.

- 13. In the case of the investment in one or more Corporation Notes or Trust Notes by an Eligible Person that is a Partner Corporation or a Partner Trust, the Partner Corporation or the Partner Trust, as the case may be, will represent to the Corporation or the Trust, as the case may be, that no shareholder of the Partner Corporation or no beneficiary of the Partner Trust, as the case may be, other than, in either case, the related Partner and the related Partner's spouse, (i) has or will directly or indirectly contribute money or other assets to such Partner Corporation or Partner Trust, as the case may be, (ii) is or will be liable for any loan or other form of financing obtained by the Partner Corporation or the Partner Trust, as the case may be, or (iii) is or will be involved in making investments decisions by the Partner Corporation or the Partner Trust, as the case may be.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Registration Requirement and the Prospectus Requirement shall not apply to the issue from time to time to Eligible Persons of Corporation Notes by the Corporation and Trust Notes by the Trust, provided that any subsequent trade in Corporation Notes and Trust Notes will be deemed to be a distribution or a distribution to the public under the Legislation of the Jurisdiction in which the trade takes place, unless such subsequent trade is one of the following:

- (a) a transfer between a Partner and other Eligible Persons connected with or related to such Partner;

- (b) a transfer to the Corporation or the Trust, as the case may be, for cancellation; or
- (c) a pledge to a financial institution for the purpose of giving collateral for indebtedness incurred for the purpose of acquiring one or more Corporation Notes or Trust Notes;

**AND IT IS THE FURTHER DECISION** of the Decision Makers pursuant to the Legislation that the Prior Decision is revoked.

February 27, 2002.

“Paul Moore”

“Stephen Paddon”

### 2.1.3 RY Splitshare Corporation - MRRS Decision

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer has only one security holder - issuer deemed to have ceased to be 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  
ONTARIO, ALBERTA, SASKATCHEWAN, QUEBEC,  
NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

AND

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

AND

**IN THE MATTER OF  
RY SPLITSHARE CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authorities or regulators (the “**Decision Makers**”) in each of Ontario, Alberta, Saskatchewan, Quebec, Nova Scotia and Newfoundland and Labrador (the “**Jurisdictions**”) has received an application on behalf of RY Splitshare Corporation (“**RYSC**”) for a decision pursuant to the securities legislation of the Jurisdictions (the “**Legislation**”) that RYSC be deemed to have ceased to be a reporting issuer or the equivalent thereof under the Legislation;

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

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

1. RYSC was incorporated under the laws of the Province of Ontario on November 17, 1992, is a reporting issuer in each of the Jurisdictions, and is not in default of any of the requirements of the Legislation.
2. The head office of RYSC is located in Toronto, Ontario.
3. The authorized capital of RYSC consists of an unlimited number of common shares (“**RYSC Shares**”) of which, as of the date hereof, 1,000 RYSC Shares are issued and outstanding as fully paid and non-assessable. All of the RYSC Shares are owned by Structured Derivative Products Corporation (“**SDPC**”), a private company incorporated under the *Business Corporations*

Act (Ontario). SDPC is not a reporting issuer under the Legislation. The registered office of SDPC is located in Toronto, Ontario.

4. RYSC was incorporated for the sole purpose of making offers to the public to exchange units consisting of transferable fixed term warrants ("Special Equity Claim securities" or "**SPECs**") and transferable custodial receipts ("Payment Enhanced Capital securities" or "**PEACs**") for an equal number of shares (the "**Underlying Shares**") of an issuer by means of a prospectus prepared and filed in accordance with the Legislation.
5. RYSC became a reporting issuer under the Legislation as of April 19, 1993 upon the issuance by the Commission of a receipt for PEACs and SPECs issued by RYSC in respect of Underlying Shares of Royal Bank.
6. Essentially, the PEACs and SPECs issued by RYSC had a 5 year term and operated so that at the end of the term one of the PEAC or SPEC would be cancelled in exchange for the Underlying Share and the other would expire worthless. The last of the PEACs and SPECs issued by RYSC expired on April 30, 1998. All of the PEACs and SPECs issued by RYSC are no longer outstanding and RYSC will not be making any further issuances of PEACs and SPECs.
7. The RYSC Shares were formerly lodged in escrow with Montreal Trust Company of Canada pursuant to an Escrow Agreement dated as of April 15, 1993, among RBC Dominion Securities Inc. and 59942 Ontario Inc. and Montreal Trust Company of Canada and RYSC (the "**Escrow Agreement**"). The Escrow Agreement was subsequently amended to permit SDPC to become a party to the escrow arrangement on the same terms and conditions. The RYSC Shares have been automatically released from escrow.
8. On October 30, 1995, an Order (the "**Order**") was granted by the OSC granting RYSC exemptive relief from a number of provisions of the *Securities Act* (Ontario) (the "Act") including, pursuant to subclause 80(b)(iii), that RYSC is exempt from the filing requirements, to the extent applicable, of section 77, 78 and 79 of the Act and the related Regulation.
9. SDPC is the sole shareholder of the RYSC Shares, and no PEACs and SPECs are outstanding.
10. There are no securities of RYSC listed or quoted on any exchange or market.
11. Other than the RYSC Shares, RYSC has no securities, including debt securities, outstanding.
12. RYSC does not intend to seek public financing by way of an offering of its securities.

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

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

**THE DECISION OF THE DECISION MAKERS UNDER THE LEGISLATION** is that RYSC is deemed to have ceased to be a reporting issuer or the equivalent thereof under the Legislation.

February 27, 2002.

"John Hughes"

## 2.1.4 Canadian Splitshare Corporation - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer has only one security holder - issuer deemed to have ceased to be 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 ONTARIO,  
ALBERTA, SASKATCHEWAN, QUEBEC,  
NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

**AND**

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

**AND**

**IN THE MATTER OF  
CANADIAN SPLITSHARE CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authorities or regulators (the "**Decision Makers**") in each of Ontario, Alberta, Saskatchewan, Quebec, Nova Scotia and Newfoundland and Labrador (the "**Jurisdictions**") has received an application on behalf of Canadian Splitshare Corporation ("**CSC**") for a decision pursuant to the securities legislation of the Jurisdictions (the "**Legislation**") that CSC be deemed to have ceased to be a reporting issuer or the equivalent thereof under the Legislation;

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

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

1. CSC was incorporated under the laws of the Province of Ontario on August 18, 1992, is a reporting issuer in each of the Jurisdictions, and is not in default of any of the requirements of the Legislation.
2. The head office of CSC is located in Toronto, Ontario.
3. The authorized capital of CSC consists of an unlimited number of common shares ("**CSC Shares**") of which, as of the date hereof, 1,000 CSC Shares are issued and outstanding as fully paid and non-assessable. All of the CSC Shares are owned by Structured Derivative Products Corporation ("**SDPC**"), a private company incorporated under the *Business Corporations Act*

(Ontario). SDPC is not a reporting issuer under the Legislation. The registered office of SDPC is located in Toronto, Ontario.

4. CSC was a special purpose company incorporated for the sole purpose of making offers to the public to exchange units consisting of transferable fixed term warrants ("Special Equity Claim securities" or "**SPECs**") and transferable custodial receipts ("Payment Enhanced Capital securities" or "**PEACs**") for an equal number of shares (the "**Underlying Shares**") of various issuers by means of prospectuses prepared and filed in accordance with the Legislation.
5. CSC became a reporting issuer under the Legislation as of November 20, 1992 as a result of the filing of four prospectuses with respect to the distribution of PEACs and SPECs derived from the Underlying Shares of four issuers.
6. Essentially, the PEACs and SPECs issued by CSC had a 5 year term and operated so that at the end of the term one of the PEAC or SPEC would be cancelled in exchange for the Underlying Share and the other would expire worthless. The last of the PEACs and SPECs issued by CSC expired on January 2, 2001. All of the PEACs and SPECs issued by CSC are no longer outstanding and CSC will not be making any further issuances of PEACs and SPECs.
7. The CSC Shares were formerly lodged in escrow with Montreal Trust Company of Canada pursuant to an Amended and Restated Escrow Agreement dated as of March 1, 1993, among RBC Dominion Securities Inc., Montreal Trust Company of Canada and CSC (the "**Restated Escrow Agreement**"). The Restated Escrow Agreement was subsequently amended to permit SDPC to become a party to the escrow arrangement on the same terms and conditions. The CSC Shares have been automatically released from escrow.
8. On October 30, 1995, an Order (the "**Order**") was granted by the OSC granting CSC exemptive relief from a number of provisions of the *Securities Act* (Ontario) (the "**Act**") including, pursuant to subclause 80(b)(iii), that CSC is exempt from the filing requirements, to the extent applicable, of section 77, 78 and 79 of the Act and the related Regulation.
9. SDPC is the sole shareholder of the CSC Shares, and no PEACs and SPECs are outstanding.
10. There are no securities of CSC listed or quoted on any exchange or market.
11. Other than the CSC Shares, CSC has no securities, including debt securities, outstanding.
12. CSC does not intend to seek public financing by way of an offering of its securities.

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

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

**THE DECISION OF THE DECISION MAKERS UNDER THE LEGISLATION** is that CSC is deemed to have ceased to be a reporting issuer or the equivalent thereof under the Legislation.

February 27, 2002.

“John Hughes”

## **2.1.5 Eastman Kodak Company - MRRS Decision**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Relief from the registration requirements and prospectus requirements for trades involving employees and former employees pursuant to equity investment plan - Relief from issuer bid requirements for acquisition by issuer of securities in connection with exercise mechanisms under equity incentive plan - Issuer with *de minimis* Canadian presence.

### **Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53, 74(1), 35(1)12(iii) and 72(1)(f)(iii)

### **Applicable Ontario Rules**

Rule 45-503 - Trades to Employees, Executives and Consultants (1998), 21 OSCB 117

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

**AND**

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

**AND IN THE MATTER OF  
EASTMAN KODAK COMPANY**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (the "Jurisdictions") has received an application from Eastman Kodak Company ("Kodak" or the "Company") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that (i) the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirements") and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirements") will not apply to certain trades in shares of Kodak common stock (the "Shares") made in connection with the Kodak 2000 Omnibus Long-Term Compensation Plan (the "Plan"); and (ii) the requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, taking up and paying for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, bid financing, identical consideration and collateral benefits together with the requirement to file a reporting form within 10

days of an exempt issuer bid and pay a related fee (the "Issuer Bid Requirements") will not apply to certain acquisitions by the Company of Shares or Awards pursuant to the Plan in each of the Jurisdictions.

**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** Kodak has represented to the Decision Makers as follows:

1. Kodak is a corporation incorporated under the laws of the state of New Jersey. The executive offices of Kodak are located in Rochester, New York.
2. The Company is registered with the Securities Exchange Commission (the "SEC") in the U.S. under the U.S. Securities Exchange Act of 1934 (the "Exchange Act") and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12G 3-2 made thereunder.
3. Kodak is not a reporting issuer in any Jurisdiction and has no present intention of becoming a reporting issuer in any Jurisdiction. The majority of the directors and senior officers of Kodak reside outside of Canada.
4. The authorized share capital of Kodak consists of 950,000,000 shares of common stock (the "Shares"), and 100,000,000 shares of preferred stock ("Preferred Shares"). As of June 30, 2001, there were 290,768,764 shares and no Preferred Shares issued and outstanding.
5. The Shares are quoted on the New York Stock Exchange (the "NYSE").
6. Kodak may use the services of agents/brokers (each an "Agent") under the Plan. The current Agents for the Plan are Mellon Investor Services LLC, FutureShare Financial LLC and Fleet National Bank. The current Agents are and if replaced, or if additional Agents are appointed, will be registered under applicable U.S. securities or banking legislation and have been or will be authorized by Kodak to provide services under the Plan. The current Agents are not registered to conduct retail trades in any of the Jurisdictions and, if replaced, or if additional Agents are appointed, are not expected to be so registered in any of the Jurisdictions.
7. The Agents' role in the Plan may include (i) assisting with the administration of the Plan, including record-keeping functions; (ii) facilitating the exercise of Awards granted under the Plan (including cashless and stock-swap exercises) to the extent that they are exercisable for Shares; (iii) holding Shares issued under the Plan on behalf of Participants, Former Participants (as defined below) and Permitted Transferees (as defined below); and (iv) facilitating the resale of the Shares issued in connection with the Plan.
8. The purpose of the Plan is to provide motivation to selected employees and directors of Kodak and its affiliates ("Kodak Companies") to put forth maximum efforts towards the continued growth, profitability, and success of the Company by providing incentives to such Employees and directors through the ownership of Shares.
9. Subject to adjustment as provided in the Plan, the maximum number of Shares which may be issued pursuant to the Plan is 22,000,000.
10. Under the Plan, options exercisable for Shares ("Options"), stock appreciation rights, Shares, shares of restricted stock, restricted stock units, performance units, performance shares, dividends and dividends equivalents, target awards and other stock-based awards (collectively "Awards") may be granted to employees and directors of Kodak and its affiliates ("Participants").
11. Employees who participate in the Plan will not be induced to purchase Shares by expectation of employment or continued employment.
12. The Plan is administered by a committee appointed by the board of directors of the Company (the "Committee").
13. There are approximately 1,996 Participants in Canada eligible to receive Awards under the Plan: 1,723 employees resident in Ontario; 74 employees resident in British Columbia; 88 employees resident in Alberta, 2 employees resident in Saskatchewan; 45 employees resident in Manitoba, 35 employees resident in Quebec, 4 employees resident in New Brunswick, 62 employees resident in Nova Scotia; 12 employees resident in Prince Edward Island and 1 employee resident in Newfoundland.
14. The Plan provides that the exercise of Options and the payment of the exercise price in order to acquire Shares may be effected pursuant to the payment of cash, the surrender of Shares of the Company ("Stock Swap Exercises") or other consideration at the fair market value on the exercise date equal to the total Option price, or, by combination of cash, Shares or other consideration. The fair market value of the Shares will be calculated by reference to the mean between the high and low trading prices of the Shares on the exercise date.
15. Kodak is authorized to withhold from any Award granted the amount of withholding taxes due in respect of an Award or payment under the Plan and to take such other action as may be necessary in the option of the Committee to satisfy all obligations for the payment of such taxes ("Share Withholding Exercises").
16. During the 90 days period from and after a "Change in Control" (as defined in the Plan), or "Change in Ownership" (as defined in the Plan) the Committee has the discretion to permit a Participant holding certain Awards to elect to surrender all or part of the Awards of the Company and to receive a cash amount from the Company at a price equal to the Change of Control Price (as defined in the Plan) ("Award Repurchase Rights").

17. Following the termination of a Participant's relationship with the Kodak Companies for reasons of disability, retirement, change of control or any other reason (a "Former Participant") and where the Award has been transferred to another party including immediate family members as defined in the Plan, or on the death of a Participant by will or pursuant to the laws of intestacy (the "Permitted Transferees"), the Former Participants and Permitted Transferees will continue to have rights in respect of the Plan (the "Post-Termination Rights"). Post-Termination Rights may include, among other things, the right of a Former Participant to receive the grant of an Award and to exercise an Option for a period determined in accordance with the Plan following termination and the right to sell Shares acquired under the Plan through the Agent. Post-Termination Rights will only be issued when the right to receive them was earned by the Participant while that Participant still had a relationship with Kodak.
18. As there is no market for the Shares in Canada and none is expected to develop, it is expected that the resale by Participants, Former Participants and Permitted Transferees of the Shares acquired under the Plan will be effected through the NYSE (the "First Trades").
19. The sale of Shares acquired under the Plan may be made by Participants, Former Participants or Permitted Transferees through the Agent.
20. As at September 28, 2001, Canadian shareholders did not hold, directly or indirectly, more than 10% of the issued and outstanding Shares of the Company and do not constitute more than 10% of the shareholders of the Company. If at any time during the currency of the Plan Canadian shareholders of the Company hold, in aggregate, greater than 10% of the total number of issued and outstanding Shares or if such shareholders constitute more than 10% of all shareholders of the Company, the Company will apply to the relevant Jurisdiction for an order with respect to further trades to and by Participants in that Jurisdiction in respect of Shares acquired under the Plan.
21. All necessary securities filings have been made in the U.S. in order to offer the Plan to participants of the Kodak Companies resident in the U.S.
22. A prospectus prepared according to U.S. securities laws describing the terms and conditions of the Plan will be delivered to each employee who is granted an Award under the Plan. The annual reports, proxy materials and other materials Kodak is required to file with the SEC will be provided or made available to Canadian Participants at the same time and in the same manner as the documents are provided or made available to U.S. Participants.
23. Pursuant to the Plan, the acquisition of Awards by the Company in the following circumstances may constitute an "issuer bid": Stock Swap Exercises, Share Withholding Exercises, and Award Repurchase Rights. The issuer bid exemptions in the Legislation may not be available for such acquisitions by the Company since such acquisitions may occur at a price that is not

calculated in accordance with the "market price," as that term is defined in the Legislation and may be made from Permitted Transferees.

