The Ontario Securities Commission

OSC Bulletin

February 28, 2003

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

The Ontario Securities Commission
Cadillac Fairview Tower
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

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

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Carswell
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2075 Kennedy Road
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M1T 3V4

416-609-3800 or 1-800-387-5164

Contact Centre - Inquiries, Complaints:	Fax: 416-593-8122
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One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Relations
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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

FEBRUARY 28, 2003

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

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

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Robert W. Korthals	—	RWK
Mary Theresa McLeod	—	MTM
H. Lorne Morphy, Q.C.	—	HLM
Robert L. Shirriff, Q.C.	—	RLS

SCHEDULED OSC HEARINGS

DATE: TBA	**Robert Thomislav Adzija *et al***
	s. 127
	T. Pratt in attendance for Staff
	Panel: TBA
DATE: TBA	**First Federal Capital (Canada) Corporation and Monte Morris Friesner**
	s. 127
	A. Clark in attendance for Staff
	Panel: TBA
DATE: TBA	**Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited, Pierrepont Trading Inc., BMO Nesbitt Burns Inc.*, John Steven Hawkyard[+] and John Craig Dunn**
	s. 127
	K. Manarin in attendance for Staff
	Panel: TBA
	* BMO settled Sept. 23/02
	[+] settlement hearing Feb. 26/03
February 25 to 28, 2003.	**Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.**
All days10:00 a.m. Except, February 18, 2003 at 2:30 p.m.	s. 127
	Y. Chisholm in attendance for Staff
	Panel: HLM/MTM
April 8 to 25, 2003 excluding April 18, 2003.	**Phoenix Research and Trading Corporation, Ronald Mock and Stephen Duthie**
All days at 10:00 a.m. except April 15, 2003 at 2:30 p.m.	s. 127
	T. Pratt in attendance for Staff
	Panel: TBA

April 14, 2003	**Philip Services Corporation (Motion)**	**ADJOURNED SINE DIE**
10:00 a.m.	s. 127	**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**
	K. Manarin in attendance for Staff	
	Panel: TBA	
May 6, 2003	**Gregory Hyrniw and Walter Hyrniw**	**DJL Capital Corp. and Dennis John Little**
10:00 a.m.	s. 127	**Dual Capital Management Limited, Warren Lawrence Wall, Shirley Joan Wall, DJL Capital Corp., Dennis John Little and Benjamin Emile Poirier**
	Y. Chisholm in attendance for Staff	**Global Privacy Management Trust and Robert Cranston**
	Panel: TBA	**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
		Philip Services Corporation
		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
		Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol

1.1.2 Notice of Request for Comments - Proposed Amendments to Rule 61-501 and Policy 61-501CP - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions

NOTICE OF REQUEST FOR COMMENTS

PROPOSED AMENDMENTS TO RULE 61-501 AND POLICY 61-501CP - INSIDER BIDS, ISSUER BIDS, GOING PRIVATE TRANSACTIONS AND RELATED PARTY TRANSACTIONS

The Commission is publishing for comment in today's Bulletin proposed amendments to Rule 61-501 (the "Rule") and Policy 61-501CP (the "Policy").

The Rule provides security holders with enhanced protections when issuers are involved in specified types of transactions. The proposed amendments are primarily intended to clarify grey areas, reduce the necessity for applications for exemptive relief and generally make the Rule more user-friendly. The amendments are also designed to eliminate unnecessary regulatory burdens, particularly for junior issuers.

The Notice and the proposed amended versions of the Rule and Policy are published in Chapter 6 of this Bulletin.

1.1.3 OSC Staff Notice 81-705 Implementation of a Continuous Disclosure Review Program for Investment Funds - Investment Funds Branch

ONTARIO SECURITIES COMMISSION
STAFF NOTICE 81-705

IMPLEMENTATION OF A CONTINUOUS DISCLOSURE REVIEW PROGRAM FOR INVESTMENT FUNDS

INVESTMENT FUNDS BRANCH

The Investment Funds Branch (the "Branch") at the Ontario Securities Commission ("OSC") is responsible for administering regulation of all investment funds. Investment funds include mutual funds, non-redeemable investment funds (defined in OSC Rule 14-501), exchange-traded funds, split share corporations, labour sponsored funds, commodity pools and scholarship plans.

The Branch currently has 14 members including lawyers, accountants, review officers and support staff.

One of the goals of the Branch is to improve continuous disclosure documents for the benefit of investment fund investors. To this end, the Branch published proposed National Instrument 81-106 – Investment Fund Continuous Disclosure on September 20, 2002. As a next step, the Branch will introduce a continuous disclosure review program for all investment funds ("CD Review Program") in March 2003. The purpose of this Notice is to communicate the general features of the CD Review Program.

In addition to monitoring investment funds for timely and complete disclosure of information, the CD Review Program will be used to monitor how investment funds are being managed. This will include checking for compliance with Ontario securities law and how an investment fund is being managed compared to the investment objective and strategies disclosed in the fund's prospectus.

Types of Review

Investment funds will be subject to either a full, issue-oriented or basic review based on selective review criteria. Like the selective review approach to prospectus review, the responsibility for full compliance with applicable securities legislation, policies and practices remains with the investment funds and their managers. The fact that an investment fund has not been selected for review in a given year in no way detracts from such responsibility.

Full Review

A full review would typically include a comprehensive examination of the investment fund's entire disclosure record including financial statements for a minimum of the past two years. In addition to all the prescribed regulatory filings, staff may review other materials that are aimed at investors, such as the fund manager's website and newsletters.

Issue Oriented Review

An issue-oriented review focuses on particular issues. Some of these issues may include valuation, compliance with investment objectives, compliance with conditions of orders (e.g. conflict of interest orders) and incentive fee disclosure.

Basic Review

A basic review ensures all required continuous disclosure documents have been filed in accordance with the requirements of Ontario securities law.

How will investment funds be selected for review?

The CD Review Program will focus on those investment funds whose principal jurisdiction is Ontario.

Investment funds will be selected for review primarily through a risk-based approach. A random selection basis will also be used from time to time to supplement the risk-based selection. Since the selection process is primarily risk-based, some investment funds may be reviewed more frequently than others.

The continuous disclosure review criteria are likely to change frequently as certain disclosure related issues gain greater prominence or as questions are raised about particular accounting issues or disclosure practices.

We do not propose to review all the funds in a fund family unless there is reason to believe that the risks are more widespread. Rather, we intend to select a sample of funds from within a fund family based on our risk assessment.

The following is the current list of continuous disclosure review criteria:

1. Investment Fund's Financial Condition or Results

- The investment fund is experiencing financial difficulty, as indicated by high net redemptions, few liquid assets, high concentration of assets and other financial indicators.
- The investment fund has recently restated or corrected prior years' financial results (e.g., due to a NAV correction).
- The investment fund is not complying with its stated investment objective.
- The investment objective results in significant exposure to small issuers, high-yield (low-grade) bonds.
- The investment fund has investment objectives and strategies akin to a hedge fund.

2. Accounting Methods and Practices

- The investment fund has completed transactions where the accounting treatment is unclear or where staff is aware of divergent views as to accounting practice.

3. Auditor Related Issues

- The auditors' report includes a qualified opinion, non-standard wording or missing information.
- The auditor is terminated or resigns, and the investment fund has disclosed a disagreement, unresolved issue or consultation as described in National Policy Statement 31.
- Previous experience or information available to staff indicates that the investment fund, its auditor or a particular director or officer of the investment fund or the fund manager warrants additional scrutiny.

4. Prior Regulatory Scrutiny

- The investment fund or the fund complex has not recently been the subject of a CD Review by staff of the OSC or another provincial securities regulator.
- The investment fund or fund complex has a history of prior defaults or prior non-compliance with securities requirements.
- Another branch of the Commission, or another regulator, has referred a matter to the attention of the Investment Funds Branch.
- Public complaints, media reports, staff observations or other credible sources indicate that disclosure issues may exist.

What is a Continuous Disclosure Review process?