24. The Legislation of all of the Jurisdictions does not contain exemptions from the Prospectus and Registration Requirements for all the intended trades in Awards under the Plan.
25. When the Agents sell Shares on behalf of Participants, Former Participants and Permitted Transferees, the Agents, Participants, Former Participants and Permitted Transferees may not be able to rely upon the exemptions from the Registration Requirements and Prospectus Requirements contained in the Legislation of the Jurisdictions.

**AND WHEREAS** pursuant to the System, this 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:

- (i) the Registration Requirements and Prospectus Requirements will not apply to any trade or distribution of Awards made in connection with the Plan, including trades and distributions involving the Company and its Canadian affiliates, the Agents, Participants, Former Participants, and Permitted Transferees, provided that, except in Quebec, the first trade in Shares acquired through the Plan pursuant to this Decision will be deemed a distribution or primary distribution to the public under the Legislation unless the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied and provided that, in Quebec, the first trade in Shares acquired through the Plan pursuant to this Decision will be deemed a distribution unless the alienation (resale) is made outside Quebec;
- (ii) the first trade by Participants, Former Participants, Permitted Transferees, in Shares acquired pursuant to the Plan including first trades effected through the Agents, will not be subject to the Registration Requirement, provided such first trade is executed through a stock exchange or market outside of Canada; and
- (iii) the Issuer Bid Requirements will not apply to the acquisition by Kodak of Shares from Participants, Former Participants or Permitted Transferees provided such acquisitions are made in accordance with the terms of the Plan.

February 26, 2002.

"Paul Moore"

"Stephen Paddon"



## 2.1.6 BMTC Group Inc. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Dutch Auction Issuer Bid - With respect to securities tendered at or below the clearing price, offer providing for full take-up and payment for shares tendered by odd lot holders - Offeror exempt from the requirement in the legislation to take up and pay for securities proportionately according to the number of securities deposited by each securityholder and the associated disclosure requirement

### Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 95(7) and 104(2)(c).

### Applicable Ontario Regulations

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 189(b).

### Applicable Ontario Rules

Rule 61-501 - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions

### MRRS DECISION DOCUMENT

#### IN THE MATTER OF THE SECURITIES LEGISLATION OF QUEBEC AND ONTARIO

AND

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

AND

#### IN THE MATTER OF BMTC GROUP INC.

### MRRS DECISION DOCUMENT

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of Quebec and Ontario (the "Jurisdictions") has received an application from BMTC Group Inc. ("BMTC" or the "Company") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that, in connection with the proposed purchase by BMTC of a portion of its outstanding Class A Subordinate Voting Shares (the "Shares") pursuant to an issuer bid (the "Bid"), BMTC be exempt from the requirement in the Legislation to:

- (i) take-up and pay for securities proportionately according to the number of securities deposited by each security holder (the "Proportionate Take-up and Payment Requirement");

- (ii) provide disclosure in the issuer bid circular (the "Circular") of such proportionate take-up and payment (the "Associated Disclosure Requirement"); and
- (iii) obtain a valuation of the Shares and provide disclosure in the circular of such valuation or a summary thereof (the "Valuation Requirement").

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

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

1. BMTC is a reporting issuer in each of the Jurisdictions and is not on the list of defaulting reporting issuers.
2. The authorized capital of BMTC includes an unlimited number of Shares, of which approximately 6,874,418 were issued and outstanding as of January 31, 2002.
3. The Shares are listed and posted for trading on The Toronto Stock exchange (the "TSE").
4. The Bid will be made pursuant to a Modified Dutch Auction procedure as follows:
  - (a) the maximum number of Shares (the "Specified Number") that the Company intends to purchase under the Bid will be specified in the Circular and all Shares validly tendered and not withdrawn will be taken up by BMTC up to the Specified Number;
  - (b) the range of prices (the "Range") within which the Company is willing to repurchase its Shares under Bid will also be specified in the Circular;
  - (c) any holder of Shares (each, a "Shareholder") wishing to tender to the Bid will have the right either to: (i) specify the lowest price within the Range that the shareholder is willing to sell the tendered Shares (an "Auction Tender"); or (ii) elect to be deemed to have tendered at the Clearing Price (as determined in accordance with paragraph 4(d) below) (a "Clearing Price Tender");
  - (d) the clearing price (the "Clearing Price") tendered to the Bid will be the lowest price that will enable BMTC to purchase the Specified Number of Shares and will be determined based upon the number of shares tendered pursuant to an Auction Tender and not withdrawn at each price within the Range and the number of Shares tendered pursuant to a Clearing Price Tender, with each Clearing Price Tender being considered a tender at the lowest price in the Range for the purpose of calculating the Clearing Price;
  - (e) all Shares tendered at or below the Clearing Price by Shareholders who hold "odd lots" (i.e.

lots of less than 100 shares each) will be taken up and paid for at the Clearing Price and will not be subjected to pro ration, provided that such Shareholders tender all of their Shares to the Bid;

- (f) all other Shares tendered at or below the Clearing Price pursuant to either an Auction Tender or a Clearing Price Tender will be taken up and paid for at the Clearing Price, subject to pro ration if the aggregate number of shares tendered at or below the Clearing Price pursuant to Auction Tenders and the number of Shares tendered to Clearing Price Tenders exceeds the Specified Number;
- (g) if, as a result of pro ration and after giving effect to the purchase of the number of Shares determined as set out in paragraph 4(d) above, a depositing shareholder were to hold fewer than 100 Shares held by the Shareholder under separate certificates or in different accounts, and Shares not tendered by the Shareholder pursuant to separate Auction tenders or Clearing Price Tenders and retained by the Shareholder as a result of pro ration, BMTC will purchase all such Shares at the Clearing Price, providing that all such Shares are properly deposited to the Bid;
- (h) all Shares tendered at prices above the Clearing Price will be returned to the appropriate Shareholders;
- (i) all Shares tendered by Shareholders who specify a tender price for such tendered Shares that falls outside the Range will be considered to have been improperly tendered, will be excluded from the determination of the Clearing Price, will not be purchased by BMTC and will be returned to the tendering Shareholders; and
- (j) all shares tendered by Shareholders who fail to specify any tender price for such tendered Shares and fail to indicate that they have tendered their Shares pursuant to a Clearing Price Tender will be considered to have tendered pursuant to a Clearing Price Tender.

5. Prior to the expiry of the Bid, all information regarding the number of Shares tendered and the prices at which such Shares are tendered will be kept confidential and the depository under the Bid will be directed by BMTC to maintain such confidentiality until the Clearing Price is determined.

6. Since the Bid is for less than all the Shares, if the number of Shares tendered to the Bid at or below the Clearing Price exceeds the Specified Number of Shares which BMTC is prepared to purchase, the legislation would require BMTC to take-up and pay for deposited Shares proportionately, according to the number of Shares deposited by each Shareholder. In addition, the legislation would require disclosure in the Circular that BMTC would, if Shares tendered to the Bid exceeded the Specified Number of shares which BMTC is

prepared to purchase, take-up Shares proportionately according to the number of Shares tendered by each Shareholder.

7. The Circular will:

- (a) disclose the mechanics for the take-up and payment for, or return of, Shares as described in paragraph 4 above; and
- (b) explain that, by tendering Shares at the lowest price in the Range, a Shareholder can reasonably expect that Shares so tendered will be purchased at the Clearing Price, subject to pro ration as described in paragraph 4 above;
- (c) disclose the Liquidity Opinion, as described below; and
- (d) disclose that the TSE will have sent the Director a statement indicating concurrence with the Liquidity opinion.

8. Prior to making the Bid, BMTC will retain an independent registered dealer to provide an opinion that a liquid market existed prior to the Bid and that following completion of the Bid, shareholders will continue to have available a market which is not materially less liquid than the market which now exists prior to the Bid (the "Liquidity Opinion").

9. Prior to commencing the Bid, BMTC will receive a statement from the TSE that it concurs with the Liquidity Opinion and this statement will also be sent to the Director.

10. No formal valuation will be prepared in connection with the issuer bid, or disclosed in the Circular, as BMTC submits that it will rely on the liquidity exemption available under Legislation.

**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 in the Jurisdictions pursuant to the Legislation is that, in connection with the Bid, BMTC is exempt from each of the Proportionate Take-up and Payment Requirement, the Associated Disclosure Requirement and the Valuation Requirement, provided that Shares tendered to the Bid are taken up and paid for, or returned to the Shareholders, in the manner and circumstances described in paragraph 4 above.

February 19, 2002.

"Guy Lemoine"

"Claire Richer"

**2.1.7 Leggett & Platt, Incorporated - MRRS Decision**

**Headnote**

Mutual Reliance Review System - trades made to former employees in accordance with the provisions of employees compensation plan exempt from registration requirements - first trade in shares acquired pursuant to compensation plan not subject to registration requirement provided that issuer is not a reporting issuer, *de minimis* Canadian security holders and trade is executed through facilities outside of Canada - relief granted from the issuer bid requirements upon the acquisition of shares of the issuer from employees, former employees and legal representatives at a price determined under the compensation plan

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am, ss. 25, 25, 74(1), 95, 96, 97, 98, 100, 104(2)(c)

**Ontario Regulations Cited**

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

**Ontario Rules Cited**

Rule 45-503 Trades to Employees, Executives and Consultants

Multilateral Instrument 45-102 Resale of Securities

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

**AND**

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

**AND**

**IN THE MATTER OF  
LEGGETT & PLATT, INCORPORATED**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario and Québec (the "Jurisdictions") has received an application from Leggett & Platt, Incorporated ("L&P") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that:

- (a) the issuance of options (the "Options") to purchase shares in the common stock of L&P ("Shares") and certain trades in Shares made in connection with L&P's Flexible Stock Plan (the "Plan") shall not be subject to the requirements contained in the Legislation to be registered to

trade in a security (the "Registration Requirements") and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirements") (collectively, the "Registration and Prospectus Requirements"); and

- (b) certain transfers of Shares made in accordance with the Plan shall not be subject to the requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, taking up and paying for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, bid financing, identical consideration and collateral benefits (collectively, the "Issuer Bid Requirements");

**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** L&P has represented to the Decision Makers that:

1. L&P is a corporation incorporated under the laws of the State of Missouri, United States. L&P is not a reporting issuer under the Legislation and has no present intention of becoming a reporting issuer under the Legislation.
2. As at September 30, 2001, there were 198,803,441 Shares issued and 196,537,679 Shares outstanding. As of the same date, there were 2,265,762 Shares held in treasury.
3. The Shares are listed and quoted for trading on the New York Stock Exchange (the "NYSE") and the Pacific Stock Exchange.
4. L&P is currently subject to the reporting requirements of the United States *Securities Exchange Act* of 1934, as amended (the "Exchange Act").
5. The Plan was established to attract, retain, motivate and reward employees of L&P and its subsidiaries worldwide ("Employees"), to encourage ownership of Shares by Employees and to promote and further the best interests of L&P by granting cash and other awards to Employees.
6. Under the Plan, a committee (the "Committee") has the authority to determine the type of benefits to which Employees are entitled. Current Employees are eligible to receive (i) Options; (ii) stock appreciation awards ("SAAs"), convertible into cash or Shares, or a combination thereof; (iii) restricted stock ("Restricted Stock"); (iv) performance shares ("Performance Shares"); and (v) cash awards and other Share-based benefits.
7. Options granted under the Plan may be either incentive stock options (within the meaning of the United States

- Internal Revenue Code) or may be non-qualified stock options. Each Option which qualifies as an incentive stock option must be granted to an Employee for a term that does not exceed ten (10) years from the date of grant. The exercise price of any Option that qualifies as an incentive stock option will not be lower than the closing price of the Shares on the NYSE on the date the Option is granted. The price payable by an Employee upon the exercise of any Option which is a non-qualified stock option will not be less than the par value of the Shares. The terms of all Options are generally determined by the Committee under the Plan.
8. Under the Plan, SAAs are comprised of units, called "Stock Appreciation Units", equal to the appreciation value of one Share from the time the Stock Appreciation Unit is granted until the time the grantee elects to receive payment. Plan participants who elect to receive payment of an SAA will receive cash, Shares or any combination thereof, as determined by the Committee, equal to such appreciation.
  9. Restricted Stock are Shares which are subject to forfeiture until a period of time has elapsed or certain conditions have been fulfilled. Under the Plan, the Committee may grant Shares of Restricted Stock at no cost and the grantee is entitled to full voting and dividend rights with respect to all Shares of Restricted Stock. Each certificate representing a share of Restricted Stock bears a legend referring to the terms of the Plan and the risk of forfeiture of such Shares and stating that such Shares are non-transferable until all restrictions have been satisfied and the legend has been removed.
  10. Performance Shares represent the right of a participant to whom Performance Shares have been granted to receive Shares or cash equal to the fair market value of such Shares at a future date in accordance with specific terms imposed at the time of grant. Generally, such right is based upon the attainment of targeted profit and/or performance objectives.
  11. Employees, upon exercising an Option, can satisfy the amount due in respect of the exercise price by, among other methods, transferring to L&P Shares they already own, which have a fair market value which equals the amount due to L&P (based on the closing price of the Shares on the NYSE at the time of the transfer) (a "Stock Swap Exercise").
  12. Shares that are transferred by an Employee or former Employee pursuant to a Stock Swap Exercise are not cancelled and will continue to be available for use under the Plan.
  13. L&P has a number of Employees resident in Canada, some of whom are resident in the Jurisdictions (the "Canadian Employees"). As of September 30, 2001, there were approximately 3,117 Employees resident in Canada of which approximately 3 Canadian Employees resident in British Columbia, 101 Canadian Employees resident in Ontario and 27 Canadian Employees resident in Quebec held existing Options under the Plan.
  14. As of September 30, 2001, 7,000,000 Shares have been authorized for issuance under the Plan. Additionally, as of September 30, 2001, the aggregate number of Shares held by holders of record with addresses in each of the Jurisdictions represented less than 1% of the total number of outstanding Shares and the aggregate number of holders of record with addresses in each of the Jurisdictions was less than 1% of the total number of holders of record.
  15. Employees will not be induced to participate in the Plan by expectation of employment or continued employment.
  16. Each Employee has or will be provided with an explanatory booklet in respect of the Plan containing a summary and description of the Plan and L&P has provided or will provide copies of the Plan to Employees upon request.
  17. All disclosure material relating to L&P that L&P is required to file with the United States Securities and Exchange Commission pursuant to the Exchange Act will be made available to the Canadian Employees who purchase Shares under the Plan at the same time, and in the same manner, as the materials which are made available to shareholders who are resident in the United States.
  18. On September 9, 1999, pursuant to Decision No. 1999-MC-2290 of the Commission des valeurs mobilières du Québec (the "Québec Commission"), L&P was granted an exemption from the prospectus and registration requirements of the *Securities Act* (Québec) in connection with the distribution of Options to senior executives. Also, on September 9, 1999, pursuant to Decision No. 1999-MC-2291 of the Québec Commission, L&P was granted an exemption from certain provisions of Policy Q-3 in connection with the distribution of Options to senior executives employed by L&P in Quebec. Neither of these decisions covers the issuance of Options to Canadian Employees in Québec who are not senior executives nor the resale by such Canadian Employees of Shares acquired under the Plan.
  19. An exemption from the Registration and Prospectus Requirements is not available in all of the Jurisdictions for the issuance of Options and for the trades in Shares by (i) Canadian Employees, (ii) individuals who acquired Shares while Canadian Employees but who are no longer employed by L&P ("Former Canadian Employees") or (iii) legal representatives of a deceased Canadian Employee or a Former Canadian Employee ("Legal Representatives"). An exemption from the Registration Requirements is not available in all of the Jurisdictions for trades in Shares by a dealer duly registered in the United States but not registered under the Legislation on behalf of such Canadian Employees, Former Canadian Employees or Legal Representatives.
  20. When the Canadian Employees transfer Shares to L&P pursuant to a Stock Swap Exercise, such transfers may constitute an "issuer bid" as defined under the Legislation of certain Jurisdictions. Exemptions from the issuer bid provisions of the Legislation may not be

available in all Jurisdictions for such transfers by the Canadian Employees since the Plan does not necessarily establish a price for the Shares that is equal to or less than market value as prescribed under the Legislation.