The following outlines how a typical review would be performed:

- Each review begins with a "desk review". In a desk review, staff will review all relevant filings to identify potential issues that would require additional investigation. During a desk review, the fund will not usually be contacted. If no issue is identified, the review is completed. Essentially, the CD Review Program will not impose cost or resource demands on investment funds that meet all of their regulatory obligations and are managed according to their prospectus disclosure and other representations.
- If the desk review has identified certain issues, then additional information may be requested for further investigation. A letter would be sent to the investment fund advising that it had been selected

for a CD Review. The letter would also outline what information is being requested. We expect the investment funds to provide their response within a specified time frame. Please note that a comprehensive, complete response will allow the Investment Funds Branch to complete the CD review in an effective and timely manner and reduce the amount of follow up work. If necessary, additional comment letters would follow.

How will issues identified in a CD Review be resolved?

Staff will work with the investment fund to resolve issues in a timely manner. Staff will be aggressive in pursuing matters arising from continuous disclosure reviews and in enforcing the requirements of Ontario securities law through all available means. The Investment Funds Branch works closely with the Enforcement Branch when determining the type of regulatory action necessary if staff believes an investment fund has breached Ontario securities law.

What is the impact to the investment funds prospectus review criteria?

The Investment Funds Branch will continue its selective review of prospectus filings. When necessary and appropriate, staff will co-ordinate its work on the two review programs to improve effectiveness and efficiency.

Communication with the industry

At least annually, the Branch will publish the findings of its CD Review Program.

For further information, please contact:

Paul Dempsey
Manager, Investment Funds
416-593-8091
pdempsey@osc.gov.on.ca

Anne Ramsay
Senior Accountant, Investment Funds
416-593-8243
aramsay@ocs.gov.on.ca

Raymond Chan
Accountant, Investment Funds
416-593-8128
rchan@osc.gov.on.ca

February 28, 2003.

1.1.4 Notice of Request for Comments – Proposed Multilateral Instrument 55-103 – Insider Reporting for Certain Derivative Transactions (Equity Monetization), and Proposed Companion Policy 55-103CP – Insider Reporting for Certain Derivative Transactions (Equity Monetization)

NOTICE OF REQUEST FOR COMMENTS

PROPOSED MULTILATERAL INSTRUMENT 55-103 – *INSIDER REPORTING FOR CERTAIN DERIVATIVE TRANSACTIONS (EQUITY MONETIZATION)*, AND

PROPOSED COMPANION POLICY 55-103CP – *INSIDER REPORTING FOR CERTAIN DERIVATIVE TRANSACTIONS (EQUITY MONETIZATION*)

The Commission is publishing in Chapter 6 of today's Bulletin a Notice requesting comments on the following:

- Proposed Multilateral Instrument 55-103 – *Insider Reporting for Certain Derivative Transactions (Equity Monetization*); and
- Proposed Companion Policy 55-103CP – *Insider Reporting for Certain Derivative Transactions (Equity Monetization*).

1.2 Notices of Hearing

1.2.1 Marlene Berry et al. - 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
MARLENE BERRY, ALLAN EIZENGA, GUY FANGEAT, RICHARD JULES FANGEAT, MICHAEL HERSEY, BRIAN LAWRENCE, LUKE JOHN MCGEE, JOHN NEWMAN, NORMAND RIOPELLE AND ROBERT LOUIS RIZZUTO

AMENDED NOTICE OF HEARING
(Section 127 and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act,* R.S.O. 1990, c. S.5, as amended (the "Act") in the Main Hearing Room, 17th Floor, 20 Queen Street West, Toronto, Ontario on March 5, 2003 at 11:00 a.m. or as soon thereafter as the hearing can be held;

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

(a) that the registration of the respondent Robert Louis Rizzuto be terminated or suspended or restricted for such period as specified by the Commission or that terms and conditions be imposed on his registration;

(b) that trading in any securities by the respondents cease permanently or for such period as is specified by the Commission;

(c) prohibiting the respondents from becoming or acting as a director or officer of any issuer permanently or for such period as specified by the Commission;

(d) reprimanding the respondents;

(e) requiring the respondents to pay the costs of the Commission's investigation and the hearing; and

(f) such other order as the Commission may deem appropriate.

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

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

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

February 7, 2003.

"John Stevenson"

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

AND

IN THE MATTER OF
MARLENE BERRY, ALLAN EIZENGA, GUY FANGEAT, RICHARD JULES FANGEAT, MICHAEL HERSEY, BRIAN LAWRENCE, LUKE JOHN MCGEE, JOHN NEWMAN, NORMAND RIOPELLE and ROBERT LOUIS RIZZUTO

AMENDED STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

THE RESPONDENTS

1. Marlene Berry ("Berry") is an individual who resides in Belmont, Ontario. Berry has never been registered with the Ontario Securities Commission (the "Commission") to trade in securities.

2. Allan Eizenga ("Eizenga") is an individual who resides in Milton, Ontario. Eizenga has never been registered with the Commission to trade in securities.

3. Guy Fangeat ("G. Fangeat") is an individual who resides in British Columbia. G. Fangeat has never been registered with the Commission to trade in securities.

4. Richard Jules Fangeat ("Fangeat") is an individual who resides in Sparta, Ontario. During the material time, Fangeat was registered with the Commission. Fangeat has not been registered with the Commission since December 29, 1998.

5. Michael Hersey ("Hersey") is an individual who resides in London, Ontario. Hersey has never been registered with the Commission to trade in securities.

6. Brian Lawrence ("Lawrence") is an individual who resides in St. Thomas, Ontario. Lawrence has never been registered with the Commission to trade in securities.

7. Luke John McGee ("McGee") is an individual who resides in Pointe Claire, Quebec. McGee has never been registered with the Commission to trade in securities.

8. John Newman ("Newman") is an individual who resides in Lachine, Quebec. Newman has never been registered with the Commission to trade in securities.

9. Normand Riopelle ("Riopelle") is an individual who resides in Mount Brydges, Ontario. Riopelle has never been registered with the Commission to trade in securities.

10. Robert Louis Rizzuto ("Rizzuto") is an individual who resides in Oakville, Ontario. Rizzuto is registered with the Commission to sell mutual fund securities and limited market products.

THE DISTRIBUTION OF THE SAXTON SECURITIES

11. Saxton Investment Ltd. ("Saxton") was incorporated on January 13, 1995. Eizenga was Saxton's registered director. Saxton and Eizenga established numerous other corporations. The respondents McGee, Fangeat, Riopelle and Rizutto were officers and/or directors in several of such companies.

12. Between January 1995 and September 1998, the respondents sold to Ontario investors securities of one or more of the following companies (the "Offering Corporations"):

The Saxton Trading Corp.
The Saxton Export Corp.
The Saxton Export (II) Corp.
The Saxton Export (III) Corp.
The Saxton Export (IV) Corp.
The Saxton Export (V) Corp.
The Saxton Export (VI) Corp.
The Saxton Export (VII) Corp.
The Saxton Export (VIII) Corp.
The Saxton Export (IX) Corp.
The Saxton Export (X) Corp.
The Saxton Export (XI) Corp.
The Saxton Export (XII) Corp.
The Saxton Export (XIII) Corp.
The Saxton Export (XIV) Corp.
The Saxton Export (XV) Corp.
The Saxton Export (XVI) Corp.
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The Saxton Export (XXXIV) Corp.
The Saxton Export (XXXV) Corp.
The Saxton Export (XXXVI) Corp.
The Saxton Export (XXXVII) Corp.

The Saxton Export (XXXVIII) Corp.

13. All of the Offering Corporations were incorporated pursuant to the laws of Ontario. The respondents' sales of shares of the Offering Corporations (the "Saxton Securities") constituted trades in securities of an issuer that had not been previously issued.

14. The distribution of the Saxton Securities contravened Ontario securities law. None of the Offering Corporations filed a preliminary prospectus or a prospectus with the Commission. No Offering Corporation was issued a receipt for a prospectus by the Commission.

15. The Offering Corporations purported to rely on the "seed capital" prospectus exemption contained in subparagraph 72(1)(p) of the *Securities Act,* R.S.O. 1990, c. S.5 (the "Act"). Neither this exemption, nor any other prospectus exemption, was available to them.

16. None of the exemptions from the registration requirements in Ontario securities law was available for the sale of the Saxton Securities.

HERSEY'S CONDUCT

(a) Sale of the Saxton Securities

17. Hersey participated in the illegal distributions, and engaged in unregistered trading, of the Saxton Securities. Between 1995 and 1996, Hersey sold in excess of $2 million worth of the Saxton Securities to over 30 Ontario investors. Many of the clients to whom Hersey sold the Saxton Securities had purchased insurance products from him and trusted him implicitly.