21. Since there is no market for the Shares in Canada and none is expected to develop, any resale of the Shares acquired under the Plan will be effected through the facilities of, and in accordance with the rules applicable to, a stock exchange or market outside of Canada on which the Shares may be listed or quoted for trading.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Registration and Prospectus Requirements shall not apply to the issuance of Options or the trades in Shares made in connection with the Plan to, with, or on behalf of, a Canadian Employee, a Former Canadian Employee or a Legal Representative provided that the first trade in, or the resale of, such Shares (including the Shares acquired upon the exercise of an Option) shall be deemed to be a distribution unless:

- (a) in the case of the first trade of such Shares in Ontario, such first trade is made in compliance with section 2.14 of Multilateral Instrument 45-102 Resale of Securities, or
- (b) in the case of the resale of such Shares in Québec, such resale is either made (i) between Canadian Employees, Former Canadian Employees or Legal Representatives or (ii) outside of Quebec;

**AND THE FURTHER** Decision of the Decision Makers pursuant to the Legislation is that the Issuer Bid Requirements of the Legislation shall not apply to the transfer of Shares by Canadian Employees, Former Canadian Employees or Legal Representatives, as the case may be, pursuant to a Stock Swap Exercise.

February 28, 2002.

"Paul Moore"

"Kerry Adams"

## 2.1.8 Duke Energy Corporation, et al. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief from registration and prospectus requirements in connection with a statutory arrangement involving an exchangeable share structure where exemptions may not be available in for technical reasons. Exchangeco exempted from certain continuous disclosure and insider reporting requirements subject to certain conditions. First trade deemed a distribution unless made in accordance with specified provisions of Multilateral Instrument 45-102: *Resale of Securities*.

### Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1), 80(b)(iii) and 121(2)(a)(ii).

### Applicable Ontario Rules

Rule 45-501 - Exempt Distributions  
Rule 51-501 - AIF and MD&A

### Applicable National Instruments

Multilateral Instrument 45-102: Resale of Securities  
National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI)

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

AND

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

AND

**IN THE MATTER OF  
DUKE ENERGY CORPORATION,  
3946509 CANADA INC.,  
3058368 NOVA SCOTIA COMPANY AND  
WESTCOAST ENERGY INC.**

### 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, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon Territory, Northwest Territories and Nunavut (collectively, the "Jurisdictions") has received an

application from Duke Energy Corporation ("**Duke Energy**"), 3058368 Nova Scotia Company ("**Callco**"), 3946509 Canada Inc. ("**Exchangeco**") and Westcoast Energy Inc. ("**Westcoast**") (collectively, the "**Applicant**") for a decision pursuant to the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the "**Legislation**") that:

- (a) certain trades in securities made in connection with or resulting from the proposed combination (the "**Transaction**") of Duke Energy and Westcoast to be effected by way of a plan of arrangement (the "**Arrangement**") under Section 192 of the *Canada Business Corporations Act* (the "**CBCA**") shall be exempt from the requirements contained in the Legislation to be registered to trade in a security (the "**Registration Requirements**") and to file a preliminary prospectus and a prospectus and receive receipts therefor (the "**Prospectus Requirements**");
- (b) Exchangeco shall be exempt from the requirements of the Legislation to issue a press release and file a report upon the occurrence of a material change, to file with the Decision Makers and deliver to its security holders an annual report, where applicable, and interim and annual financial statements, to file and deliver an information circular, to file interim and annual management's discussion and analysis of the financial condition and results of operation of Exchangeco and, where applicable, to file an annual information form (the "**Continuous Disclosure Requirements**"); and
- (c) the requirement contained in the Legislation for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer and the filing requirements of Exchangeco in connection therewith (the "**Insider Reporting Requirements**") shall not apply to each insider of Exchangeco and its successors and Exchangeco;

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

**AND WHEREAS** the Applicant has represented to each Decision Maker that:

1. Duke Energy, together with its subsidiaries, is an integrated energy and energy services provider with the ability to offer physical delivery and management of both electricity and natural gas throughout the United States and abroad. With over 23,000 employees worldwide, Duke Energy is a multinational corporation with operations in over 50 countries.
2. As of December 31, 2000, Duke Energy's total assets were approximately US\$58 billion. For the financial

year ended December 31, 2000, its total operating revenues and net income were approximately US\$49.318 billion and US\$1.776 billion, respectively.

3. Duke Energy was organized in 1917 under the laws of the state of New Jersey and reincorporated under the laws of the State of North Carolina in 1963. Duke Energy was known as Wateree Power Company until 1924, when it changed its name to Duke Power Company. In 1997, it changed its name to Duke Energy Corporation. Duke Energy's principal executive offices are located at 526 South Church Street, Charlotte, North Carolina, U.S.A. 28202.
4. Duke Energy's authorized capital currently consists of two billion common shares, without par value, 12.5 million shares of preferred stock ("**Duke Energy Preferred Stock**"), par value US\$100 per share, issuable in series, 10 million shares of preferred stock A ("**Duke Energy Preferred Stock A**"), par value US\$25 per share, issuable in series, and 1.5 million shares of preference stock, par value US\$100 per share, issuable in series ("**Duke Energy Preference Stock**"). The Duke Energy common shares are fully participating voting shares. As at December 10, 2001, there were 776,632,413 Duke Energy common shares issued and outstanding and as at November 30, 2001 there were 1,534,984 shares of Duke Energy Preferred Stock, 2,007,185 shares of Duke Energy Preferred Stock A and no shares of Duke Energy Preference Stock issued and outstanding.
5. As of November 29, 2001, there were 81 registered holders of Duke Energy common shares in Canada holding 38,933 Duke Energy common shares, representing approximately 0.005% of the total number of issued and outstanding Duke Energy common shares. As of December 10, 2001, there were 961 beneficial holders of Duke Energy common shares in Canada holding 2,097,951 shares representing approximately 0.27% of the total number of issued and outstanding Duke Energy common shares.
6. As of November 30, 2001, there were 54,176,015 Duke Energy common shares reserved for issuance pursuant to the Duke Energy stock option plans ("**Duke Energy Plans**"). As of November 30, 2001, of all of the options outstanding under the Duke Energy Plans, there were 28 persons in Canada holding options to purchase an aggregate of 99,220 Duke Energy common shares, representing approximately 0.18% of the Duke Energy common shares reserved for issuance pursuant to the Duke Energy Plans.
7. Duke Energy is a public company in the United States. The Duke Energy common shares are listed on the New York Stock Exchange (the "**NYSE**") under the symbol "DUK".
8. Duke Energy is not a "reporting issuer" or the equivalent in any province or territory of Canada. Upon the completion of and as a consequence of the Arrangement, Duke Energy may become a reporting issuer in British Columbia, Alberta, Saskatchewan and Québec.

9. Duke Energy is subject to the United States *Securities Exchange Act of 1934*, as amended (the "**Exchange Act**").
10. On September 20, 2001, the market capitalization of Duke Energy was approximately Cdn\$47.2 billion and the trading price of a Duke Energy common share was US\$38.73.
11. Callco is an indirect wholly-owned subsidiary of Duke Energy. Callco is an unlimited liability company incorporated under the *Companies Act* (Nova Scotia) on September 14, 2001 as 3058368 Nova Scotia Company to hold the call rights related to the Exchangeable Shares (as defined below). Prior to the effective date of the Arrangement (the "**Effective Date**"), it is expected that Callco will change its name to "Duke Energy Canada Call Co.". Callco's registered office address is Suite 800, 1959 Upper Water Street, P.O. Box 997, Halifax, Nova Scotia B3J 2X2.
12. The authorized capital of Callco consists of one billion common shares. All of the outstanding common shares of Callco are held indirectly by Duke Energy.
13. Exchangeco is an indirect subsidiary of Duke Energy incorporated under the CBCA on September 14, 2001 as 3946509 Canada Inc. for the purpose of implementing the Arrangement. Prior to the Effective Date, it is expected that Exchangeco will change its name to "Duke Energy Canada Exchangeco Inc.". Exchangeco's registered office address is 199 Bay Street, Commerce Court West, Suite 5300, Toronto, Ontario M5L 1B9.
14. The authorized capital of Exchangeco consists of an unlimited number of common shares and an unlimited number of preference shares, issuable in series. All of the outstanding common shares of Exchangeco are held indirectly by Duke Energy. No preference shares of Exchangeco are currently outstanding.
15. The share capital of Exchangeco will be amended prior to the Effective Date to create the non-voting exchangeable shares (the "**Exchangeable Shares**"). Upon the completion of the Arrangement, all of the outstanding Exchangeable Shares will be held by former Westcoast Shareholders who receive Exchangeable Shares in exchange for their Westcoast common shares pursuant to the Arrangement.
16. Exchangeco is currently a "closely-held issuer" within the meaning of that term under OSC Rule 45-501. Upon completion of the Arrangement, it is anticipated that the Exchangeable Shares will be listed on The Toronto Stock Exchange (the "**TSE**") and that Exchangeco will become a reporting issuer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland. The Exchangeable Shares were conditionally approved for listing on the TSE on October 12, 2001, subject to the satisfaction of its customary requirements.
17. Westcoast is a North American energy company whose interests include natural gas gathering, processing and transmission, natural gas storage facilities and gas distribution, power generation, and international energy businesses as well as financial, information and energy services businesses.
18. As at December 31, 2000, Westcoast had consolidated assets of approximately Cdn\$15.1 billion and employed approximately 5,500 people. For the financial year ended December 31, 2000, Westcoast had gross revenues of approximately Cdn\$8.9 billion and net income of approximately Cdn\$388 million.
19. Westcoast was incorporated by a Special Act of Parliament as Westcoast Transmission Company Limited in 1949, and continued under the CBCA effective May 5, 1976. Westcoast Transmission Company Limited changed its name to Westcoast Energy Inc. on June 1, 1988. Westcoast's registered office is 1333 West Georgia Street, Vancouver, British Columbia V6E 3K9.
20. Westcoast's authorized capital consists of an unlimited number of Westcoast common shares and an unlimited number of first preferred shares, issuable in series (the "**Westcoast First Preferred Shares**"), and second preferred shares, issuable in series (the "**Westcoast Second Preferred Shares**"). As of November 27, 2001, 127,386,859 Westcoast common shares were issued and outstanding, no Westcoast Second Preferred Shares were issued and outstanding, and the following Westcoast First Preferred Shares were issued and outstanding:
  - a. 8,000,000 4.90% Cumulative Redeemable First Preferred Shares, Series 5;
  - b. 5,000,000 4.72% Cumulative Redeemable First Preferred Shares, Series 6;
  - c. 6,000,000 5.50% Cumulative First Preferred Shares, Series 7;
  - d. 6,000,000 5.60% Cumulative First Preferred Shares, Series 8; and
  - e. 5,000,000 5.00% Cumulative Redeemable First Preferred Shares, Series 9.
21. The Westcoast common shares are listed on the TSE under the symbol "W" and on the NYSE under the symbol "WE".
22. Westcoast is a reporting issuer or the equivalent in all provinces of Canada. To the best of the knowledge of Westcoast, Westcoast is not in default of any of the requirements of the Legislation. Westcoast is also currently subject to the reporting requirements applicable to foreign private issuers under the Exchange Act.
23. Westcoast is currently eligible to file under National Instrument 44-101 -"Short Form Prospectus Distributions".
24. As of February 6, 2002, based on information provided to Westcoast by Independent Investor Communications Corp., it is estimated that beneficial Westcoast Shareholders in Canada held 87,087,844 Westcoast common shares, representing approximately 68% of

the total number of issued and outstanding Westcoast common shares. Based on the number of sets of Westcoast Meeting materials sent to Canadian addresses, it is estimated that on November 8, 2001 there were 41,424 Westcoast Shareholders in Canada.

25. As of November 29, 2001, of all the Westcoast Options outstanding under the Westcoast stock option plans, Westcoast Options representing the right to acquire 4,788,312 Westcoast common shares were held by residents of Canada, representing approximately 98.7% of the total number of Westcoast common shares which may be acquired pursuant to the exercise of Westcoast Options.
26. Duke Energy, Callco, Exchangeco and Westcoast entered into an amended and restated combination agreement as of September 20, 2001, pursuant to which Duke Energy intends to acquire all of the issued and outstanding Westcoast common shares by way of the Arrangement.
27. The Arrangement will be carried out under Section 192 of the CBCA. On November 6, 2001, the Applicant obtained, under section 192 of the CBCA, an interim order (the "Interim Order") from the Supreme Court of British Columbia which order specifies, among other things, certain procedures and requirements to be followed in connection with the calling and holding of the Westcoast Meeting (as defined below) and the completion of the Arrangement.
28. Westcoast mailed a management proxy circular dated November 8, 2001 (the "**Circular**") to holders ("**Westcoast Shareholders**") of Westcoast common shares and holders ("**Westcoast Optionholders**") of Westcoast options, and filed the Circular in all of the provinces on November 16, 2001.
29. The Circular contained or incorporated by reference prospectus-level disclosure of the business and affairs of Duke Energy and Westcoast and a detailed description of the Arrangement, except as varied by Orders previously granted by certain of the Decision Makers. The Circular also contained certain historical financial statements of Duke Energy and Westcoast and certain pro forma condensed consolidated financial statements for the combined Duke Energy/Westcoast entity.
30. The Circular sought, among other things, approval by the Westcoast Shareholders and Westcoast Optionholders (collectively, the "**Westcoast Securityholders**") of the Arrangement and approval by the Westcoast Shareholders of the amendment to the shareholder rights plan of Westcoast (the "**Westcoast Rights Agreement**") waiving the application of the Westcoast Rights Agreement to the Transaction, at a special meeting of Westcoast Securityholders held on December 13, 2001 (the "**Westcoast Meeting**").
31. At the Westcoast Meeting, each Westcoast Shareholder was entitled to one vote for each Westcoast common share held, and each holder of Westcoast Options was entitled to one vote for each Westcoast common share such holder would receive on a valid exercise of the Westcoast Options held by the Holder. At the Westcoast Meeting, over 96% of the votes cast by the Westcoast Securityholders were in favour of the Transaction. In addition, the Westcoast Shareholders approved the amendment to the Westcoast Rights Agreement.
32. Westcoast received a valid notice of objection to the Arrangement, pursuant to rights of dissent granted to Westcoast Shareholders in accordance with the Interim Order, from only one Westcoast Shareholder in respect of 664 Westcoast common shares (the "**Dissenting Shareholder**").
33. On January 10, 2002, the Supreme Court of British Columbia granted final approval to the Arrangement.
34. Subject to the satisfaction or waiver of all closing conditions, including obtaining all required regulatory approvals, it is currently anticipated that the Transaction will be completed in the first quarter of 2002.
35. On the Effective Date, pursuant to the Arrangement, each Westcoast Shareholder (other than the Dissenting Shareholder, and other than Duke Energy and its affiliates) may elect, subject to certain proration adjustments described in the Circular, as consideration for each Westcoast common share held:
  - a. Cdn\$43.80 in cash;
  - b. a fraction of a Duke Energy common share equal to the Exchange Ratio (as described below);
  - c. a fraction of an Exchangeable Share equal to the Exchange Ratio; or
  - d. a combination of a fraction of a Duke Energy common share, a fraction of an Exchangeable Share and/or cash.
36. Only residents of Canada may elect to receive Exchangeable Shares. Any election to receive Exchangeable Shares by a Westcoast Shareholder who is not a resident of Canada will be deemed to be an election to receive Duke Energy common shares.
37. The Exchange Ratio will be determined by dividing Cdn\$43.80 by the product of the weighted average trading price of Duke Energy common shares on the NYSE over the 20 consecutive trading days ending two Business Days before the Effective Date (the "**Weighted Average Trading Price of Duke Energy Common Shares**") and a fixed currency exchange rate of Canadian dollars to U.S. dollars of 1.54. The Exchange Ratio is subject to a collar such that if the Weighted Average Trading Price of Duke Energy Common Shares is equal to or less than US\$36.88, the Exchange Ratio will be fixed at 0.7711, and if the Weighted Average Trading Price of Duke Energy Common Shares is equal to or greater than US\$46.48, the Exchange Ratio will be fixed at 0.6119.



38. The Arrangement provides that the consideration to be paid by Duke Energy to Westcoast Shareholders pursuant to the Arrangement will consist of approximately 50% cash and approximately 50% Duke Energy common shares and/or Exchangeable Shares. Elections made by Westcoast Shareholders in the letter of transmittal and election form mailed to Westcoast Shareholders will, pursuant to the Arrangement, be prorated accordingly.
39. No fractions of Exchangeable Shares or Duke Energy common shares will be issued in exchange for Westcoast common shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Exchangeco or Duke Energy. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share or a Duke Energy common share will be entitled to receive a cash payment equal to the product of the fractional interest and the Weighted Average Trading Price of Duke Energy common shares.
40. Under the Arrangement, each Westcoast Option will be replaced with an option (the "Replacement Options") to purchase Duke Energy common shares. The number of Duke Energy common shares for which a Replacement Option may be exercised will be determined by multiplying the number of Westcoast common shares subject to the Westcoast Option by the Exchange Ratio, subject to rounding. The exercise price of the Replacement Option will be determined by dividing the exercise price per Westcoast common share of the Westcoast Option immediately prior to the effective time of the Arrangement by the Exchange Ratio, subject to rounding. The exercise price will also be converted into U.S. dollars at the currency exchange rate on the Effective Date.
41. As a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Westcoast common shares will be held directly or indirectly by Duke Energy and its affiliates.
42. It is expected that the Westcoast common shares will be delisted from the TSE and the NYSE on or after the Effective Date and on the Effective Date, Exchangeco will become a reporting issuer, or the equivalent thereof, in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland.
43. The Westcoast First Preferred Shares, Series 5, Series 6, Series 7, Series 8 and Series 9 will remain issued and outstanding and will continue to be listed on the TSE after the Effective Date. Westcoast will continue to be a reporting issuer or the equivalent thereof in all provinces of Canada.
44. The Exchangeable Shares will be issued by Exchangeco. The Exchangeable Shares provide the holder with a security having, as nearly as practicable, economic terms and voting rights that are the same as the Duke Energy common shares.
45. Duke Energy will apply to the NYSE to list the Duke Energy common shares to be issued pursuant to the Arrangement and issuable in exchange for the Exchangeable Shares and upon exercise of the Replacement Options.
46. The rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "**Exchangeable Share Provisions**"), the terms and conditions of the voting and exchange trust agreement to be entered into between Duke Energy, Exchangeco and a trustee (the "**Trustee**") in connection with the Arrangement (the "**Voting and Exchange Trust Agreement**") and the terms and conditions of the support agreement to be entered into between Duke Energy, Callco and Exchangeco in connection with the Arrangement (the "**Support Agreement**") are described in the Circular, and are summarized below.\
47. The Exchangeable Shares will be issued by Exchangeco and will be exchangeable at any time up to eight years from the Effective Date (subject to earlier redemption in accordance with the Arrangement), on a one-for-one basis, at the option of the holder, for Duke Energy common shares. An Exchangeable Share will provide a holder with economic terms and voting rights which are, as nearly as practicable, equivalent to those of a Duke Energy common share. Westcoast Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange (which currently includes the TSE), they will be "qualified investments" for certain investors and will not constitute "foreign property", in each case, under the *Income Tax Act* (Canada).
48. Subject to applicable law and the exercise of the Retraction Call Right described below, a holder of Exchangeable Shares will be entitled at any time following the effective time of the Arrangement to retract any or all of the Exchangeable Shares owned by the holder and to receive an amount per share equal to the Retraction Price described in the Circular which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Duke Energy common share and any dividends payable on such Exchangeable Share. When a holder of Exchangeable Shares makes a Retraction Request, Callco will have an overriding call right (the "**Retraction Call Right**") to purchase all but not less than all of the Exchangeable Shares subject to the Retraction Request in exchange for the Retraction Price, pursuant to the Exchangeable Share Provisions.
49. Subject to applicable law and the Redemption Call Right described below, at any time on or after the eighth anniversary of the Effective Date, Exchangeco may, or earlier in the event of certain circumstances described in the Circular under the heading "*Early Redemption*" will, redeem all but not less than all of the then outstanding Exchangeable Shares for an amount

per share equal to the Redemption Price described in the Circular, which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Duke Energy common share and any dividends payable on such Exchangeable Share. Callco will have an overriding right (the "**Redemption Call Right**") to purchase on the Redemption Date all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by Duke Energy and its affiliates) for a purchase price per share equal to the Redemption Price, as set out in the Plan of Arrangement attached as Schedule F to the Circular.

50. Except as required by law or under the Support Agreement, the terms of the Exchangeable Share Provisions or the Voting and Exchange Trust Agreement, the holders of Exchangeable Shares will not be entitled to receive notice of, attend or vote at any meeting of shareholders of Exchangeco.
51. On the Effective Date, Duke Energy, Exchangeco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which Duke Energy will issue to the Trustee a number of Duke Energy common shares equal to the number of Exchangeable Shares issued and outstanding (other than Exchangeable Shares held by Duke Energy and its affiliates), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of Duke Energy common shares. Each registered holder of Exchangeable Shares (other than Duke Energy and its affiliates) (a "**Beneficiary**") on the record date for any meeting at which shareholders of Duke Energy are entitled to vote will be entitled to instruct the Trustee to vote one Duke Energy common share held by the Trustee for each Exchangeable Share held by the Beneficiary. The Exchangeable Shares are subject to adjustment or modification in the event of a stock split or other change to the capital structure of Duke Energy so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the Duke Energy common shares.
52. The Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Exchangeco payable at the same time as, and the same as or economically equivalent to, each dividend paid by Duke Energy on a Duke Energy common share.
53. On the liquidation, dissolution or winding-up of Exchangeco or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law, preferential rights to receive from Exchangeco the Liquidation Amount for each Exchangeable Share held. When a liquidation, dissolution or winding-up occurs, Callco will have an overriding right (the "**Liquidation Call Right**") to purchase all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by Duke Energy and its affiliates) from the holders of Exchangeable Shares on the Liquidation Date for a purchase price per share equal to the Liquidation Amount described in the Circular, which will be fully paid and satisfied by the delivery of one Duke Energy common share and any dividends payable on such Exchangeable Share. On the liquidation, dissolution or winding-up of Exchangeco (or when any other Insolvency Event described in the Circular occurs, and while it continues) each holder of Exchangeable Shares (other than Duke Energy and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "**Exchange Right**") granted to the Trustee in the Voting and Exchange Trust Agreement to require Duke Energy to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the Exchangeable Share Price as described in the Circular, which will be fully paid and satisfied by the delivery of one Duke Energy common share and any dividends payable on such Exchangeable Share.
54. In order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of Duke Energy common shares, immediately prior to the effective time of the liquidation, dissolution or winding-up of Duke Energy (or when any other Liquidation Event described in the Circular occurs), each Exchangeable Share will, pursuant to the automatic exchange right granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for Duke Energy common shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement.
55. The Exchangeable Shares will have a preference over the common shares of Exchangeco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Exchangeco, whether voluntary or involuntary, or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs. The Exchangeable Shares will rank junior to the preference shares of Exchangeco.
56. On the Effective Date, Duke Energy, Exchangeco and Callco will enter into the Support Agreement which will provide that Duke Energy will not declare or pay dividends on the Duke Energy common shares unless Exchangeco on the same day declares or pays an equivalent dividend on the Exchangeable Shares, and that Duke Energy will ensure that Exchangeco and Callco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Exchangeco and the holders of the Exchangeable Shares, Duke Energy will not issue or distribute Duke Energy common shares, securities exchangeable for or convertible into or carrying rights to acquire Duke Energy common shares, rights, options or warrants to subscribe for or to purchase Duke Energy common shares, evidences of indebtedness or other assets of Duke Energy to the holders of Duke Energy common shares nor will Duke Energy subdivide, redivide or change the Duke Energy

common shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares.

57. The Arrangement involves or may involve, a number of trades and/or distributions of securities (collectively, the "**Trades**"), in respect of which there may be no registration or prospectus exemptions available under the Legislation, including, without limitation, the issuance of the Exchangeable Shares, Replacement Options and Duke Energy common shares; the issuance of Duke Energy common shares upon the exchange of Exchangeable Shares and the issuance of Duke Energy common shares upon the exercise of Replacement Options; the creation and exercise of all the various rights under the Voting and Exchange Trust Agreement, Support Agreement and Exchangeable Share Provisions; and the issuance of shares of Duke Energy and its affiliates (including Exchangeco and Calco) in connection with the Arrangement.
58. The fundamental investment decision to be made by a Westcoast Securityholder was made at the time when such holder voted in respect of the Arrangement. As a result of this decision, unless Exchangeable Shares are sold in the market, a holder (other than the Dissenting Shareholder) will ultimately receive Duke Energy common shares in exchange for the Westcoast common shares held by such holder. The use of the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be, as nearly as practicable, the economic and voting equivalent of the Duke Energy common shares. As such, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision.
59. As a result of the economic and voting equivalency in all material respects between the Exchangeable Shares and the Duke Energy common shares, holders of Exchangeable Shares will have an equity interest determined by reference to Duke Energy, rather than Exchangeco. Dividend and dissolution entitlements will be determined by reference to the financial performance and condition of Duke Energy, not Exchangeco. Accordingly, it is the information relating to Duke Energy, not Exchangeco, that will be relevant to the holders of Exchangeable Shares.
60. Duke Energy will send concurrently to all holders of Exchangeable Shares and Duke Energy common shares resident in the Jurisdictions all disclosure material furnished to holders of Duke Energy common shares resident in the United States including, without limitation, copies of its annual financial statements and all proxy solicitation materials.
61. The Circular disclosed that applications have been made for prospectus, registration and resale exemptions and exemptions from the continuous disclosure requirements. The Circular specified the disclosure requirements from which Exchangeco has applied to be exempted and identified the disclosure that would be made in substitution therefor if such exemptions are granted.

62. Upon completion of the Arrangement, assuming a maximum Exchange Ratio of 0.7711, it is expected that the beneficial holders of Duke Energy common shares resident in Canada will hold approximately 4.1% of the issued and outstanding Duke Energy common shares and/or Exchangeable Shares (calculated based upon the number of beneficial Westcoast Shareholders and beneficial holders of Duke Energy common shares who are residents of Canada, as set out above, and on the basis that the consideration to be paid by Duke Energy to Westcoast Shareholders pursuant to the Arrangement will be approximately 50% cash and approximately 50% Duke Energy common shares and/or Exchangeable Shares). This percentage would increase to approximately 4.4% if it is assumed that all of the Westcoast Options held by residents of Canada were exercised prior to the effective time of the Arrangement.
63. There is no public market in Canada for the Duke Energy common shares and no such public market is expected to develop.

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

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

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

1. the Registration Requirements and the Prospectus Requirements shall not apply to the Trades provided that
- (a) the first trade in Exchangeable Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "**Applicable Legislation**"), unless:
- (i) except in Québec,
- (A) the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 ("**MI 45-102**") are satisfied; and provided further that, in determining the period of time that Exchangeco has been a reporting issuer for the purposes of section 2.6 of MI 45-102, the period of time that Westcoast has been a reporting issuer may be included; or
- (B) where such first trade is a control distribution as such term is defined in MI 45-102, such trade is made in compliance with section 2.8 of MI 45-102; and provided further

that, in determining the period of time that Exchangeco has been a reporting issuer for the purposes of section 2.8 of MI 45-102, the period of time that Westcoast has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares (or an affiliated or controlled entity of such holder) held Westcoast common shares shall be included in the calculation of the hold period);

- (ii) in Québec, to the extent that there is no exemption available from the Registration Requirements and the Prospectus Requirements in respect of any of the Trades, the Trades are not subject to the Registration Requirements and the Prospectus Requirements, provided that the issuer or one of the parties to the Arrangement (including, for greater certainty, Westcoast) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the Trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Westcoast was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares; and
- (b) the first trade in Duke Energy common shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation unless, at the time of the trade:
  - (i) except in Québec,
    - (A) if Duke Energy is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Duke Energy has been a reporting issuer under section 2.6, the period of time that Westcoast has been a reporting issuer may be included; or
    - (B) if Duke Energy is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada; and
  - (ii) in Québec, to the extent that there is no exemption available from the Registration

Requirements and Prospectus Requirements in respect of any of the Trades, the Trades are not subject to the Registration Requirements and the Prospectus Requirements, provided that the issuer or one of the parties to the Arrangement (including, for greater certainty, Westcoast) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the Trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Westcoast was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Duke Energy common shares; and

**IT IS FURTHER THE DECISION** of the Decision Makers, other than the Decision Maker in the Northwest Territories, pursuant to the Legislation that:

- 2. the Continuous Disclosure Requirements shall not apply to Exchangeco so long as:
  - (a) Duke Energy sends concurrently to all holders of Exchangeable Shares resident in Canada all disclosure material furnished to holders of Duke Energy common shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;
  - (b) Duke Energy files with each Decision Maker copies of all documents required to be filed by it with the SEC under the *Exchange Act*, and such filings are made under Exchangeco's SEDAR profile and the filing fees which would otherwise be payable by Exchangeco in connection with such filings are paid;
  - (c) Duke Energy complies with the requirements of the NYSE in respect of making public disclosure of material information on a timely basis and forthwith issues in Canada and files with the Decision Makers any press release that discloses a material change in Duke Energy's affairs;
  - (d) Exchangeco complies with the material change reporting requirements in respect of material changes in the affairs of Exchangeco that would be material to holders of Exchangeable Shares but would not be material to holders of Duke Energy common shares;
  - (e) Duke Energy includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Duke Energy

and not in relation to Exchangeco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the Duke Energy common shares and the right to direct voting at Duke Energy's shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);

- (f) Duke Energy remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities, including, without limitation, common shares of Exchangeco;
- (g) Exchangeco does not issue any securities to the public other than the Exchangeable Shares in connection with the Arrangement, and preferred shares issued to Duke Energy's financial advisors prior to the consummation of the Arrangement; and

3. The Insider Reporting Requirements, and the requirement to file an insider profile under National Instrument 55-102 – System for Electronic Disclosure by Insiders, shall not apply to Exchangeco and each insider of Exchangeco, so long as:

- (a) such insider of Exchangeco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning Duke Energy before the material facts or material changes are generally disclosed; and
- (b) such insider of Exchangeco is not a director or senior officer of Duke Energy, or a "major subsidiary" of Duke Energy, as such term is defined in National Instrument 55-101 - Exemptions from Certain Insider Reporting Requirements as if Duke Energy were a reporting issuer.

February 26, 2002.

"Paul Moore"

"R.S. Paddon"

## 2.1.9 Firm Capital Mortgage Investment Trust - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Close-end investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unitholders pursuant to a distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions - first trade relief provided for additional units of trust, subject to certain conditions.

### Statutes Cited

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

### Rules Cited

Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans 21 OSCB 3685.

Rule 81-501 Mutual Fund Reinvestment Plans 20 OSCB 5163.

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

**AND**

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

**AND**

**IN THE MATTER OF  
FIRM CAPITAL MORTGAGE INVESTMENT TRUST**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "**Decision Maker**") in each of the Provinces of British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland (the "**Jurisdictions**") has received an application from Firm Capital Mortgage Investment Trust (the "**Trust**") for a decision, pursuant to the securities legislation of the Jurisdictions (the "**Legislation**") that the requirement contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the "**Registration and Prospectus Requirements**") shall not apply to the distribution of units of the Trust pursuant to a distribution reinvestment plan (the "**DRIP**");

**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 Trust has represented to the Decision Makers that:

1. The Trust is an unincorporated closed-end investment trust governed by the laws of the Province of Ontario by an amended and restated declaration of trust dated as of May 24, 2001. As a mortgage investment trust, the Trust is a non-bank provider of residential and commercial real estate finance. The Trust generates fees and income from investments in a portfolio of mortgage loans and generates stable distributions for Unitholders.
2. The objectives of the Trust are to: (i) provide Unitholders with stable and secure cash distributions from the Trust's investments in mortgage loans in market segments which are underserved by Canadian banks and other large financial institutions; and (ii) obtain superior yields and maximize distributions and Unit value through the sourcing and efficient management of the Trust's mortgage investments in such market segments. The Trust makes regular monthly cash distributions to Unitholders and distributes all of the distributable cash of the Trust. The Trust paid aggregate distributions of distributable cash of \$0.95 per Unit to Unitholders in 2000 (which included a special year-end distribution of \$0.0429 per Unit) and is currently making regular monthly distributions of \$0.075 per Unit.
3. The Trust is not a "mutual fund" as defined in the Legislation because the unitholders of the Trust ("**Unitholders**") are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Trust as contemplated in the definition of "mutual fund" in the Legislation.
4. The Trust is currently a reporting issuer (or its equivalent) in each of the Jurisdictions under the Legislation and has been a reporting issuer (or its equivalent) in each of the Jurisdictions under the Legislation since September 28, 1999 when it received a receipt in each of the Jurisdictions for a final prospectus filed in connection with its initial public offering of Units.
5. On April 20, 2001, the Trust received a Stability Rating of SR-3 from Standard & Poor's. Trusts rated SR-3 have a high level of distribution stability relative to other rated Canadian income funds.
6. The beneficial interests in the Trust are divided into a single class of Units and the Trust is authorized to issue an unlimited number of Units. As of the date hereof, 7,557,500 Units are issued and outstanding.
7. Units are listed and posted for trading on The Toronto Stock Exchange (the "**TSE**") under the symbol "FC.UN". The closing price on the TSE on November 29, 2001 was \$9.25.
8. The Trust intends to establish a DRIP pursuant to which Canadian resident Unitholders may, at their option, invest cash distributions paid on their Units in additional Units ("**Additional Units**") as an alternative to receiving cash distributions. The DRIP will not be available to Unitholders who are not Canadian residents.
9. Distributions due to participants in the DRIP ("**DRIP Participants**") will be paid to Computershare Trust Company of Canada in its capacity as agent under the DRIP (in such capacity, the "**DRIP Agent**") and applied to purchase Additional Units. If the weighted average price of Units on the TSE for the five trading days immediately preceding the relevant distribution date (the "**Average Market Price**") is less than \$9.50, the DRIP Agent shall use such funds to purchase, through an investment dealer selected by the Trust, at a cost less than \$9.50 per Unit, Additional Units through the facilities of the TSE for a period of five trading days following the relevant distribution date. To the extent the DRIP Agent is unable to purchase Additional Units at a cost less than \$9.50 per Unit because Units are not offered or are offered at prices which, after payment of brokerage fees of commissions, would result in a cost at or exceeding \$9.50 per Unit, then the remaining funds will be applied to the purchase of Additional Units from the treasury of the Trust at \$9.50 per Unit. If the Average Market Price is \$9.50 or more, the funds will be applied to the purchase of Additional Units from the treasury of the Trust at the Average Market Price.
10. DRIP Participants may elect to purchase additional Units (the "Purchase Units") at the Average Market Price (the "**Cash Top Up**"). A minimum purchase of \$1,000.00 per month and maximum purchases of up to \$12,000.00 per year will be permitted under the Cash Top Up. These Purchase Units will be issued out of the treasury of the Trust. The aggregate number of Units that may be issued under the Cash Top Up may not exceed in each year 2% of the number (at the commencement of the fiscal year of the Trust) of the outstanding Units of the Trust. In the event that the aggregate cash payments received in a particular month would, if fully applied to the purchase of Units, cause the Trust to issue a number of Units which exceeds 2% of the number (at the commencement of the fiscal year of the Trust) of the outstanding Units of the Trust, the DRIP Agent will apply a *pro rata* portion of the cash payments from each DRIP Participant. The balance of the cash payments will be refunded to the applicable DRIP Participants.
11. Full investment of a DRIP Participant's funds will be possible under the DRIP and the Cash Top Up because the DRIP and the Cash Top Up will permit fractions of Units, as well as whole Units, to be purchased and held for DRIP Participants. Also, distributions in respect of whole Units and fractions of Units purchased under the DRIP and the Cash Top Up will be held by the DRIP Agent for the DRIP Participant's account and automatically invested under the DRIP in Additional Units.
12. Additional Units and Purchase Units, as the case may be, purchased under the DRIP or Cash Top Up will be

held by the DRIP Agent for DRIP Participants. Certificates for such Units will not be issued to DRIP Participants unless specifically requested.