18. Hersey did not make the appropriate independent inquiries and conduct the necessary due diligence before he sold the Saxton Securities to his clients.

19. Hersey failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. None of his clients received an Offering Memorandum prior to purchasing the Saxton Securities. The only documentation provided to clients by Hersey was vague promotional material prepared by Saxton.

20. Hersey misrepresented to his clients the nature and quality of the Saxton Securities. Among other things, Hersey told certain investors that the Saxton products were guaranteed notwithstanding that the Offering Memoranda described them as "speculative". He also misrepresented the terms under which the investment could be liquidated.

21. Hersey earned a 5% commission on his sales of the Saxton Securities.

22. Hersey recruited others to become Saxton salespeople. In describing the investment products to such salespeople, Hersey made similar misrepresentations to those described in paragraph 20.

(b) Sale of SecurCorp Financial Inc. Securities

23. In or about December 1992, Hersey incorporated Professional Insurance Management Inc. ("Professional Insurance"). Hersey and his wife were the officers of Professional Insurance. Hersey was the company's sole director. Through Professional Insurance, Hersey offered his clients the opportunity to purchase investment products, including that of SecurCorp Financial Inc. ("SecurCorp").

24. SecurCorp was incorporated in September 1996. Hersey was SecurCorp's sole officer and director. SecurCorp offered investors a high yield guaranteed investment product and an interest in SecurCorp's Cuban ventures (the "SecurCorp Securities").

25. The distribution of the SecurCorp Securities contravened Ontario securities law. SecurCorp did not file a preliminary prospectus or a prospectus with the Commission. Further, none of the prospectus exemptions were available to it.

26. Commencing in or about 1994 and through early 1999, Hersey participated in the illegal distribution, and engaged in unregistered trading, of the SecurCorp Securities. Hersey sold in excess of $200,000 worth of such securities to Ontario investors. He earned commissions on such sales.

27. Some of the clients who purchased the SecurCorp Securities had previously purchased the Saxton Securities from Hersey. Once Hersey's relationship with Saxton terminated in or about late 1996, Hersey recommended to certain clients that they transfer their money from Saxton to SecurCorp.

28. Hersey failed to provide his clients with access to substantially the same information concerning the SecurCorp Securities that a prospectus filed under the Act would provide. None of Hersey's clients received an Offering Memorandum in connection with their purchase of such Securities.

29. Hersey misrepresented to his clients the nature and quality of the SecurCorp Securities. He told clients that such investments were guaranteed and fully insured.

30. In certain cases, he misrepresented in which vehicle clients' monies had been invested. He also moved clients' money from SecurCorp to another investment vehicle without their knowledge (see paragraph 37 below).

(c) Sale of the Sussex International Ltd. Securities

31. In or about December 1994, Hersey incorporated Sussex International Ltd. ("Sussex International"). Hersey was Sussex International's sole officer and director.

32. Sussex International was another Saxton vehicle. Sussex International represented to the public that it was investing in the same businesses as the Offering Corporations.

33. Sussex International offered investors the opportunity to purchase shares in the company (the "Sussex International Securities"). The distribution of the Sussex International Securities contravened Ontario securities law. Sussex International did not file a preliminary prospectus or a prospectus with the Commission. Further, none of the prospectus exemptions were available to it.

34. Hersey participated in the illegal distribution, and engaged in unregistered trading, of the Sussex International Securities. Hersey earned commissions on his sales of the Sussex International Securities. Certain of Hersey's clients who purchased the Sussex International Securities also had purchased the Saxton Securities and/or the SecurCorp Securities.

35. Hersey failed to provide his clients with access to substantially the same information concerning the Sussex International Securities that a prospectus filed under the Act would provide. None of Hersey's clients received an Offering Memorandum in connection with their purchase of the Sussex International Securities.

36. Hersey misrepresented to his clients the nature and quality of the Sussex International Securities. Hersey told clients that their investments were guaranteed and RRSP-eligible.

37. In certain cases, Hersey told clients that they had purchased SecurCorp Securities notwithstanding that he had invested their money in Sussex International. In other cases, Hersey transferred clients' money into Sussex International without their knowledge.

(d) Sale of Securities post September 1998

38. In February 1999, Hersey sold Securcorp Securities to an Ontario investor. Hersey engaged in such unregistered trading notwithstanding the commencement of this Commission proceeding against him and in face of a cease trade order dated September 24, 1998.

39. The conduct of Hersey, described in paragraphs 17 through 38, was contrary to Ontario securities law and the public interest.

FANGEAT'S CONDUCT

(a) Fangeat's Sales of the Saxton Securities

40. Fangeat became registered with the Commission to sell mutual fund securities in February 1993. Between December 31, 1996 and May 7, 1997 and July 2, 1997 and December 28, 1998, Fangeat was registered to sell mutual fund securities and limited market products.

41. By 1996, Fangeat also had been licensed with the Financial Services Commission of Ontario to sell life and other insurance products for many years.

42. Fangeat participated in the illegal distributions of the Saxton Securities. Between 1996 and late spring 1998, Fangeat sold, or acted as the financial advisor in connection with, at least $10 million worth of the Saxton Securities to Ontario investors. Many investors had been clients of Fangeat for several years and trusted him implicitly.

43. Fangeat failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Further, he did not make the appropriate independent inquiries and conduct the necessary due diligence before he sold the Saxton Securities to his clients.

44. Fangeat misrepresented to his clients the nature and quality of the Saxton Securities. Among other things, Fangeat marketed and endorsed all the Saxton investment products as no, or low, risk notwithstanding that the Offering Memoranda described the Saxton Securities as "speculative".

45. Fangeat represented to clients that Saxton intended to go public and ultimately would be listed on a recognized stock exchange.

46. Moreover, Fangeat provided clients with account statements which did not reflect the true value of the Saxton Securities.

47. Fangeat failed to adequately assess the suitability of his clients' investments in the Saxton Securities.

48. Fangeat's sales of the Saxton Securities were never processed through his sponsor firm. In or about the summer of 1997, notwithstanding that Fangeat had been told by his then-sponsor that he was not authorized to sell such Securities, he continued to do so.

(b) Fangeat's Role in Saxton's Management

49. Fangeat held the position of marketing officer at Saxton. Ultimately, Fangeat became a Saxton Vice-President. Fangeat was involved in Saxton management discussions and decision-making.

His company, Integrated Planning Services Inc. ("Integrated Planning"), processed subscription agreements, RRSP applications and related paperwork respecting investors' purchases of the Saxton Securities.

50. Fangeat recruited and managed most of the Saxton salespeople and acted as an intermediary between Saxton and its sales representatives. In this role, he made various misrepresentations to Saxton salespeople including:

(i) that they did not need to be registered with the Commission to sell the Saxton Securities;

(ii) that the sales of the Saxton Securities complied with Ontario securities law;

(iii) that the capital invested in Saxton's Guaranteed Investment Certificate/Fixed Dividend Account product was guaranteed;

(iv) that the Saxton investment products were suitable for conservative investors with low risk investment objectives;

(v) that, based on the profitability of Saxton to date, the "Equity Dividend Account" product would provide a 30% rate of return for investors; and

(vi) that a sponsor firm had authorized the sale of the Saxton Securities.

51. Each of the Offering Corporations prepared an Offering Memorandum. Such Memoranda provided little information about Saxton other than the geographic location in which the company conducted business. Fangeat was an officer of several of the Offering Corporations. As such, he failed to scrutinize adequately the accuracy and sufficiency of such Memoranda before they were distributed to salespeople and prospective investors.

52. Saxton distributed to investors quarterly statements. Fangeat knew that the quarterly statements were unsubstantiated by any accounting or financial data in Saxton's possession. Fangeat also knew that the statements misrepresented the value of the shareholders' investments and thus, were misleading to investors and Saxton salespeople

(c) Fangeat's Compensation

53. Fangeat received commissions of at least $500,000 on his sales of the Saxton Securities. He also received a management fee of 2.5% on all Saxton Securities sold. Among other things, Saxton provided Fangeat with a Mercedes Benz as part of his compensation package and paid Integrated Planning's overhead expenses.