13. Unitholders may terminate their participation in the DRIP at any time by written notice to the DRIP Agent. Such notice, if actually received prior to a distribution date, will have effect for such distribution. Thereafter, distributions payable to such Unitholders will be by cash. The Trust may amend (subject to prior TSE approval), suspend or terminate the DRIP and Cash Top Up at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of the DRIP Participants except as otherwise required by law. All DRIP Participants will be sent written notice of any such amendment, suspension or termination.

**AND WHEREAS** under 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 Makers with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the trades of Additional Units (including the Purchase Units) by the Trust to the DRIP Participants pursuant to the DRIP (and the Cash Top Up incorporated therein) shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

- (a) at the time of the trade the Trust is a reporting issuer or the equivalent under the Legislation;
- (b) no sales charge is payable in respect of the trade;
- (c) the Trust has caused to be sent to the person or company to whom the Additional Units are issued, not more than 12 months before the trade, a statement describing:
  - (i) their right to withdraw from the DRIP and to make an election to receive cash instead of Units on the making of a distribution of income by the Trust; and
  - (ii) instructions on how to exercise the right referred to in (i); and
- (d) the first trade in Additional Units (including Purchase Units) acquired pursuant to this Decision shall be deemed a distribution or primary distribution to the public unless
  - (i) except in Quebec, the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 are satisfied, and
  - (ii) in Quebec,
    - (a) the issuer is a reporting issuer in Quebec and has complied with the applicable

requirements for 12 months immediately preceding the trade;

- (b) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
- (c) no extraordinary commission or consideration is paid to a person or company in respect of the trade, and
- (d) if the seller of the securities is an insider or officer of the issuer, the selling securityholder has no reasonable grounds to believe that the issuer is in default of any requirement of securities legislation;
- (e) disclosure of the initial distribution of the Additional Units is made to the relevant Jurisdictions by providing the particulars of the date of the distribution of such Additional Units, the number of such Additional Units and the purchase price paid or to be paid for such Additional Units in:
  - (i) an information circular or take-over bid circular filed in accordance with the Legislation; or
  - (ii) a letter filed with the Decision Maker in the relevant Jurisdiction by a person or company certifying that the person or company has knowledge of the facts contained in the letter, when the Trust distributes such Additional Units for the first time and thereafter, not less frequently than annually, unless the aggregate number of Additional Units so traded in any month exceeds 1% of the Units outstanding at the beginning of a month in which the Additional Units were traded, in which case a separate report shall be filed in each relevant Jurisdiction (other than Quebec) in respect of that month within ten days of the end of such month; and
- (f) in the financial year of the Trust during which a trade or trades in Purchase Units pursuant to the Cash Top Up takes place, the aggregate number of Purchase Units issued pursuant to the Cash Top Up before such trade or trades, plus the aggregate number of Purchase Units issued in the trade or trades or concurrently with the trade or trades, does not exceed two percent of the number of Trust Units outstanding at the commencement of that financial year.

March 5, 2002.

“Paul Moore”

“R. Stephen Paddon”

## 2.1.10 HSBC Bank USA - MRRS Decision

### Headnote

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

### Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am. ss. 25(1)(a)&(c), 34(a), 35(1)(3)(i), 35(2)1(c), 53(i), 72(1)(a)(i), 73(1)(a), 74(1), 147.

### Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am. ss. 151, 206, 218, Schedule 1 s. 28.

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

**AND**

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

**AND**

**IN THE MATTER OF  
HSBC BANK USA**

### MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut Territory and Yukon Territory (the "Jurisdictions") has received an application (the "Application") from HSBC Bank USA ("HBUS") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that HBUS is exempt from various registration, prospectus and filing requirements of the Legislation in connection with the banking activities to be carried on by HBUS 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** it has been represented by HBUS to the Decision Makers that:

1. HBUS is a corporation duly organized and existing under the laws of the State of New York and is a validly existing banking organization under the banking laws of the State of New York. HBUS is a wholly-owned subsidiary and the principal banking subsidiary of HSBC USA Inc., an indirectly-held, wholly-owned subsidiary of HSBC Holding plc.
2. HBUS is the third largest depository institution and has the most extensive branch network in the State of New York, with more than 420 branches. It also has branches in Florida, Pennsylvania, California and Panama. In addition to its branch network, HBUS has the third largest factoring service in the United States of America and is the largest US bank-owned factor. It also conducts one of the world's largest precious metals operations and has also entered into Internet banking.
3. HSBC is not, and has no current intention of becoming, a reporting issuer in any province of Canada, nor are any of its securities listed on any stock exchange in Canada.
4. HBUS does not currently have a presence in Canada. An affiliate of HBUS, HSBC Bank Canada, currently provides retail banking, commercial lending and corporate treasury products in Canada. The full service branch of HBUS intends to leverage its AA credit rating to provide commercial lending services to corporate and institutional banking clients which have credit requirements that exceed the single name limit in Canada (an A credit rating). In addition, HBUS plans to engage in certain treasury related activities;
5. In June 1999, amendments to the *Bank Act* were proclaimed that permit foreign commercial banks to establish direct branches in Canada. These amendments have created a new Schedule III listing foreign banks permitted to carry on banking activities through branches in Canada;
6. In October, 2001, HBUS made an application (the "Bank Act Application") to the Office of the Superintendent of Financial Institutions Canada ("OSFI") for an order under the *Bank Act* permitting it to establish a full service branch under the *Bank Act* and designating it on Schedule III to the *Bank Act*;
7. Upon approval of the Bank Act Application, HBUS will establish and commence business as a foreign bank branch under the *Bank Act*. HBUS expects to receive all OSFI approvals on or before March 1, 2002.
8. HBUS will only be involved in wholesale deposit-taking, commercial lending and related treasury functions;
9. HBUS 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 counseling, and is registered to act in such capacity under the applicable Legislation, and (h) a foreign institution that is (i) engaged in the banking, trust, loan or insurance business, the business of a cooperative credit society or the business of dealing in securities or is otherwise engaged primarily in the business of providing financial services, and (ii) is incorporated or formed otherwise than by or under an Act of Parliament or of the legislature of a province or territory in Canada);
  - (e) a pension fund sponsored by an employer for the benefit of its employees or employees of an affiliate that is registered and has total plan assets under administration of greater than \$100 million;
  - (f) a mutual fund corporation that is regulated under an Act of the legislature of a province or territory in Canada or under the laws of any other jurisdiction and has total assets under administration of greater than \$10 million;
  - (g) an entity (other than an individual) that has gross revenues on its own books and records of greater than \$5 million as of the date of its most recent annual financial statements; 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 Decision as "Authorized Customers".
- 10. The only advising activities which HBUS intends to 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;
  - 11. The Legislation applicable in each Jurisdiction currently refers to either "Schedule I and Schedule II banks", "banks", "savings institutions" or "financial institutions" in connection with certain exemptions however no reference is made in any of the Legislation to entities listed on Schedule III to the *Bank Act*;
  - 12. In order to ensure that HBUS, as an entity listed on Schedule III to the *Bank Act*, is able to provide banking services to businesses in the Jurisdictions it requires similar exemptions enjoyed by banking institutions incorporated under the *Bank Act* to the extent that the current exemptions applicable to such banking institutions are relevant to the banking business being undertaken by HBUS in the Jurisdictions;
- 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 upon the establishment by HBUS of a branch designated on Schedule III to the *Bank Act* and in connection with the banking business to be carried on by HBUS in the Jurisdictions by such branch:
- 1. HBUS 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. HBUS 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 HBUS where HBUS purchases the security as principal shall be exempt from the registration and prospectus requirements of the

Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation") provided that:

- (i) the forms that would have been filed and the fees that would have been paid under the Applicable Legislation if the trade had been made, on an exempt basis, to an entity listed on Schedule I or II to the *Bank Act* purchasing as principal (referred to in this Decision as a "Schedule I or II Bank Exempt Trade") are filed and paid in respect of the trade to HBUS;
- (ii) except in Quebec, the first trade in a security acquired by HBUS pursuant to this Decision is deemed a distribution or primary distribution to the public under the Applicable Legislation unless the conditions in subsections 2 or 3, as applicable, of section 2.5 of Multilateral Instrument 45-102 - *Resale of Securities* are satisfied; and
- (iii) in Quebec, the first trade in a security acquired by HBUS pursuant to this Decision will be a distribution unless,
  - (a) at the time HBUS acquired the security:
    - (i) the issuer of the security is a reporting issuer in Quebec; (ii) the issuer is not a Capital Pool Company as defined in Policy 2.4 of The Canadian Venture Exchange Inc.; (iii) the issuer has a class of securities listed on an acceptable exchange, has not been advised that it does not meet the requirements to maintain that listing and is not designated inactive, or the issuer has a class of securities that has an approved rating from an approved rating organization; for purposes of this Decision, the acceptable exchanges include the Toronto Stock Exchange, tier 1 and 2 of The Canadian Venture Exchange Inc., the American Stock Exchange, Nasdaq National Market, Nasdaq SmallCap Market, the New York Stock Exchange and the London Stock Exchange Limited; and (iv) the issuer has filed an annual information required under section 159 of the Regulation made under the *Securities Act* (Quebec), as amended from time to time, (the "Quebec Act") within the time period contemplated by that section, or, if not required to file an annual information, has filed a prospectus that contains the most recent financial statements;
  - (b) the issuer has been a reporting issuer in Quebec for 4 months immediately preceding the trade;
  - (c) HBUS has held the securities for at least 4 months;
  - (d) no extraordinary commission or other consideration is paid;

- (e) no effort is made to prepare the market or to create a demand for the securities;
- (f) if HBUS is an insider of the issuer, HBUS has no reasonable grounds to believe that the issuer is in default under the Quebec Act; and
- (g) HBUS files a report within 10 days of the trade prepared and executed in accordance with the requirements of the Quebec Act that would apply to a trade made in reliance on section 43 or 51 of the Quebec Act.

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

**THE FURTHER DECISION** of the Decision Maker in Ontario is that:

- A. Subsection 25(1)(a) of the *Securities Act* (Ontario) R.S.O. 1990 c. S.5 (as amended) (the "Act") does not apply to a trade by HBUS:
  - (i) of a type described in subsection 35(1) of the Act or section 151 of the Regulations made under the Act; or
  - (ii) subject to paragraph 4 above, in securities described in subsection 35(2) of the Act;
- B. Subsection 25(1)(a) and section 53 of the Ontario Act do not apply to a trade by HBUS in:
  - (i) a security of a mutual fund, if the security is sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of the plan for its employees, and
    - (a) the employees deal only with the sponsor in respect of their participation in the plan and the purchase of the security by the plan, or
    - (b) the decision to purchase the security is not made by or at the direction of the employee; or
  - (ii) in a security of a mutual fund that:
    - (a) is administered by a body corporate to which the *Trust and Loan Companies Act* (Canada)

applies or a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province or territory in Canada;

- (b) consists of a pool of funds that:
  - (A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered under the *Income Tax Act* (Canada), and
  - (B) is established by or related to persons or companies that are associates or affiliates of or that otherwise do not deal at arms length with the promoters of the mutual fund, except the trust, loan or insurance corporation that administers the fund; and
- (c) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Ontario Act; and

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

February 26, 2002.

"Paul M. Moore"

"R. Stephen Paddon"

## 2.2 Orders

### 2.2.1 Business Development Bank of Canada

#### Headnote

Crown Corporation, that became a reporting issuer by virtue of the listing of its notes on the TSE, deemed to have ceased to be a reporting issuer - Except for shares held in trust for Crown, all issued and outstanding securities of issuer are securities referred to in paragraph 1(a) of subsection 35(2) of the Act.

#### Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am. ss. 35(2)1(a), 73(1)(a), 83 and 83.1.

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

**AND**

**IN THE MATTER OF  
THE BUSINESS DEVELOPMENT BANK OF CANADA**

**ORDER  
(Section 83)**

**UPON** the application (the "Application") of Business Development Bank of Canada (the "Bank") to the Ontario Securities Commission (the "Commission") for an order pursuant to section 83 of the Act, that the Bank be deemed to have ceased to be a reporting issuer.

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

1. the Bank is a body corporate governed by the *Business Development Bank of Canada Act* (The "BDB Act");
2. the purpose of the Bank is to support Canadian entrepreneurship by providing financial and management services and by issuing securities or otherwise raising funds or capital in support of those services;
3. subsection 3(4) of the BDB Act provides that the Bank is for all purposes an agent of Her Majesty in right of Canada (the "Federal Crown");
4. subsection 23(2) of the BDB Act provides that the shares of the Bank may be issued only to the Designated Minister (as defined in the BDB Act) to be held in trust for the Federal Crown;
5. subsection 18(1) of the BDB Act provides that the Bank may borrow money by issuing and selling or pledging debt obligations of the Bank;
6. the Bank has, and may, from time to time, borrow money by issuing notes (the "Notes") that constitute

direct unconditional obligations of the Bank which are also direct unconditional obligations of the Federal Crown;

7. the terms of any Notes issued by the Bank may provide for a return to the holder that is linked to various market indices (such as currencies, commodities, interest rates, swap rates), an equity index or basket of securities or equity indices or other underlying interests;
8. except for shares that are held in trust for the Federal Crown, all other securities ("Outstanding Securities") of the Bank that are issued and outstanding are securities ("exempt securities") that:
  - (a) are referred to in paragraph 1(a) of subsection 35(2) of the Act;and
  - (b) do not, by their terms, limit the liability of the Bank to the assets of the Bank, or provide for any return that may be dependent upon the financial condition or performance of the Bank, so that the financial condition or performance of the Bank is not relevant to any holder of the Outstanding Securities;
9. the Outstanding Securities were issued by the Bank in reliance upon the prospectus exemption contained in clause 73(1)(a) of the Act that refers to securities in paragraph 1(a) of subsection 35(2) of the Act;
10. the Bank may, from time to time, arrange for the listing of its securities on The Toronto Stock Exchange (the "TSE"), so that upon such listing the Bank may, by virtue of the definition of "reporting issuer" in the Act, become a reporting issuer, in which case, the Bank intends to apply to the Commission for an order, pursuant to section 83 of the Act, that it be deemed to have ceased to be a reporting issuer;
11. on December 6, 1999, the Bank became a reporting issuer by virtue of the transfer of the listing of the Internet Stock Basket Protected Notes Due 2009 of the Bank from the Montreal Exchange to the TSE. On January 21, 2000, the Commission issued an order pursuant to section 83 of the Act deeming the Bank to have ceased to be a reporting issuer under the Act;
12. on February 7, 2000, the Bank became a reporting issuer by virtue of the listing of Global Giants Equity-Linked Notes, Series 1 of the Bank on the TSE. On February 29, 2000, the Commission issued an order pursuant to section 83 of the Act deeming the Bank to have ceased to be a reporting issuer under the Act;
13. on April 28, 2000, the Bank became a reporting issuer by virtue of the listing of International Equity Index Linked Notes, Series 1 of the Bank on the TSE. On June 2, 2000, the Commission issued an order pursuant to section 83 of the Act deeming the Bank to have ceased to be a reporting issuer under the Act;
14. on December 6, 2000, the Bank became a reporting issuer by virtue of the listing of Global Equity Index