(d) Sales of the Sussex International Securities

54. Fangeat participated in the illegal distribution of the Sussex International Securities. Sussex International operated out of Fangeat's Integrated Planning offices.

(e) Failure to Contact the OSC

55. In the late summer of 1997, Saxton received a legal opinion that the distribution of the Saxton Securities contravened Ontario securities law. Despite his knowledge of this opinion, Fangeat did not contact the Commission. Moreover, he continued to participate in the raising of funds from the public through the distribution of the Saxton and Sussex International Securities.

56. Fangeat's conduct, described in paragraphs 40 through 55, was contrary to Ontario securities law and the public interest.

MCGEE'S CONDUCT

57. McGee is a lawyer by training. He was called to the Ontario bar in 1993. In or about 1995, McGee became licensed as an insurance agent with the Financial Services Commission of Ontario. McGee has never been registered with the Commission.

(a) McGee's Management Role

58. McGee became actively involved in the business of Saxton in the summer of 1996. By early 1997, McGee was Saxton's Vice-President. McGee also was an officer and/or a director of several of the Offering Corporations. Eizenga terminated McGee in December 1997.

59. The sales to Ontario investors of the Saxton Securities constituted illegal distributions. Among other things, the Offering Corporations were designed to circumvent the "seed capital" prospectus exemption requirement that sales be made to no more than 25 purchasers. McGee was aware of the corporate structure used by Saxton to distribute its securities. To McGee's knowledge, once one Offering Corporation solicited 25 investors, a new Offering Corporation was created.

60. Each of the Offering Corporations prepared an Offering Memorandum. Such Memoranda provided little information about Saxton other than the geographic location in which the company conducted business. McGee was an officer of several of the Offering Corporations. The Offering Memoranda described McGee as an "investment consultant" and lawyer. McGee failed to scrutinize

adequately the accuracy and sufficiency of such Memoranda before they were distributed to salespeople and prospective investors.

61. McGee provided to salespeople and investors written and oral information concerning Saxton and its operations. In this regard, McGee made various inaccurate and misleading statements. McGee failed to take the necessary steps to verify the accuracy and reliability of such information before distributing it to salespeople and investors.

62. McGee's misrepresentations to the Saxton salespeople included:

(i) that they did not need to be registered with the Commission to sell the Saxton Securities;

(ii) that the sales of the Saxton Securities complied with Ontario securities law;

(iii) that based on the profitability of Saxton to date, the "Equity Dividend Account" product would provide a 30% rate of return for investors;

(iv) that the capital invested in Saxton's "Guaranteed Investment Certificate/Fixed Dividend Account" product was guaranteed; and

(v) information relating to the financial state and health of Saxton.

63. Many of the Saxton salespeople relied on McGee's representations given that he was a Saxton Vice-President and a lawyer. Salespeople, in turn, relayed inaccurate and misleading information McGee provided them to their clients.

64. Saxton distributed to investors quarterly statements. McGee knew that the quarterly statements were unsubstantiated by any accounting or financial data in Saxton's possession. McGee also knew that the statements misrepresented the value of the shareholders' investments and thus, were misleading to investors and Saxton salespeople.

65. Further, McGee knew that Fangeat was making misrepresentations to certain investors. McGee failed to take the appropriate steps to curtail Fangeat's activity or to correct the information provided to investors.

66. In or about mid-1997, McGee became aware that there were significant investor funds for which Saxton could not account. McGee failed to alert the Commission and/or any other law enforcement agency and did not take appropriate steps to stop the sale of the Saxton Securities.

67. Ultimately, McGee sought legal advice and was told that Saxton was engaged in serious securities violations. Notwithstanding this knowledge, McGee failed to:

(i) approach the Commission; and

(ii) instruct the Saxton salespeople to stop selling the Saxton Securities.

(b) McGee's Sales of the Saxton Securities

68. Between March and May 1996, McGee sold the Saxton Securities directly to at least 4 Ontario investors for a total amount in excess of $80,000. McGee earned commissions of 5% on such sales.

69. McGee failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Investors were not provided with an Offering Memorandum prior to their purchase of the Saxton Securities and McGee did not otherwise provide adequate information.

70. Moreover, McGee misrepresented to investors that the Saxton Securities was a guaranteed investment product notwithstanding that the Offering Memoranda described such Securities as "speculative".

71. McGee also was involved with the general promotion, solicitation and sale of the Saxton Securities by, among other things, drafting promotional and investor relations material for distribution to prospective investors and discussing with sales representatives and prospective investors the Saxton business and growth potential.

(c) McGee's Compensation

72. In addition to commissions paid on his own direct sales, between the summer of 1996 and early 1997, McGee was paid 2.5% of all monies raised through the purchase of the Saxton Securities. Commencing in February 1997, McGee received a salary for his work with Saxton. In connection with his involvement in Saxton, McGee earned, in approximately one year, in excess of $500,000.

73. By virtue of the conduct described in paragraphs 57 through 72, McGee participated in the illegal distributions of the Saxton Securities and engaged in unregistered trading contrary to section 25 of the Act. No registration exemption was available to him. McGee's conduct was contrary to Ontario securities law and the public interest.

BERRY'S CONDUCT

74. During the material time, Berry worked for Integrated Planning, Professional Management and Sussex International.

75. Between 1996 and 1998, Berry participated in the illegal distributions of the Saxton, SecurCorp and Sussex International Securities for which she was remunerated. Further, she engaged in conduct which constituted "trading" in the Saxton Securities without being registered to do so contrary to section 25 of the Act. No exemption from the registration requirements was available to Berry.

76. Berry met with many of Fangeat's clients and, among other things, had them sign subscription agreements and other documents relating to their purchase of the Saxton Securities. Berry also sent letters to Saxton and Laurentian Bank on behalf of clients giving instructions.

77. All the paperwork concerning the purchase of Saxton Securities was processed through Berry and Integrated Planning. Berry worked closely with Fangeat and was kept fully apprised of the business and management of Saxton.

78. All the paperwork concerning the purchases of Sussex International Securities and SecurCorp Securities was processed through Berry and Sussex International and Professional Management respectively.

79. Berry knew that Hersey was unregistered and that his difficulties with Eizenga related to Hersey's alleged dishonest conduct respecting the handling of investor funds. Notwithstanding this knowledge, Berry worked with Hersey to solicit funds from the investing public.

80. By the late summer 1997/fall 1997, Berry was aware that the distribution of Saxton Securities may not comply with Ontario securities law. Notwithstanding this knowledge, Berry continued to participate in their distribution (and that of Sussex International Securities) and failed to contact the Commission.

81. Berry's conduct, described in paragraphs 74 through 80 above, was contrary to Ontario securities law and the public interest.

RIZUTTO'S CONDUCT

82. Rizzuto was first registered with the Commission to trade mutual fund securities in September 1992. Commencing in January 1997, Rizutto could also trade limited market products.

83. Rizutto participated in the illegal distributions of the Saxton Securities. Each of the Offering Corporations prepared an Offering Memorandum. Such Memoranda provided little information about Saxton other than the geographic location in which the company conducted business. Rizutto was an officer of seven of the Offering Corporations. As such, he failed to scrutinize adequately the accuracy and sufficiency of such Memoranda before they were distributed to salespeople and prospective investors.

84. Between April 1997 and April 1998, Rizzuto sold the Saxton Securities to 7 Ontario investors for a total amount sold of approximately $750,000. He received commissions of approximately $24,000 on such sales.

85. Rizzuto failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Among other things, none of his clients received an Offering Memorandum prior to purchasing the Saxton Securities.

86. Rizzuto misrepresented the nature and quality of the Saxton Securities. He told clients that they were purchasing a low risk guaranteed product. In fact, investors were purchasing shares in Saxton, such securities which were described in the Offering Memoranda as "speculative".

87. Rizzuto failed to adequately assess the suitability of his clients' investments in the Saxton Securities.

88. The sale of the Saxton Securities were not processed through Rizutto's sponsor firm. Rizzuto failed to inform his sponsor that he was engaged in the selling of such products.

89. The conduct of Rizzuto, described in paragraphs 82 through 88 above, was contrary to Ontario securities law and the public interest.

RIOPELLE'S CONDUCT

90. During the material time, Riopelle was a licensed life insurance agent.

91. Riopelle participated in the illegal distributions, and engaged in unregistered trading, of the Saxton Securities. No exemption from the registration requirements was available to him.

92. Riopelle was an officer of nine of the Offering Corporations. Each of the Offering Corporations prepared an Offering Memorandum. Such Memoranda provided little information about Saxton other than the geographic location in which the company conducted business. In his capacity as an officer of certain Offering Corporations, he failed to scrutinize adequately the accuracy and sufficiency of such Memoranda before they were distributed to salespeople and prospective investors.

93. Riopelle sold the Saxton Securities to 8 Ontario investors for a total amount sold of approximately $480,000.00. All such investors were clients who had purchased life and other insurance products previously from Riopelle.

94. Riopelle earned commissions of approximately $24,000 on the sales described in paragraph 93.

95. Riopelle failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Among other things, none of his clients received an Offering Memorandum prior to purchasing the Saxton Securities.

96. Riopelle misrepresented the nature and quality of the Saxton Securities. He told clients that they were purchasing a low risk guaranteed product from Saxton. In fact, investors were purchasing shares in Saxton, such securities which were described in the Offering Memoranda as "speculative".

97. The conduct of Riopelle, described in paragraphs 90 through 96 above, was contrary to Ontario securities law and the public interest.

THE REMAINING RESPONDENTS' CONDUCT

98. In respect of the respondents Eizenga, G. Fangeat, Lawrence and Newman, these individuals acted contrary to Ontario securities law and the public interest by:

    (i) selling the Saxton Securities and thus, participating in such Securities' illegal distribution; and

    (ii) trading in securities without being registered with the Commission and with no available exemption from the registration requirements of Ontario securities law.

99. Such other allegations as Staff may make and the Commission may permit.

February 7, 2003.

1.3 News Releases

1.3.1 OSC Finds Terry G. Dodsley Traded and Advised in Securities Without Registration

FOR IMMEDIATE RELEASE
February 21, 2003

OSC FINDS TERRY G. DODSLEY TRADED AND ADVISED IN SECURITIES WITHOUT REGISTRATION

TORONTO – An Ontario Securities Commission panel found that Terry G. Dodsley, who has never been registered with the OSC in any capacity, has traded and advised in securities contrary to subsections 25(1)(a) and 25(1)(c) of the *Ontario Securities Act* and the public interest.

"The conduct of Dodsley in this matter well demonstrates the need for the requirements found in section 25 of the Act," said the independent panel in its decision issued February 20, 2003. "His activities in advising and promoting the acquisition of commodities and other specific securities, and suggesting unreasonable returns with little or no risk can only be described as dangerous and contrary to the public interest. The conduct and lack of judgement exhibited by Dodsley should be considered if he ever seeks to be a registrant under the Act."

The panel ordered that Dodsley cease trading, directly or indirectly, in any securities for a period of ten years, except for trading directly in securities beneficially owned by him for his own personal account.

Staff have made an application to make further submissions in this matter.

For Media Inquiries: Eric Pelletier
Manager, Media Relations
416-595-8913

For Investor Inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.3.2 OSC Issues Amended Notice of Hearing and Statement of Allegations in the Saxton Matter

FOR IMMEDIATE RELEASE
February 26, 2003

OSC ISSUES AMENDED NOTICE OF HEARING AND STATEMENT OF ALLEGATIONS IN THE SAXTON MATTER

TORONTO – Staff of the Ontario Securities Commission amended its Notice of Hearing and Statement of Allegations against several respondents in the Saxton matter. Of the original respondents, fifteen have entered into settlement agreements with Staff namely: Robert Adzija, Larry Ayres, David Bending, Douglas Cross, Allan Dorsey, George Holmes, Todd Johnston, Michael Kennelly, John Kirby, Ernest Kiss, Arthur Krick, Frank Latam, Ron Masschaele, Randall Novak and Michael Vaughan. The Commission approved all settlements.

The remaining respondents participated, to varying degrees, in the illegal distributions of the Saxton securities and engaged in other conduct contrary to Ontario securities law and the public interest. Certain respondents also face allegations relating to their involvement in the sale of the Sussex International (Marlene Berry, Michael Hersey and Richard Fangeat) and SecurCorp Financial Inc. (Marlene Berry and Michael Hersey) securities.

The first appearance before the Commission is scheduled for March 5, 2003 at 11 a.m.

Copies of the Amended Notice of Hearing and Amended Statement of Allegations of Staff of the Commission are available on the Commission's website www.osc.gov.on.ca or from the Commission offices at 20 Queen Street West, 19th Floor, Toronto.

For Media Inquiries: Eric Pelletier
Manager, Media Relations
416-595-8913

For Investor Inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.3.3 CPAB Council of Governors Media Release - Financial Authorities Announce Appointments to New Audit Oversight Board

FOR IMMEDIATE RELEASE
February 26, 2003

FINANCIAL AUTHORITIES ANNOUNCE APPOINTMENTS TO NEW AUDIT OVERSIGHT BOARD

TORONTO - Gordon Thiessen, founding Chair of the Canadian Public Accountability Board (CPAB) and former Governor of the Bank of Canada, and David Brown, Chair of the Council of Governors of the CPAB as well as Chair of the Ontario Securities Commission, today announced the names of the directors appointed to the Board of the CPAB. These appointments are for an initial term of 3 years.

The new directors are:

- Raymond Bachand, managing partner and CEO of SECOR *(Quebec)*
- Bob Bertram, Executive Vice President, Investments, Ontario Teachers Pension Plan Board *(Ontario)*
- Brian Canfield, Chairman, TELUS *(British Columbia)*
- Wendy Dobson, Director, The Institute for International Business, University of Toronto's Joseph L. Rotman School of Management *(Ontario)*
- Ron Gage, Former Chairman and CEO, Ernst & Young *(Ontario)*
- Jacques Mėnard, Chairman of BMO Nesbitt Burns and President of BMO Financial Group *(Quebec)*
- Ted Newall, Chairman of the Board, Nova Chemicals Ltd. *(Alberta)*

Completing the Board of 11 directors are the senior executives of 3 provincial CA institutes:

- Gérard Caron, President, CEO and Secretary General of the Ordre des comptables agréés du Québec
- Steve Glover, Executive Director, The Institute of Chartered Accountants of Alberta
- Brian Hunt, President and CEO, The Institute of Chartered Accountants of Ontario

"I am very impressed with the quality of the individuals we have been able to attract to serve on the Board. This highlights the interest and importance attached to this initiative in Canada," said Mr Thiessen. "The range of expertise and experience brought by the Board members will be invaluable to the CPAB."

"I am delighted with the diversity represented by our Board members, both in terms of their career backgrounds and their regional representation," said David Brown. "This is a very strong team to lead the CPAB in its task of designing and implementing a rigorous system of oversight of the auditing of public companies that will contribute to public confidence in the integrity of financial reporting in Canada."

The CPAB is a new independent organization established to oversee the auditors of public companies. Its mission is to contribute to public confidence in the integrity of financial reporting of Canadian public companies by promoting high quality, independent auditing.

The Council of Governors also includes the Chair of the Canadian Securities Administrators, Douglas Hyndman; the Chair of the Commission des valeurs mobilières du Québec, Pierre Godin; the federal Superintendent of Financial Institutions, Nicholas Le Pan; and the President and CEO of the Canadian Institute of Chartered Accountants, David Smith.

For media enquiries: Eric Pelletier
Manager, Media Relations
Ontario Securities Commission
(416) 595-8913

Barbara Timmins
Commission des valeurs mobilières du Québec
514-940-2176
1-800-361-5072 (Quebec only)

FOR IMMEDIATE RELEASE
February 26, 2003

CPAB COUNCIL OF GOVERNORS BACKGROUNDER

BOARD MEMBER BIOGRAPHIES

Raymond Bachand

Mr Bachand is currently the managing partner and CEO of SECOR, an independent strategy consulting firm. He was President and CEO of the Quebec Solidarity Fund (Fonds de Solidarité du Québec) from 1997 to 2001 after having served in various senior roles since 1994 and as a Director from its creation in 1983 to 1994. The Quebec Solidarity Fund is a leading Canadian labour-sponsored venture and development capital fund. Mr Bachand also worked for 12 years in corporate development with Métro Richelieu, a leading Quebec food distributor, and Culinar, a food manufacturer. Mr Bachand has served on several Boards of Directors including SSQ Financial Group and Gaz Métropolitain and is also active in the community. In addition to numerous past social and cultural involvements, he is currently a Director of the Montreal Symphonic Orchestra Endowment Fund, a Co-Chair of the Tolerance Foundation and President of the Cultural Policy Advisory Group for the City of Montreal. Mr Bachand was called to the Quebec Bar in 1970. He holds a Masters and a Doctorate in Business Administration from the Harvard Business School.