Linked Notes, Series 1 of the Bank on the TSE. On January 5, 2001, the Commission issued an order pursuant to section 83 of the Act deeming the Bank to have ceased to be a reporting issuer under the Act;

15. on March 22, 2001, the Bank became a reporting issuer by virtue of the listing of Nasdaq-100 Index<sup>®</sup> Linked Notes, Series 1 and Nasdaq-100 Index<sup>®</sup> Linked Notes, Series 2 of the Bank on the TSE. On April 15, 2001, the Commission issued an order pursuant to section 83 of the Act deeming the Bank to have ceased to be a reporting issuer under the Act;
16. on April 27, 2001, the Bank became a reporting issuer by virtue of the listing of Nasdaq-100 Index<sup>®</sup> Linked Notes, Series 3 of the Bank on the TSE. On July 17, 2001, the Commission issued an order pursuant to Section 83 of the Act deeming the Bank to have ceased to be a reporting issuer under the Act;
17. on May 30, 2001, the Bank became a reporting issuer by virtue of the listing of Nasdaq-100 Index<sup>®</sup> Linked Notes, Series 4 of the Bank on the TSE. On July 24, 2001, the Commission issued an order pursuant to Section 83 of the Act deeming the Bank to have ceased to be a reporting issuer under the Act;
18. on June 29, 2001, the Bank became a reporting issuer by virtue of the listing of Canadian Technology Equity Linked Notes, Series 1 of the Bank on the TSE. On July 31, 2001, the Commission issued an order pursuant to Section 83 of the Act deeming the Bank to have ceased to be a reporting issuer under the Act;
19. on September 27, 2001, the Bank became a reporting issuer by virtue of the listing of Principal Protected Blue Chip Technology Linked Notes, Series 1 on the TSE. On November 16, 2001, the Commission issued an order pursuant to Section 83 of the Act deeming the Bank to have ceased to be a reporting issuer under the Act ;
20. On December 12, 2001, the Bank became a reporting issuer by virtue of the listing of Principal Protected European Stock Index Linked Notes, Series 2 on the TSE. The Bank is not in default of any requirements of the Act or regulations made thereunder.
21. if the Outstanding Securities should cease to be exempt securities, the Bank will so advise the Director, so that the Director may consider whether, in the circumstances, it may be appropriate to apply to the Commission for an order, pursuant to section 83.1 of the Act, deeming the Bank to be a reporting issuer for the purposes of Ontario securities laws.

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

**AND UPON** the Commission being satisfied that to do so would be in the public interest;

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

February 15, 2002.

"Paul M. Moore"

"R. Stephen Paddon"

## 2.2.2 FW Omnimedia Corp. - ss. 83.1(1)

### Headnote

Subsection 83.1(1) - issuer deemed to be a reporting issuer in Ontario - issuer has been a reporting issuer in Alberta since 1998 and in BC since 2000 - issuer listed and posted for trading on the Canadian Venture Exchange - continuous disclosure requirements of Alberta and BC 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. CHAPTER S.5, AS AMENDED  
(the "Act")**

**AND**

**IN THE MATTER OF  
FW OMNIMEDIA CORP.**

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

**UPON** the application (the "**Application**") of FW Omnimedia Corp. ("**FW**") for an order pursuant to subsection 83.1(1) of the Act deeming FW a reporting issuer for the purposes of the Ontario securities law;

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

**AND UPON** FW representing to the Commission that:

1. FW was incorporated on August 7, 1996 pursuant to the provisions of the *Business Corporations Act* (Alberta).
2. The head office of FW is located at 305, 296 Richmond Street West, Toronto, Ontario M5X 1X2. The address of FW's registered office is 1800, 350 - 7<sup>th</sup> Avenue SW, Calgary, Alberta, T2P 3N9.
3. FW has been a reporting issuer under: (i) the *Securities Act* (Alberta) (the "**Alberta Act**") since July 2, 1998 when pursuant to the provisions of the Alberta Act, receipt for a final prospectus was issued; and (ii) the *Securities Act* (British Columbia) (the "**BC Act**") since February 22, 2000 as a result of the merger between the Alberta Stock Exchange and the Vancouver Stock Exchange that created the Canadian Venture Exchange (the "CDNX").
4. FW is not on the list of defaulting reporting issuers maintained pursuant to the Alberta Act or the BC Act and is not in default of any requirements under the Alberta Act or the BC Act.
5. On September 29, 1998, FW's common shares were listed and posted for trading on the CDNX under the

- trading symbol "FWO". FW is in compliance with all of the requirements of the CDNX.
6. FW has a "significant connection to Ontario", as defined by CDNX Policy 1.1, in that: (i) approximately 78% of the issued and outstanding shares of FW are registered in the names of shareholders having a registered address in Ontario; and (ii) two of a total of six directors and officers of FW are resident in Ontario (Jonathan Bogo, president and director, and John Byrne, director).
  7. The continuous disclosure requirements under the Alberta Act and the BC Act are substantially the same as the requirements under the Act.
  8. FW is not a reporting issuer in Ontario, and is not a reporting issuer, or equivalent, in any other jurisdiction other than Alberta and British Columbia.
  9. The authorized capital of FW consists of unlimited common shares and unlimited preferred shares without par or nominal value of which 15,644,780 common shares were issued and outstanding as of January 29, 2002. In addition, options and warrants to purchase an aggregate of 3,051,978 additional common shares of FW were outstanding as of May 10, 2001.
  10. The continuous disclosure materials filed by FW under the Alberta Act and the BC Act are available on the System for Electronic Document Analysis and Retrieval.
  11. There have been no penalties or sanctions imposed against FW by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority, and FW has not entered into any settlement agreement with any Canadian securities regulatory authority.
  12. Neither FW nor any of its directors, officers nor, to the knowledge of FW or 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 authority that would likely be considered important to a reasonable investor making an investment decision.
  13. Neither FW nor any of its directors, officers nor, to the knowledge of FW, 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 FW, nor to the knowledge of FW, 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.

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

February 26, 2002.

"Iva Vranic"

## 2.2.3 Avalon Works Corp. - ss. 83.1(1)

### Headnote

Subsection 83.1(1) - Issuer deemed a reporting issuer in Ontario - Issuer has been a reporting issuer in Alberta since October 13, 2000 and in British Columbia since January 29, 2001 - Issuer listed and posted for trading on the Canadian Venture Exchange - Issuer not designated as a capital pool company by CDNX - Continuous disclosure requirements of British Columbia and Alberta substantially the same as 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  
AVALON WORKS CORP.**

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

**UPON** the application of Avalon Works Corp. (the "Issuer") for an order pursuant to subsection 83.1(1) of the Act deeming the Issuer to be a reporting issuer for the purposes of Ontario securities law;

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

**AND UPON** the Issuer representing to the Commission as follows:

1. The Issuer was incorporated on April 6, 2000 pursuant to the provisions of the *Canada Business Corporations Act*.
2. The Issuer's head office, which was formerly located in the Province of Quebec, is now located in Ottawa, Ontario.
3. The Issuer has been a reporting issuer under the *Securities Act* (Alberta) (the "Alberta Act") since October 13, 2000 following the issuance of a receipt by the Alberta Securities Commission (the "ASC") on October 13, 2000 for the Issuer's initial public offering prospectus dated September 29, 2000 pursuant to ASC Rule 46-501 - *Junior Capital Pool Offerings*.
4. The Issuer's common shares ("Common Shares") were listed and posted for trading on the Canadian Venture Exchange Inc. ("CDNX") on January 29, 2001, upon which date the Issuer also became a reporting issuer under the *Securities Act* (British Columbia) (the "BC Act").

5. The Issuer acquired all of the issued and outstanding common shares of Danek Associates Inc. ("DAI") following its shareholders' approval of such acquisition at its annual and special meeting of shareholders held on April 30, 2001 (the "Qualifying Transaction"). In connection with the Qualifying Transaction, a total of 12,000,000 Common Shares were issued to a total of 6 Ontario residents.
6. In connection with the Qualifying Transaction, the Issuer prepared and sent to its shareholders, and filed with the appropriate securities regulatory authorities, an information circular dated March 21, 2001 (the "Information Circular") containing prospectus-level disclosure with respect to the business and affairs of the Issuer, DAI and the Qualifying Transaction.
7. Effective May 4, 2001, the Issuer was no longer designated as a Capital Pool Company by the CDNX.
8. The authorized share capital of the Issuer consists of an unlimited number of Common Shares and an unlimited number of First Preferred Shares and Second Preferred Shares. There are currently 18,360,000 Common Shares issued and outstanding and no First Preferred Shares or Second Preferred Shares issued and outstanding.
9. The Common Shares are currently listed and posted for trading on CDNX.
10. The Issuer has a significant connection to Ontario in that: (i) residents of Ontario hold no less than 12,000,000 Common Shares representing approximately 65% of the Issuer's issued and outstanding Common Shares, (ii) three of the Issuer's four directors are resident in Ontario, and (iii) the Issuer's head office is now located in Ontario.
11. The Issuer has maintained its continuous disclosure obligations under the Alberta Act and the BC Act since October 13, 2000 and January 29, 2001, respectively, which obligations are substantially similar to those under the Act. The continuous disclosure materials filed by the Issuer since October 13, 2000 are available on the System for Electronic Document Analysis and Retrieval.
12. Other than in the provinces of Alberta and British Columbia, the Issuer is not a reporting issuer or equivalent under the securities legislation of any other jurisdiction in Canada.
13. The Issuer is not in default of any requirements under the BC Act, the Alberta Act, any of the rules and regulations made thereunder, or of any requirements of the CDNX.
14. 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.

15. Neither the Issuer nor any of its directors, officers nor, to the best 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.
16. Neither the Issuer nor any of its directors, officers nor, to the best 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.
17. None of the directors or officers of the Issuer, nor to the best 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.

**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 a reporting issuer for the purpose of Ontario securities laws.

March 1, 2002.

"Iva Vranic"

## 2.2.4 T S Telecom Ltd. - ss. 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 January 20, 1986 and in Alberta since October 14, 1987 - 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  
T S TELECOM LTD.**

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

**UPON** the application of T S Telecom Ltd. (the "Company") for an order pursuant to subsection 83.1(1) of the Act deeming the Company 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 Company representing to the Commission as follows:

1. The Company was incorporated under the Company Act (British Columbia) on May 7, 1984 as Minotaur Explorations Ltd. The Company changed its name to China Growth Enterprises Corp. on September 12, 1994. Pursuant to Articles of Continuance dated January 22, 1996, the Company was continued under the laws of the Province of Ontario and changed its name to T S Telecom Ltd.
2. The head office of the Company is located at 180 Amber Street, Markham, Ontario L3R 3J8.
3. Pursuant to Articles of Continuance dated January 22, 1996, the Company increased its authorized share capital to an unlimited number of common shares without nominal or par value and an unlimited number of preferred shares without nominal or par value. As at September 14, 2001, the Company had 21,990,005 common shares issued and outstanding.
4. The Company has 13,632,808 common shares of the Company, or approximately 62% of the total issued common shares of the Company, registered to shareholders whose last address on the Company's



register of shareholders was in Ontario, as at September 14, 2001.

5. The Company is and has been a reporting issuer under the Securities Act (British Columbia) (the "BC Act") since January 20, 1986 and under the Securities Act (Alberta) (the "Alberta Act") since October 14, 1987. The Company is not in default of any requirements of the BC Act and Alberta Act.
6. The Company is not a reporting issuer in Ontario, and is not a reporting issuer, or equivalent, in any other jurisdiction, except British Columbia and Alberta.
7. The continuous disclosure requirements of the BC Act and the Alberta Act are substantially the same as the requirements under the Act.
8. The continuous disclosure materials filed by the Company under the BC Act and under the Alberta Act since the inception of the System Electronic Document Analysis and Retrieval (SEDAR) are available on SEDAR.
9. The common shares of the Company are listed on the CDNX, and the Company is in compliance with all requirements of the CDNX.
10. The Company has not been subject to any penalties or sanctions imposed against the Company by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority, and has not entered into any settlement agreement with any Canadian securities regulatory authority.
11. Neither the Company nor any of its officers, directors nor, to the knowledge of the Company, its officers and directors, 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.
12. Neither the Company nor any of its officers, directors, nor to the knowledge of the Company, its officers and directors, 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.
13. None of the officers or directors of the Company, nor to the knowledge of the Company, its officers and directors, any of its controlling shareholders, is or has been at the time of such event an officer or director 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.

14. Neither the Company nor any of its officers, directors, nor to the knowledge of the Company, its officers and directors, 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.

**AND UPON** the Director 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 Company be deemed a reporting issuer for purposes of Ontario Securities Law.

February 21, 2002.

"Iva Vranic"

**2.2.5 Black Bean Communications Ltd. et al. -  
Temporary Order ss. 127(1) and 127(5)**

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

**AND**

**IN THE MATTER OF  
BLACK BEAN COMMUNICATIONS LTD.  
GERHARD ("GARY") R. MOHR, and JOHN FENNER**

**TEMPORARY ORDER  
(Subsection 127(1) and 127(5))**

**WHEREAS IT APPEARS** to the Ontario Securities Commission that:

1. Black Bean Communications Ltd. ("Black Bean") is incorporated under the laws of Ontario.
2. Gerhard R. Mohr ("Mohr"), also known as Gary Mohr, is the President of Black Bean, and a resident of Mississauga, Ontario.
3. John Fenner ("Fenner") is affiliated with Black Bean, and currently resides in Saint Joseph, Missouri.
4. Black Bean, Mohr, and Fenner have never been registered with the Ontario Securities Commission ("Commission") in any capacity.
5. Black Bean and Mohr operate a Web site at [www.bbean.com](http://www.bbean.com) relating to investment opportunities and services.
6. Fenner may have acted a securities broker-dealer for Black Bean.
7. Black Bean, Mohr, and Fenner may have traded in securities, without being registered, contrary to section 25 of the Securities Act, R.S.O. 1990, cS-5, as amended ("Act").
8. The Web site appears to offer investments, which are contrary to the public interest, including prime bank instruments and Nigerian investment opportunities, among others.

**AND WHEREAS** the Ontario Securities Commission is of the opinion that the length of time required to conclude a hearing could be prejudicial to the public interest;

**AND WHEREAS** by Commission order made March 9, 2001, pursuant to subsection 3.5(3) of the Act, any one of David A. Brown, Howard Wetston, and Paul M. Moore acting alone, is authorized to make orders under section 127(5) of the Act;

**IT IS ORDERED**, pursuant to subsections 127(1) and (5) of the Act, that Black Bean Communications Ltd, Gerhard R. Mohr, and John Fenner shall cease trading in all securities;

**IT IS FURTHER ORDERED**, pursuant to subsections 127(1) and (5) of the Act, that any exemptions contained in Ontario securities law do not apply to Black Bean Communications Ltd, Gerhard R. Mohr, and John Fenner for the period of this order;

**IT IS FURTHER ORDERED** that this temporary order shall take effect immediately and shall expire on the fifteenth day unless extended by the Ontario Securities Commission.

February 26, 2002.

"David A. Brown"

**2.2.6 Create-A-Fund Incorporated and Ronald Etherington - ss. 127(1) and 127(5)**

Incorporated and Ronald L. Etherington for the period of this order;

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

**IT IS FURTHER ORDERED** that this temporary order shall take effect immediately and shall expire on the fifteenth day unless extended by the Ontario Securities Commission.

**AND**

February 26, 2002.

**IN THE MATTER OF  
CREATE-A-FUND INCORPORATED  
AND RONALD ETHERINGTON**

**TEMPORARY ORDER  
(Subsection 127(1) and 127(5))**

**WHEREAS IT APPEARS** to the Ontario Securities Commission that:

1. Create-a-fund Incorporated ("Create-a-fund") is incorporated pursuant to the laws of Ontario, and is located in Burlington, Ontario.
2. Ronald Etherington ("Etherington") is the sole directing mind of Create-a-fund, and resides in Burlington, Ontario.
3. Create-a-fund and Etherington have never been registered with the Ontario Securities Commission ("Commission") in any capacity.
4. Create-a-fund and Etherington operate a Web site at [www.createafund.com](http://www.createafund.com) relating to investment opportunities and services.
5. It appears that Create-a-fund and Etherington have been trading in securities, without being registered, contrary to section 25 of the Securities Act, R.S.O. 1990, c. S-5, as amended ("Act").
6. It appears that Create-a-fund and Etherington have held themselves out as engaging in the business of advising others as to the buying and selling of securities, without being registered contrary to section 25 of the Act.