Bob Bertram

A native of Eston, Saskatchewan, Mr Bertram has been the Executive Vice President, Investments, at the Ontario Teachers Pension Plan Board since 1990. He is also a Director of The Cadillac Fairview Corporation Ltd, Maple Leaf Sports & Entertainment Ltd. and a series of other private companies owned by OTPPB. A former Chair of the Pension Investment Association of Canada, he is a past-member of the Financial Services Commission's Investment Advisory sub-Committee and a Director of the Institute of Corporate Directors. Mr Bertram holds a BA from the University of Calgary, an MBA from the University of Alberta and a Chartered Financial Analyst (CFA) designation.

Gérard Caron, FCA, FCMC

Gérard Caron graduated from l'École des Hautes Études Commerciales in 1963 and has been a member of the Ordre des comptables agréés du Québec since 1965. Mr. Caron, FCA, FCMC, has been the President, CEO and Secretary General of the Ordre des comptables agréés du Québec since 1997 after having been director general and secretary general of the Ordre since 1995. A Fellow chartered accountant and Fellow certified management consultant, Mr Caron has spent most of his career in information technology consulting in CA firms and in IT businesses and departments.

He was a consultant in accounting organization with Hydro-Québec and a consultant in organization and methods with the Société Générale de Financement. During his nearly ten years at the Société Générale d'Informatique (SGI) inc., he successively held the positions of senior consultant, partner and vice-president. He subsequently returned to public practice to work with Maheu Noiseux and then with Price Waterhouse where, as a partner, he held senior positions in information systems and management consulting services.

Brian Canfield

Since retiring from his position as Chairman and CEO of BCTEL in 1997 after a career of over 40 years in the telecommunications industry, Mr Canfield has acted as Chairman of BCTEL and is currently the Chairman of TELUS. He has served on the Boards of Royal Trust, Pacific Forest Products and Concord Pacific, and now chairs the Governance Committee of the Toronto Stock Exchange. Other Board involvements include BC Gas Inc., Trans Mountain Pipe Line Co. Ltd, and Suncor Energy. Mr Canfield was educated in British Columbia. He attended the British Columbia Institute of Technology and the Banff School of Advanced Management. In 1997, he became the first businessman to be presented with an Honorary Doctor of Technology by the British Columbia Institute of Technology. Mr Canfield was appointed to the Order of British Columbia in 1998.

Wendy Dobson

Ms Dobson has been Director of the Institute for International Business at the University of Toronto's Joseph L. Rotman School of Management since 1993 and a Professor since 1990. After serving as President of the C.D. Howe Institute, an independent, Canadian, not for profit, economic policy research institution from 1981 to 1987, Ms Dobson was Canada's Associate Deputy Minister of Finance from 1987 to 1989. She was Visiting Fellow at the Institute for International Economics in Washington from 1989 to 1991 and again in 1998. Ms Dobson has had numerous international involvements throughout her career, including as consultant to the United Nations and as Alternate Governor of the International Monetary Fund. Currently a Director of several companies, including TransCanada Pipelines, Toronto Dominion Bank, University of Toronto Press, DuPont Canada, and MDS Inc., Ms Dobson holds a BScN from the University of British Columbia, Masters degrees in Public Administration and in Public Health from Harvard University, and a PhD in Economics from Princeton University. She has written widely on global economic topics and served on numerous advisory committees, both Canadian and international.

Ron Gage

Mr Gage retired in 1999 after a 38-year career at Ernst & Young that led him to become Chairman and CEO from 1993 to 1999. A native of Brantford, Ontario, Mr Gage holds a B.Comm. degree from the University of Toronto and a Chartered Accountancy designation. He became a Fellow of the Institute of Chartered Accountants of Ontario in 1976 and received the Award of Outstanding Merit from the same institution in 1997. Mr Gage is a former President

of the Institute of Chartered Accountants of Ontario, past Chair of the Canadian Institute of Chartered Accountants and also served two terms on the Board of Governors of the Canadian Institute of Chartered Accountants. He served on the Independent Advisory Committee to the Auditor General of Canada from 1983 to 1985 and The Business Council on National Issues from 1993 to 1999. His community involvements have included membership on the Boards of Wilfrid Laurier University, the National Ballet of Canada and the Canadian Association for the Mentally Retarded. He was Chair of the Richard Ivey School of Business Advisory Board from 1998 to 2001. Mr Gage is now a Director of RTO Enterprises, Toromont Industries and several AIM funds.

Steve Glover

Mr Glover MBA FCA is the Executive Director of the Institute of Chartered Accountants of Alberta (ICAA). A native of Ontario, he attended the University of Waterloo where he obtained a Bachelor of Mathematics degree in 1975. He earned his CA designation 1976 and later obtained a Masters of Business Administration degree from the University of Alberta.

Mr Glover began his career with the Institute of Chartered Accountants of Alberta in 1979 in the Student Education area. He became Executive Director in 1984, and four years later was elected a Fellow of the Chartered Accountants. Mr Glover's career has included public accounting in a major firm and lecturing in accounting at the University of Waterloo. He is currently a member of the Canadian Institute of Chartered Accountants (CICA) Council of Senior Executive and serves on the Education Committee of the International Federation of Accountants (IFAC).

Mr Glover's community involvements have included serving as President of the Edmonton Downtown Rotary Club, Director and executive committee member of the Winspear Foundation, Director of the Edmonton Community Foundation, President of the Northern Light Theatre, and Treasurer of the University of Alberta Business Alumni Association. He has been appointed to the Board of Directors of Caritas Health Group. In 2001, Mr Glover was a recipient of a University of Alberta Alumni Association Honour Award and has been named a finalist in the Alberta Venture eAwards, community category.

Brian A. Hunt, FCA

Mr Hunt, FCA was appointed President and CEO of the Institute of Chartered Accountants of Ontario (ICAO) on July 1, 2001 after having served as a member of the ICAO's 2000-01 Council (and re-elected for 2001-02), and a member of the Council's 2000-01 finance committee.

He was elected a Fellow of the Institute in 2000 for his outstanding career achievements.

Mr Hunt came to the ICAO from his former position as President of the Canadian Automobile Association. He represented CAA as a director and/or officer of the International Touring Alliance, the American Automobile Association Traffic Safety Foundation and the Transportation Association of Canada. His earlier positions have included President of Hayward Industrial Products Inc., President of PHH Canada, and Vice-President of Sales and Client Services of PHH's U.S. operations. After receiving a B.Com. from the University of Windsor in 1974, Mr Hunt trained with Coopers and Lybrand in Toronto (CA, 1976) where he worked on engagements with clients in numerous locations including northern Ontario mining company audits.

A frequent guest on public affairs television and radio programs, Mr Hunt is also a frequent presenter at Financial Post and other seminars, and has authored a weekly column, Behind the Wheel, in The Globe and Mail.

Mr Hunt is a resident of Oakville. He is married and has three children.

L. Jacques Ménard, O.C.

Mr Ménard is Chairman of BMO Nesbitt Burns and President, Québec, of BMO Financial Group. During his thirty-year career in the brokerage and investment banking fields, he has served as a Director of a number of industry organisations, including as Chairman of the Investment Dealers Association of Canada, the Montreal Exchange and the Trans-Canada Options Clearing Corporation. Mr Ménard is currently a Director of RONA Inc., Bowater Inc., Ontario Power Generation (OPG), and of nStein Technologies. He was formerly a Chairman of Hydro-Québec and Vice Chairman of Gaz Métropolitain. Mr Ménard serves on the Advisory Board of the Richard Ivey School of Business and on the International Advisory Board of l'École des Hautes Études Commerciales in Montreal. In addition to his current role as Director of The Macdonald Stewart Foundation, Mr Ménard has held leadership positions with, among others, The Board of Trade of Metropolitan Montreal, The Canadian Policy Research Network, Centraide of Greater Montreal (United Way) and Les Grands Ballets Canadiens. He has been recognized for his professional and community achievements by the University of Sherbrooke, the McGill University Faculty of Management and Concordia University's Commerce and Administration Faculty. Mr Ménard became a member of the Order of Canada in 1995 and was promoted to the rank of Officer in 2001. A native of Chicoutimi, he holds a B.A. from College Sainte-Marie, a Bachelor of Commerce from Loyola College and an MBA from the University of Western Ontario, Richard Ivey School of Business.