**AND WHEREAS** the Ontario Securities Commission is of the opinion that the length of time required to conclude a hearing could be prejudicial to the public interest;

**AND WHEREAS** by Commission order made March 9, 2001, pursuant to subsection 3.5(3) of the Act, any one of David A. Brown, Howard Wetston, and Paul M. Moore acting alone, is authorized to make orders under section 127(5) of the Act;

**IT IS ORDERED**, pursuant to subsections 127(1) and (5) of the Act, that Create-a-fund Incorporated and Ronald L. Etherington shall cease trading in all securities;

**IT IS FURTHER ORDERED**, pursuant to subsections 127(1) and (5) of the Act, that any exemptions contained in Ontario securities law do not apply to Create-a-fund

## Chapter 3

# Reasons: Decisions, Orders and Rulings

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IN THIS ISSUE

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## Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Extending & Rescinding Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Rescinding Order
Armac Capital Corp	21 Feb 02	04 Mar 02	06 Mar 02	
Enwave Corporation	27 Feb 02	11 Mar 02		01 Mar 02
Jawz Inc.	20 Feb 02	05 Mar 02	06 Mar	
KRG Television	05 Mar 02	15 Mar 02		
Magra Computer Technologies Corp.	21 Feb 02	05 Mar 02	05 Mar 02	
New Inca Gold Ltd.	22 Feb 02	06 Mar 02	06 Mar 06	
Peaksoft Multinet Corp.	05 Mar 02	15 Mar 02		
Ronin Resource Corp.	22 Feb 02	06 Mar 02	06 Mar 06	
Voiceiq Inc.	25 Feb 02	08 Mar 02		27 Feb 02

### 4.2.1 Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Krystal Bond Inc.	19 Feb 02	04 Mar 02	04 Mar 02		
World Wise Technologies Inc.	19 Feb 02	04 Mar 02	04 Mar 02		

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**Chapter 5**  
**Rules and Policies**

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**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>Purchaser</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
30Jan02	4 Purchasers	1350052 Ontario Inc. - Secured Term Loans	1,750,000	1,750,000
29Jan02	Dalrymple, J. Ian	1350052 Ontario Inc. - Loan Payable on demand	950,000	950,000
20Feb02		Acuity Pooled High Income Fund - Trust Units	300,000	20,798
04Feb02	Acuity Funds Ltd.	Acuity Pooled High Income Fund - Trust Units	150,000	10,405
30Jan02		Acuity Pooled High Income Fund - Trust Units	300,000	20,669
30Jan02		Acuity Pooled High Income Fund - Trust Units	500,000	34,448
11Feb02	Rushlake Hotels (USA), Inc.	AFM Hospitality Corporation - Common Shares	150,000	66,667
31Jan02	7 Purchasers	Alternum Capital - North American Value Hedge Fund - Limited Partnership Units	1,575,000	3,150
31Jan02	6 Purchasers	Alternum Capital - Global Health Sciences Hedged Fund - Limited Partnership Units	1,900,924	2,390
08Feb02 & 15Feb02	Morton, Timothy	Arrow Eagle & Dominion Fund - Class A Trust Units	250,000	29,152
08Feb02	Leighton, Stan	Arrow Global RSP MultitManager Fund - Class A Trust Units	150,000	14,954
01Feb02	McCullough, Tracey and Cropley, Jon	Arrow Global RSP MultitManager Fund - Class A Trust Units	175,000	17,535
01Feb02	Murray, Robb and Katherine	Arrow Global MultitManager Fund - Class A Trust Units	115,000	11,431
08Feb02 & 15Feb02	3 Purchasers	Arrow Global RSP MultitManager Fund - Class A Trust Units	221,887	22,166
01Feb02	McGovern James & Sylvia	Arrow Global RSP MultitManager II Fund - Class A Trust Units	550,000	5,459
01Feb02	McGovern, James & Sylvia	Arrow Global RSP MultitManager II Fund - Class A Trust Units	350,000	3,500
01Feb02	3 Purchasers	Arrow Goodwood Fund - Class A Trust Units	197,195	18,147
08Feb02	H.G. Holdings Company Ltd.	Arrow Goodwood Fund - Class A Trust Units	50,000	4,770
15Feb02	Curry, Mark	Bard Ventures Ltd. - Units	50,000	200,000
08Feb02		Camcor 2002 Limited Partnership - Limited Partnership Units	10,050,000	1,005
18Feb02	Kirkwood, Elizabeth Jean	Canabrava Diamond Corporation -Common Shares	3,800	10,000
21Feb02	Covington Fund II Inc.	Canadian Insurance Marketing Inc. - Common Shares	1,250,000	20

**Notice of Exempt Financings**

<u>Trans.</u>	<u>Date</u>	<u>Purchaser</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
	08Feb02	Energold Minerals Inc.	Canadian Zinc Corporation - Units	150,000	1,000,000
	29Nov01		Canlight Capital Inc. - Beneficial Interest	900,000	900,000
	29Jan02	7 Purchasers	Carma Financial Services Corporation	200,000	800,000
	14Feb02	11 Purchasers	Case Resources Inc. - Common Shares	3,500,000	11,666,668
	24Jan02	18 Purchasers	Casurina Limited Partnership - Limited Partnership Units	8,042,166	4,195
	12Feb02	BMO Nesbitt Burns Inc.	Cymer, Inc. - Convertible Subordinated Notes due February 15, 2009	\$795,800	\$795,800
	13Feb02	London Life Investment Management Ltd.	DR Residential Mortgage Trust - Series A@ Senior Medium Term Secured Floating Rate Notes due May 20, 2003	\$20,000,000	\$20,000,000
	15Feb02	24 Purchasers	Eldorado Gold Corporation - Special Warrants	20,789,160	49,498,000
	01Jun01 to 31Dec01		Elliot & Page Balanced Fund - Class G Units	10,575,334	896,849
	01Jun01 to 31Dec01		Elliot & Page American Growth Fund - Class G Units	2,023,395	94,668
	01Jun01 to 31Dec01		Elliot & Page Value Equity Fund - Class G Units	2,036,732	202,983
	01Jun01 to 31Dec01		Elliot & Page Cabot Emerging Growth Fund - Class G Units	3,473,985	289,536
	01Jun01 to 31Dec01		Elliot & Page Cabot Blue Chip Fund - Class G Units	7,407,664	397,186
	01Jun01 to 31Dec01		Elliot & Page Money Fund - Class G Units	91,161,236	9,116,123
	01Jun01 to 31Dec01		Elliot & Page Monthly High Income Fund - Class G Units	30,049,177	2,814,475
	01Jun01 to 31Dec01		Elliot & Page Sector Rotation Fund - Class G Units	1,636,997	138,181
	01Jun01 to 31Dec01		Elliot & Page U.S. Mid-Cap Fund - Class G Units	7,029,376	569,858
	01Jun01 to 31Dec01		Elliot & Page International Equity Fund - Class G Units	1,000,000	100,000
	01Jun01 to 31Dec01		Elliot & Page Cabot Multi-Style Fund - Class G Units	9,675,401	678,969
	01Jun01 to 31Dec01		Elliot & Page Generation Wave Fund - Class G Units	529,749	44,769
	13Nov01		Energy Conversion Technologies Inc. - Special Warrants	50,000	100,000
	01may01 to 01Jan02		Epic Limited Partnership - Limited Partnership Units	2,170,000	1,761
	18Feb02	3 Purchasers	First Canadian Gold Corporation Inc. - Common Shares	75,000	250,000
	18Feb02	4 Purchasers	First Canadian Gold Corporation Inc. - Convertible Debentures	\$295,000	\$295,000
	14Feb02	Weaver & Associates and 1114377 Ontario Inc.	Gametele Systems Inc. - Common Shares	25,275	280,844
	06Feb02	Nixon, Brian	KBSH Private - Money Market Fund - Units	500,000	50,000
	06Feb02	Nixon, Brian	KBSH Private - Canadian Equity Fund - Units	200,000	13,506
	05Feb02	Latham, Colin	KBSH Private - Money Market Fund - Units	550,000	55,000
	06Feb02	Zacharias, John	KBSH Private - US Equity Fund - Units	268,981	17,120
	06Feb02	Nixon, Brian	KBSH Private - US Equity Fund - Units	300,000	19,076
	22Feb02	11 Purchasers	Kinetic Energy Inc. - Common Shares	500,000	5,000,000
	31Dec01	23 Purchasers	Kingwest Avenue Portfolio - Units	2,312,050	115,003
	15Jan02	3 Purchasers	Kingwest Avenue Portfolio - Units	213,395	10,724
	31Jan02	12 Purchasers	Kingwest Avenue Portfolio - Units	791,327	39,635
	31Dec01	Smith, M and 980235 Ontario Ltd.	Kingwest U.S. Equity Portfolio - Units	151,370	14,962

**Notice of Exempt Financings**

<u>Trans.</u>	<u>Date</u>	<u>Purchaser</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
	20Dec01	CMP 2001 Resource Limited Partnership and CMP 2001 II Resource Limited Partnership	KWG Resources Inc. - Common Shares	480,000	6,000,000
	01Jan01 to 01Mar01		Montrachet Investments Limited Partnership - Partnership Units	1,000,000	100,000
	02Jan01		Montrachet Investments Limited Partnership - Partnership Units	2,450,000	245,000
	05Feb02	4 Purchasers	Navaho Networks Inc. - Common Shares	400,000	400,000
	12Feb02	MTAX 2001 (No. 1) Mineral Limited Partnership	Pacific North West Capital Corp. - Units	103,749	188,636
	13Feb02	10 Purchasers	Patrician Consolidated Gold Mines Ltd. - Units	145,000	725,000
	20Feb02	Altamira Management	# Penn National Gaming, Inc. - Common Stock	630,672	13,000
	08Nov01		Republic of Panama - 8.25% Notes Due April 22/08	\$3,197,261	\$3,197,261
	07Feb02	Innovium Capital Corp	Rx-Rite.Com Inc. - Units	11,086	5,543
	15Feb02	3 Purchasers	Sciometric Instruments Inc. - Class D Preferred Shares and Debentures	1,000,000, \$2,000,000	2,889,447, \$2,000,000 Resp.
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 219 Limited Partnership - Class A Limited Partnership Units	313,885	313
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 248 Limited Partnership - Class A Limited Partnership Units	206,204	206
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 208 Limited Partnership - Class A Limited Partnership Units	343,241	343
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 232 Limited Partnership - Class A Limited Partnership Units	700,720	700
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 255 Limited Partnership - Class A Limited Partnership Units	248,924	248
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 244 Limited Partnership - Class A Limited Partnership Units	1,005,598	1,005
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 239 Limited Partnership - Class A Limited Partnership Units	130,119	130
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 195 Limited Partnership - Class A Limited Partnership Units	272,229	272
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 115 Limited Partnership - Class A Limited Partnership Units	1,639,836	1,639
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 52 Limited Partnership - Class A Limited Partnership Units	832,005	823
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 260 Limited Partnership - Class A Limited Partnership Units	224,840	224
	15Feb02	SHAAE (2001) Master Limited Partnership	Sentinel Hill No. 255 Limited Partnership - Class A Limited Partnership Units	553,997	553
	28Dec01	8 Purchasers	Spotwave Wireless Inc. - Shares of Series B Preferred Stock	13,516,700	19,173,423
	28Dec01	4 Purchasers	Spotwave Wireless Canada Inc. - Series B Preferred Shares	5,565,700	7,912,162
	15Feb02	5 Purchasers	St Andrew Goldfields Ltd. - Units	922,210	5,850,000
	08Feb02	McCutcheon Comber Investment Management Inc. and Canada Dominion Resources LP III	Terraquest Energy Corporation - Common Shares	150,000	750,000
	08Feb02	Hewson, Wendy and Stinson, Peter K.	The KBSH Goodwood Canadian Long/Short Fund - Units	9,000	878
	20Sep01		The Dominican Republic - 9½% Bonds due 2006	\$6,228,557	\$6,228,557
	15Feb02	Royal Precious Metals Fund	Thistle Mining Inc. - Units	1,600,000	8,000,000
	19Feb02	3 Purchasers	Ultravision Corporation - Secured Series A Convertible Debentures	\$231,352	\$231,352

**Notice of Exempt Financings**

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<u>Trans.</u>				
<u>Date</u>	<u>Purchaser</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
15Feb02	The Canada Life Assurance Company	Yonge York Holdings Inc. - 6.29% First Mortgage Bond	\$27,000,000	\$27,000,000
15Feb02	5 Purchasers	ZTEST Electronics Inc. - Convertible Debenture	261,875	261,875

**Notice of Intention to Distribute Securities and Accompanying Declaration under Section 2.8 of Multilateral Instrument 45-102 Resale of Securities - Form 45-102F3**

<u>Seller</u>	<u>Security</u>	<u>Amount</u>
Paros Enterprises Limited	Aktion Corporation - Common Shares	2,000,000
Greenberg, Ian	Astral Media Inc. - Class A Non-Voting Shares	125,000
Greenberg, Sidney	Astral Media Inc. - Class A Non-Voting Shares	92,500
Mullan, Glenn J.	Canadian Royalties Inc. -	333,500
Larry, Melnick	Champion Natural Health.com Inc. - Subordinate Voting Shares and Multiple Voting Shares	60,190, 217,758 Resp.
Kruzick, John H.	DRC Resources Corporation - Common Shares	404,900
Black, Conrad M.	Hollinger Inc. - Series II Preference Shares	1,611,039
The Schad Foundation	Husky Injection Moulding Systems Ltd. - Common Shares	1,100,000
1461940 Ontario Inc.	Husky Injection Moulding Systems Ltd. - Common Shares	400,000
Six-M-Enterprises (1993) Ltd.	Mullen Transportation Inc. - Common Shares	1,000,000
ONCAN Canadian Holdings Ltd.	Onex Corporation - Subordinate Voting Shares	999,900
Ontex Resources Limited	Pifher Resources Inc. - Common Shares	200,000
Targa Group Inc.	Plaintree Systems Inc. - Common Shares	7,355,165



**Chapter 9**  
**Legislation**

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## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

Agrium Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated March 6th, 2002  
Mutual Reliance Review System Receipt dated March 6th, 2002

**Offering Price and Description:**

US\$110,3200,000 - 11,200,000 Common Shares @ \$US9.85 per Common Share

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

Scotia Capital Inc.  
RBC Dominion Securities Inc.  
Banc of America Securities Canada Co.  
TD Securities Inc.

**Promoter(s):**

-

**Project #426650**

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**Issuer Name:**

AltaRex Corp.

**Type and Date:**

Preliminary Prospectus dated March 5th, 2002  
Received on March 7th, 2002

**Offering Price and Description:**

Up to 1,000 Units (each Unit Consisting of \* Common Shares and 250 Shares Purchase Warrants)  
Issuable Upon the Automatic Conversion of up to 1,000 Special Warrants

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

-

**Promoter(s):**

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**Project #426586**

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**Issuer Name:**

Axcan Pharma Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated February 28th, 2002  
Mutual Reliance Review System Receipt dated March 1st, 2002

**Offering Price and Description:**

US\$ \* - 4,500,000 Common Shares @ US\$ \* per Common Share

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

JP Morgan Securities Inc.  
National Bank Financial Inc.

**Promoter(s):**

-

**Project #425457**

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**Issuer Name:**

Bell Nordiq Income Fund  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Prospectus dated March 6th, 2002  
Mutual Reliance Review System Receipt dated March 6th, 2002

**Offering Price and Description:**

\* - \* Units @ \$10.00 per Unit

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

RBC Dominion Securities Inc.  
National Bank Financial Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
Scotia Capital Inc.  
TD Securities Inc.

**Promoter(s):**

Bell Canada

**Project #426444**

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**Issuer Name:**

Cambior Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated March 4th, 2002  
Mutual Reliance Review System Receipt dated March 5th, 2002

**Offering Price and Description:**

\$27,750,000 -21,346,154 Common Shares and 10,673,077 Common Share Purchase Warrants (issuable upon the exercise of 21,346,154 Special Warrants)

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

Sprott Securities Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.

**Promoter(s):**

-

**Project #425889**

**Issuer Name:**

Corridor Resources Inc.

**Type and Date:**

Preliminary Prospectus dated February 28th, 2002  
Mutual Reliance Review System Receipt dated March 1st, 2002

**Offering Price and Description:**

354,000 Common Shares Issuable Upon the Exercise of  
354,000 Class A Special Warrants and  
1,012,500 Common Shares issuable Upon the Exercise of  
1,012,500 Class B Special Warrants

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

Jennings Capital Inc.