Ted Newall

Mr Newall has been Chairman of the Board of Nova Chemicals Ltd since 1998 after serving as the President and CEO of Nova Corporation for 7 years. Prior to that, he spent over 30 years with DuPont Canada, becoming President and CEO in 1978 and Chairman of the Board of Directors in 1979. Mr Newall has been actively involved in initiatives to improve business/government cooperation for more than 20 years. He was the founding Chair of the Prime Minister's Advisory Committee on the

Business/Government Executive Exchange Program and is a former Chair of the Conference Board of Canada as well as the Business Council on National Issues. In addition to membership on Boards such as Molsons Ltd, Rio Algom and Canadian Pacific Ltd, Mr Newall has also served on a number of government and industry task forces. Current Board affiliations include Royal Bank of Canada, Maple Leaf Foods and BCE Inc. A native of Holden, Alberta and raised in Prince Albert, Saskatchewan, Mr Newall holds a B.Comm. degree from the University of Saskatchewan, which also awarded him an honorary doctorate of law. Among Mr Newall's many distinctions, he was named CEO of the year in 1993, was made an Officer of the Order of Canada in 1994, was selected International Business Executive of the Year in 1998 and was inducted into the Canadian Business Hall of Fame in 2001.

Gordon G. Thiessen

Mr. Thiessen's 35 years of service at the Bank of Canada culminated in a seven-year term as its Governor from 1994 to 2001. Originally from Saskatchewan Mr. Thiessen holds a PhD in Economics from the London School of Economics and has been awarded honorary doctorates from the University of Saskatchewan and the University of Ottawa. He serves on a number of corporate and other boards, including the Board of Governors of the University of Saskatchewan, where he lectured in economics in 1962, following his undergraduate and graduate studies in economics at that institution. He is the recipient of the government of Sweden's Order of the Polar Star in recognition of the assistance provided by the Bank of Canada to the Swedish central bank. During his tenure as Governor, Mr. Thiessen was recognized as contributing greatly to a more transparent and open Bank of Canada, a record that positions him very well for his new role at the CPAB.

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Truserv Canada Co-operative Inc. - MRRS Decision

Headnote

MRRS application for relief from registration and prospectus requirements in connection with trades in securities of a retailer-owned co-operative to members of another co-operative and to certain customers of that co-operative - purpose of the trades is to foster proposed business alliance between the two co-operatives - members not investors in a conventional sense and share issuance not primarily a financing vehicle for the applicant - relief granted subject to conditions, including first trade restrictions.

Applicable Ontario Statutory Provisions

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

Applicable Rules

Multilateral Instrument 45-102: Resale of Securities.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
MANITOBA AND ONTARIO

AND

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

AND

IN THE MATTER OF
TRUSERV CANADA CO-OPERATIVE INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of Manitoba and Ontario (the "Jurisdictions") has received an application filed on behalf of Truserv Canada Co-operative Inc. (the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the registration requirement and prospectus requirement contained in the Legislation (the "registration and prospectus requirements") shall not apply to trades in securities of Truserv to GROWMARK, Inc. ('GROWMARK"), Ontario GROWMARK Members (as defined below) and Country Depot Dealers (as defined below) pursuant to a proposed business alliance between Truserv and GROWMARK.

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

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;

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

1. TruServ is a co-operative originally incorporated under the *Canada Cooperatives Association Act* by Articles of Association dated January 31, 1992 under the name "Cotter Canada Hardware and Variety Cooperative". The Articles of Association of TruServ were amended by Articles of Amendment dated December 29, 1997 and Articles of Amendment dated May 21, 1999. Pursuant to the Certificate of Supplemental Registration dated July 6, 1999, the name of the cooperative was changed to "TruServ Canada Cooperative Inc." Pursuant to Articles of Amendment dated September 27, 2001, TruServ was continued under the *Canada Cooperatives Act*. Pursuant to Articles of Amendment dated November 18, 2002, TruServ amended its authorized share capital. TruServ's registered and head offices are located in Winnipeg, Manitoba.

2. TruServ is a 100% retailer-owned co-operative with more than 575 member stores across Canada operating under the trade names of True Value Hardware, V&S Department Stores, V&S Opt!ons and Pet Junction. TruServ supplies hardware, tools, paint, electrical, plumbing, lawn and garden, automotive, sporting goods, housewares, stationary, toys, pet food and supplies, domestics, apparel and crafts to its member stores.

3. TruServ is not a reporting issuer in any jurisdiction and none of its securities are listed for trading on any stock exchange.

4. The authorized capital of TruServ is comprised of the following:

   (a) an unlimited number of Class A Membership Shares,

(b) an unlimited number of Class B Investment Shares,

(c) an unlimited number of Class C Investment Shares,

(d) an unlimited number of Class D Investment Shares, and

(e) an unlimited number of Class E Investment Shares.

5. As at the date hereof, there are 9,880 Class A Membership Shares and 62,327 Class B Investment Shares issued and outstanding.

6. Class A Membership Shares evidence membership in TruServ. Holders of such shares have a right to vote, are entitled to receive dividends when, as and if declared thereon by the board of directors of TruServ and, in the event of liquidation, dissolution or winding up of TruServ, are entitled to share the property and assets of TruServ ratably with the holders of Class B Investment Shares, subject to the preference of holders of Class C Investment Shares, Class D Investment Shares and Class E Investment Shares. Class A Membership Shares are also redeemable by TruServ at any time upon payment of the issue price of such shares ($100.00).

7. Class B Investment Shares represent the patronage returns paid to holders of Class A Membership Shares. Holders of such shares have no right to vote (except as provided under the CCA), are not entitled to receive dividends and, in the event of liquidation, dissolution or winding up of TruServ, are entitled to share the property and assets of TruServ ratably with the holders of Class A Membership Shares, subject to the preference of holders of Class C Investment Shares, Class D Investment Shares and Class E Investment Shares. Class B Investment Shares are also redeemable by TruServ at any time upon payment of the issue price for such shares ($100.00).

8. Class C Investment Shares are evidence of capital contributions to TruServ. Holders of such shares have no right to vote (except as provided under the CCA), are entitled to receive dividends when, as and if declared thereon by the board of directors of TruServ, and, in the event of liquidation, dissolution or winding up of TruServ, are entitled to receive an amount equivalent to the redemption price for each share, together with all dividends declared and remaining unpaid on such shares, in priority to amounts distributed to holders of any Class A Membership Shares, Class B Investment Shares or Class D Investments Shares. The Class C Investment Shares are also redeemable by TruServ at any time upon payment of the issue price for such shares. No Class C Investment Shares are issued and there is no intention at this time for such issuance.

9. Class D Investment Shares are evidence of capital contributions to TruServ by the members of a federation (a cooperative of cooperatives). Holders of Class D Investment Shares are entitled to vote for the election of directors of TruServ in conjunction with the holders of Class A Membership Shares and, in the event of liquidation, dissolution or winding up of TruServ, the holders of Class D Investment Shares are entitled to receive an amount equivalent to the redemption price for such share, together with all dividends declared and remaining unpaid on such Class D Investment Shares, in priority to amounts distributed to the holders of any Class A Membership Shares or Class B Investment Shares, but after payment to holders of Class C Investment Shares. The Class D Investment Shares are also redeemable by TruServ at any time upon payment of the issue price for such shares.

10. Class E Investment Shares are evidence of capital contributions to TruServ. Holders of Class E Investment Shares have no right to vote, other than the right to elect one director of TruServ as a separate class in the event the aggregate dollar value of the products purchased by the members of the holder of the Class E Investment Shares from TruServ in either of the two (2) twelve-month fiscal periods of TruServ preceding the election of directors represents at least ten (10%) percent of the total revenue of TruServ in respect of the applicable preceding twelve-month fiscal period. The Class E Investment Shares are also redeemable by TruServ at any time upon payment of the issue price for such shares.