**Promoter(s):**

-

**Project #425049**

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**Issuer Name:**

Davis + Henderson Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated March 4th, 2002  
Mutual Reliance Review System Receipt dated March 5th, 2002

**Offering Price and Description:**

\$\* - 18,965,792 Units @ \$ \* per Unit

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

CIBC World Markets Inc.  
Scotia Capital Inc.  
BMO Nesbitt Burns Inc.  
TD Securities Inc.  
RBC Dominion Securities Inc.  
Griffiths McBurney & Partners  
Merrill Lynch Canada Inc.

**Promoter(s):**

MDC Corporation Inc.

**Project #425860**

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**Issuer Name:**

imaxx Money Market Fund  
imaxx Canadian Fixed Income Fund  
imaxx Canadian Fixed Pay Fund  
imaxx Canadian Equity Growth Fund  
imaxx Canadian Equity Value Fund  
imaxx US Equity Growth Fund  
imaxx US Equity Value Fund  
imaxx Global Companies Fund  
imaxx Global Sectors Fund  
imaxx TOP Conservative Portfolio  
imaxx TOP Balanced Portfolio  
imaxx TOP RSP Balanced Portfolio  
imaxx TOP Growth Portfolio  
imaxx TOP RSP Growth Portfolio  
imaxx TOP Aggressive Growth Portfolio  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectuses dated March 1st, 2002  
Mutual Reliance Review System Receipt dated March 4th, 2002

**Offering Price and Description:**

Offering A and F Class Units and Offering of A Class Units

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

AEGON Dealer Services Canada Inc.

**Promoter(s):**

AEGON Fund Management Inc.

**Project #425164**

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**Issuer Name:**

KBSH Leaders Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated March 4th, 2002  
Mutual Reliance Review System Receipt dated March 5th, 2002

**Offering Price and Description:**

\$ \* - \* @\$25.00 per Unit -

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

RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
National Bank Financial Inc.  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
Canaccord Capital Corporation  
Desjardins Securities Inc.  
Dundee Securities Corporation  
Yorkton Securities Inc.

**Promoter(s):**

KBSH Capital Management Inc.

**Project #426096**

**Issuer Name:**

Mosaic Group Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated March 4th, 2002  
Mutual Reliance Review System Receipt dated March 4th, 2002

**Offering Price and Description:**

\$45,600,000 - 12,000,000 Common Shares @ \$3.80 per Common Share

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

Yorkton Securities Inc.  
Scotia Capital Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
HSBC Securities (Canada) Inc.  
TD Securities Inc.

**Promoter(s):**

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**Project #425784**

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**Issuer Name:**

The Forzani Group Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated March 4th, 2002  
Mutual Reliance Review System Receipt dated March 4th, 2002

**Offering Price and Description:**

\$39,500,000 - 2,500,000 Common Shares @ \$15.80 per Common Share

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

National Bank Financial Inc.  
Scotia Capital Inc.  
BMO Nesbitt Burns Inc.

**Promoter(s):**

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**Project #425825**

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**Issuer Name:**

Viking Energy Royalty Trust  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated March 4th, 2002  
Mutual Reliance Review System Receipt dated March 4th, 2002

**Offering Price and Description:**

\$17,125,000 - 2,500,000 Trust Units @ \$6.85 per Trust Unit

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

Scotia Capital Inc.  
CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
TD Securities Inc.  
Raymond James Ltd.

**Promoter(s):**

-

**Project #425896**

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**Issuer Name:**

YM BioSciences Inc.  
Principal Regulator - Ontario

**Type and Date:**

Amended Preliminary Prospectus dated March 5<sup>th</sup>, 2002  
Mutual Reliance Review System Receipt dated March 6th, 2002

**Offering Price and Description:**

Minimum of \$ \*, Maximum of \$\* - Class B Preferred Shares, Series I

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

Canaccord Capital Corporation

**Promoter(s):**

-

**Project #423876**

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**Issuer Name:**

Frontiers U.S. Equity RSP Pool (Formerly Merrill Lynch Frontiers U.S. Equity RSP Pool)  
Frontiers U.S. Equity Pool (Formerly Merrill Lynch Frontiers U.S. Equity Pool)

Frontiers International Equity RSP Pool (Formerly Merrill Lynch Frontiers International Equity RSP Pool)

Frontiers International Equity Pool (Formerly Merrill Lynch Frontiers International Equity Pool)

Frontiers Global Bond Pool (Formerly Merrill Lynch Frontiers Global Bond Pool)

Frontiers Emerging Markets Equity Pool (Formerly Merrill Lynch Frontiers Emerging Markets Equity Pool)

Frontiers Canadian Short Term Income Pool (Formerly Merrill Lynch Frontiers Canadian Short Term Income Pool)

Frontiers Canadian Fixed Income Pool (Formerly Merrill Lynch Frontiers Canadian Fixed Income Pool)

Frontiers Canadian Equity Pool (Formerly Merrill Lynch Frontiers Canadian Equity Pool)

Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Simplified Prospectus and Annual Information Form dated February 28th, 2002, amending and restating Simplified Prospectus and Annual Information Form dated November 26th, 2001

Mutual Reliance Review System Receipt dated 1<sup>st</sup> day of March, 2002

**Offering Price and Description:**

Class A and F Units

**Underwriter(s) or**

CIBC Securities Inc..

**Promoter(s):**

CM Investment Management Inc.

**Project #394370**

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**Issuer Name:**

Renaissance Tactical Allocation RSP Fund (Formerly Merrill Lynch Triple A 50 RSP Fund)  
Renaissance Tactical Allocation Fund (Formerly Merrill Lynch Triple A 50 Fund)  
Renaissance Global Growth RSP Fund (Formerly Merrill Lynch Global Growth RSP Fund)  
Renaissance Global Technology RSP Fund (Merrill Lynch Global Technology RSP Fund)  
Renaissance Global Technology Fund (Formerly Merrill Lynch Global Technology Fund)  
Renaissance Select International Growth RSP Fund (Formerly Merrill Lynch Select International Growth RSP Fund)  
Renaissance Select Global Value RSP Fund (Formerly Merrill Lynch Select Global Value RSP Fund)  
Renaissance Global Sectors RSP Fund (Formerly Merrill Lynch Global Sectors RSP Fund)  
Renaissance Global Sectors Fund (Formerly Merrill Lynch Global Sectors Fund)  
Renaissance Canadian Balanced Value Fund (Formerly Merrill Lynch Canadian Balanced Value Fund)  
Renaissance U.S. Basic Value Fund (Formerly Merrill Lynch U.S. Basic Value Fund)  
Renaissance Global Growth Fund (Formerly Merrill Lynch Global Growth Fund)  
Renaissance Canadian Income Trust Fund (Formerly Merrill Lynch Canadian Income Trust Fund)  
Renaissance Canadian Bond Fund (Formerly Merrill Lynch Canadian Bond Fund)  
Renaissance Canadian Core Value Fund (Formerly Merrill Lynch Canadian Core Value Fund)  
Renaissance U.S. Money Market Fund (Formerly Merrill Lynch U.S. Money Market Fund)  
Renaissance Canadian High Yield Bond Fund (Formerly Merrill Lynch Canadian High Yield Bond Fund)  
Renaissance Canadian Growth Fund (Formerly Merrill Lynch Canadian Growth Fund)  
Renaissance Select Canadian Balanced Fund (Formerly Merrill Lynch Select Canadian Balanced Fund)  
Renaissance Canadian T-Bill Fund (Formerly Merrill Lynch Canadian T-Bill Fund)  
Renaissance Canadian Money Market Fund (Formerly Merrill Lynch Canadian Money Market Fund)  
Renaissance Developing Capital Markets Fund (Formerly Merrill Lynch Developing Capital Markets Fund)  
Renaissance Euro Fund (Formerly Merrill Lynch Euro Fund)  
Renaissance Select International Growth Fund (Formerly Merrill Lynch Select International Growth Fund)  
Renaissance Select Global Value Fund (Formerly Merrill Lynch Select Global Value Fund)  
Renaissance International RSP Index Fund (Formerly Merrill Lynch International RSP Index Fund)  
Renaissance U.S. Fundamental Growth Fund (Formerly Merrill Lynch U.S. Fundamental Growth Fund)  
Renaissance U.S. RSP Index Fund (Formerly Merrill Lynch U.S. RSP Index Fund)  
Renaissance Canadian Small Cap Fund (Formerly Merrill Lynch Canadian Small Cap Fund)  
(Class A and F Units)  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Simplified Prospectus and Annual Information Form dated February 28<sup>th</sup>, 2002, amending and restating the Simplified Prospectus and Annual Information Form dated November

1<sup>st</sup>, 2001

Mutual Reliance Review System Receipt dated 1<sup>st</sup> day of March, 2002

**Offering Price and Description:**

(Class A and F Units)

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

CIBC Securities Inc.

**Promoter(s):**

CM Investment Management Inc.

**Project #390176**

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**Issuer Name:**

Sherwood Mining Corporation  
Principal Regulator - British Columbia

**Type and Date:**

Amendment #1 dated March 1st, 2002 to Prospectus dated December 7th, 2001

Mutual Reliance Review System Receipt dated 5<sup>th</sup> day of March, 2002

**Offering Price and Description:**

-

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

Canaccord Capital Corporation  
Dundee Securities Corporation  
Haywood Securities Inc.

**Promoter(s):**

Raymond P. Antony  
Stephen P. Quin  
James A. Crobie

**Project #398608**

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**Issuer Name:**

Cardiome Pharma Corp  
Principal Regulator - British Columbia

**Type and Date:**

Final Prospectus dated February 28th, 2002

Mutual Reliance Review System Receipt dated 1<sup>st</sup> day of March, 2002

**Offering Price and Description:**

-

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

Sprott Securities Inc.  
Raymond James Ltd.

**Promoter(s):**

-

**Project #419734**

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**Issuer Name:**

ENERGY CONVERSION TECHNOLOGIES INC.

**Type and Date:**

Final Prospectus dated February 25th, 2002

Receipt dated 28<sup>th</sup> day of February, 2002

**Offering Price and Description:**

-

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

Standard Securities Capital Corporation

**Promoter(s):**

Energy Conversion Technology Inc.

**Project #403285**

**Issuer Name:**

Genetronics Biomedical Corporation  
Principal Regulator - British Columbia

**Type and Date:**

Final Prospectus dated February 27th, 2002  
Mutual Reliance Review System Receipt dated 28<sup>th</sup> day of  
February, 2002

**Offering Price and Description:**

-

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

Canaccord Capital Corporation

**Promoter(s):**

-

**Project #417422**

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**Issuer Name:**

Telesystem International Wireless Inc.  
Principal Regulator - Quebec

**Type and Date:**

Final Prospectus dated February 28th, 2002  
Mutual Reliance Review System Receipt dated 28<sup>th</sup> day of  
February, 2002

**Offering Price and Description:**

-

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

-

**Promoter(s):**

-

**Project #410086**

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**Issuer Name:**

Bombardier Inc.  
Principal Regulator - Quebec

**Type and Date:**

Final Short Form Prospectus dated February 28th, 2002  
Mutual Reliance Review System Receipt dated 28<sup>th</sup> day of  
February, 2002

**Offering Price and Description:**

-

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

CIBC World Markets Inc.  
Scotia Capital Inc.  
National Bank Financial Inc.  
BMO Nesbitt Burns Inc.

**Promoter(s):**

-

**Project #423124**

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**Issuer Name:**

Co-Steel Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated March 4th, 2002  
Mutual Reliance Review System Receipt dated 4<sup>th</sup> day of  
March, 2002

**Offering Price and Description:**

-

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

BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
TD Securities Inc.  
Scotia Capital Inc.

**Promoter(s):**

-

**Project #423351**

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**Issuer Name:**

Stantec Inc.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated March 1st, 2002  
Mutual Reliance Review System Receipt dated 1<sup>st</sup> day of  
March, 2002

**Offering Price and Description:**

-

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

Sprott Securities Inc.  
Dundee Securities Corporation  
Acumen Capital Finance Partners Limited  
Lightyear Capital Inc.

**Promoter(s):**

-

**Project #423072**

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**Issuer Name:**

WestJet Airlines Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated February 28th, 2002  
Mutual Reliance Review System Receipt dated 28<sup>th</sup> day of  
February, 2002

**Offering Price and Description:**

-

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

CIBC World Markets Inc.  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
RBC Dominion Securities Inc.  
Merrill Lynch Canada Inc.

**Promoter(s):**

-

**Project #422148**

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**Issuer Name:**

BMO Harris Canadian Growth Equity Portfolio  
BMO Harris Canadian Conservative Equity Portfolio  
BMO Harris Canadian Income Equity Portfolio  
BMO Harris Canadian Corporate Bond Portfolio  
BMO Harris Canadian Total Return Bond Portfolio  
BMO Harris U.S. Growth Portfolio  
BMO Harris U.S. Equity Portfolio  
BMO Harris International Equity Portfolio  
BMO Harris Canadian Special Growth Portfolio  
BMO Harris Canadian Money Market Portfolio  
BMO Harris Canadian Bond Income Portfolio  
BMO Harris Canadian Dividend Income Portfolio  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated March 1st, 2002  
Mutual Reliance Review System Receipt dated 1<sup>st</sup> day of March, 2002

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

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

BMO Investments Inc.

**Promoter(s):**

The Trust Company of Bank of Montreal

**Project #413558**

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**Issuer Name:**

Cartier Global Leaders RSP Fund  
Cartier U.S. Equity Fund  
Cartier Small Cap Cdn. Equity Fund  
Cartier Money Market Fund  
Cartier Global Equity Fund  
Cartier Cdn. Equity Fund  
Cartier Tactical Asset Allocation Fund  
Cartier Bond Fund  
Principal Regulator - Quebec

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated February 25th, 2002  
Mutual Reliance Review System Receipt dated 28<sup>th</sup> day of February, 2002

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

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

Cartier Partners Securities Inc.  
Cartier Partners Financial Services Inc.  
Cartier Partners Financial Ltd.  
Desjardins Trust Investment Services Inc.

**Promoter(s):**

-

**Project #416746**

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**Issuer Name:**

Members Mutual Fund

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated February 25th, 2002  
Receipt dated 1<sup>st</sup> day of March, 2002

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

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

Members Mutual Management Corp.

**Promoter(s):**

Members Mutual Management Corp.  
Member Savings Credit Union Limited  
**Project #416620**

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**Issuer Name:**

Special Opportunities Fund Ltd.  
Multiple Opportunities Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated February 28th, 2002  
Mutual Reliance Review System Receipt dated 4<sup>th</sup> day of March, 2002

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

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

-

**Promoter(s):**

-

**Project #416719**

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**Issuer Name:**

Vision Europe Fund  
Principal Regulator - Quebec

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated March 4th, 2002  
Mutual Reliance Review System Receipt dated 6<sup>th</sup> day of March, 2002

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

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

**Promoter(s):**

-

**Project #418759**

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**Issuer Name:**

Canada Payphone Corporation

**Type and Date:**

Preliminary Prospectus dated November 7<sup>th</sup>, 2000 and Amendment #1 dated January 8<sup>th</sup>, 2001 to Preliminary Prospectus  
Closed 18<sup>th</sup> day of January, 2002

**Offering Price and Description:**

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

**Promoter(s):**

-

**Project #310293**



## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Adroit Investment Management Ltd. Attention: Valmon Arthur Vaillant 2020 Scotia Place 10060 Jasper Avenue Edmonton AB T5J 3R8	Extra Provincial Adviser Investment Counsel & Portfolio Manager	Mar 01/02
New Registration	Bank of America, N.A. Attention: Prema K.R. Thiele c/o Borden Ladner Gervais LLP Scotia Plaza 40 King Street West Toronto ON M2H 3Y4	International Adviser Investment Counsel & Portfolio Manager	Mar 04/02
New Registration	Faraday Financial Corporation Attention: Richard Stephen Wernham Suite 900 90 Adelaide Street West Toronto ON M5H 3V9	Limited Market Dealer Investment Counsel & Portfolio Manager	Mar 04/02
New Registration	A. B. Watley, Inc. Attention: Robert Malin 40 Wall Street 28 <sup>th</sup> Floor New York NY 10005-1301 USA	International Dealer	Mar 05/02
New Registration	Bear, Stearns International Limited Attention: Andrew Sowter One Canada Square London England E14 5AD	International Dealer	Mar 05/02
New Registration	Benedetto, Gartland & Company Attention: Russell P. Pennoyer 1330 Avenue of the Americas New York NY 10019 USA	International Dealer	Mar 05/02
New Registration	Loewen & Partners Corporate Services Inc. Attention: Charles Barnard Loewen 500 Avenue Road Suite 701 Toronto ON M4V 2J6	Limited Market Dealer	Mar 05/02
Suspension of Registration	Investment and Tax Counsel Corp.	Mutual Fund Dealer Limited Market Dealer	Mar 05/02

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Chapter 13

**SRO Notices and Disciplinary Proceedings**

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Chapter 25  
**Other Information**

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