11. GROWMARK is a corporation, which was incorporated under the laws of the State of Delaware in 1962 under the name “FS Services Inc.” (“FS Services Inc.” changed its name to “GROWMARK, Inc.” in 1980. GROWMARK is based in Bloomington, Illinois and has a distribution center and Canadian office located in Mississauga, Ontario.

12. GROWMARK is an “accredited investor” within the meaning of Ontario Securities Commission Rule 45-501 (“OSC 45-501”).

13. GROWMARK carries on business as a federated agricultural co-operative, primarily in the states of Illinois, Wisconsin and Iowa and in the Province of Ontario. It provides products and services to its Agronomy and Consumer Division co-operative members and to Country Depot dealers located in Ontario (the “Country Depot Dealers”).

14. The member companies of GROWMARK consist of approximately 327 agricultural co-operatives

located primarily in Illinois, Wisconsin, Iowa and Ontario. As of the date hereof, there are 27 members of GROWMARK resident in Ontario ("Ontario GROWMARK Members"), each of which is a corporation incorporated under the *Co-operative Corporations Act* (Ontario) (the "OCCA") and approximately 40 Country Depot Dealers located in Ontario.

15. Pursuant to an agreement to be dated on or about January 6, 2003 (the "Agreement"), Truserv will purchase certain assets (primarily the inventory and goodwill of the consumer products business carried on in Canada by GROWMARK), and assume specified liabilities (primarily ongoing contracts), of GROWMARK.

16. In connection with the business alliance, each of the Country Depot Dealers will be offered 20 Class A Membership Shares of TruServ at a price of $100 per share. In addition, each of the Ontario GROWMARK Members will be offered one (1) Class D Investment Share of TruServ at a subscription price of $2,000 per share or, in the event that TruServ determines that issuing Class D Investment Shares to Ontario GROWMARK Members would result in unfavourable tax consequences to TruServ, each of the Ontario GROWMARK Members will be offered 20 Class A Membership Shares at an aggregate subscription price of $2,000. The purpose of the Country Depot Dealers becoming members of TruServ and the Ontario GROWMARK Members becoming shareholders (or members) of TruServ is to facilitate the business alliance and commercial relationship between TruServ and the Country Depot Dealers and between TruServ, GROWMARK and the Ontario GROWMARK Members.

17. The purchase price will be paid by TruServ to GROWMARK partially in cash, and a short term promissory note, partially by way of the assumption of specified liabilities of GROWMARK and partially by way of the issuance of certain securities of TruServ to GROWMARK as follows:

    (a) Class B Investment Shares will be issued to GROWMARK as principal at an issue price of $100.00 per share for 40% of the value of the inventory purchased by Truserv from GROWMARK. The balance of the purchase price which is not paid in cash, or short term promissory notes ("Promissory Notes"), will be satisfied through the assumption of liabilities and through the issuance of shares referred to in paragraphs (b) through (d) below;

    (b) 20 Class A Membership Shares will be issued to GROWMARK as principal at an issue price of $100.00 per share; and

    (c) 1 Class E Investment Share will be issued to GROWMARK at an issue price of $2,000 per share.

    Under the Agreement, TruServ will agree not to redeem the Class A Membership Shares, the Class B Investment Shares or the Class E Investment Shares held by GROWMARK unless GROWMARK is in breach of a material membership obligation owed to TruServ. The Articles of TruServ provide that, in respect of any proposed disposition of shares of TruServ by a shareholder other than a disposition of investment shares from one member of TruServ to another, TruServ has a right of first refusal to purchase shares for the redemption price of such shares.

18. Upon completion of the transactions described above, from time to time TruServ will pay patronage returns to the holders of Class A Membership Shares, including Country Depot Dealers and GROWMARK. The patronage returns paid to GROWMARK will be based upon the aggregate of the patronage of the Ontario GROWMARK Members (who will acquire Class D Investment Shares following the completion of the transactions described in the Agreement and upon the granting of the relief requested herein) with respect to Truserv's goods and services. Truserv will pay patronage returns through the issuance of additional Class B Investment Shares and, after certain capital requirements are met, paid in cash. Since the Class D Investment Shares do not provide the holder thereof to the right to receive patronage returns, the Ontario GROWMARK Members will participate in patronage returns to the extent that they are permitted to do so under their membership arrangements with GROWMARK.

19. The following is a summary of trades in TruServ securities in connection with the Agreement:

    (a) TruServ's issuance to GROWMARK of Class A Membership Shares (the "GROWMARK Class A Trades");

    (b) TruServ's issuance to the Country Depot Dealers of Class A Membership Shares (the "Country Depot Class A Trades");

    (c) TruServ's issuance to GROWMARK of Class B Investment Shares (the "Class B Trades");

    (d) TruServ's issuance of one (1) Class D Investment Share or 20 Class A Membership Shares to each Ontario GROWMARK Member (the "Ontario GROWMARK Member Trades");

(e) TruServ's issuance to GROWMARK of one (1) Class E Investment Share (the "Class E Trade"); and

(f) TruServ's issuance to GROWMARK of the Promissory Notes (the "Promissory Notes Trades").

20. The primary purpose of the ownership of the shares of Truserv by GROWMARK, the Ontario GROWMARK Members and the Country Depot Dealers is not for investment, but for the purpose of facilitating the overall commercial relationship and business alliance between TruServ, GROWMARK and the Ontario GROWMARK Members and between TruServ and the Country Depot Dealers. The Ontario GROWMARK Members will be purchasing consumer products and other goods sold by TruServ for resale to their members on a co-operative basis. The Country Depot Dealers will become full members in TruServ and will purchase consumer products and goods sold by TruServ for resale.

21. The GROWMARK Members and the Country Depot Dealers will be involved in a close business relationship with TruServ and, as such, the prospectus and registration requirements are not necessary with respect to the Country Depot Class A Trades and the Ontario GROWMARK Member Trades.

22. Each of the Ontario GROWMARK Members and the Country Depot Dealers will voluntarily choose whether or not to subscribe, or accept, shares of Truserv.

23. The issue price for each of the Class A Membership Shares and Class D Investment Shares is repayable by TruServ at the time that such shares are redeemed.

24. The Class D Investment Shares entitle the holder thereof to notice of, to attend and to vote at the election of directors of Truserv. Holders of such shares are not entitled to receive any dividends. The Class D Investment Shares have been created and, subject to TruServ determining that such issuance will not have unfavourable tax consequences to it, will be issued to the Ontario GROWMARK Members in order to provide such members with the right to vote at the election of directors of TruServ.

25. In the absence of the relief requested herein, the Country Depot Class A Trades and the Ontario GROWMARK Member Trades would not be exempt from the registration and prospectus requirements of the Legislation.

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

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

THE DECISION of the Decision Makers under the Legislation is that the registration and prospectus requirements do not apply to the Country Depot Class A Trades and the Ontario GROWMARK Member Trades, provided that the first trade in shares issued pursuant to such trades shall be deemed to be a distribution or a primary distribution to the public, as the case may be, unless the conditions in subsections (2) or (3) of section 2.5 of Multilateral Instrument 45-102 Resale of Securities are satisfied or unless such trade are otherwise exempt from the registration and prospectus requirements of the Legislation.

January 31, 2003.

"Doug Brown"

2.1.2 Alexis Nihon Real Estate Investment Trust - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - closed-end real estate investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders pursuant to distribution reinvestment plan whereby distributions are reinvested in additional units of the trust, subject to certain conditions - first trade in additional units deemed a distribution unless made in compliance with MI 45-102.

Applicable Ontario Statutory Provisions

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

Multilateral Instrument Cited

Multilateral Instrument 45-102 Resale of Securities (2001), 24 OSCB 5522.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA, NEW BRUNSWICK, PRICE 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
ALEXIS NIHON REAL ESTATE INVESTMENT TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, and Labrador (the "**Jurisdictions**") has received an application from Alexis Nihon Real Estate Investment Trust (the "**REIT**") 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 REIT pursuant to a distribution reinvestment plan to be implemented by the REIT (the "**DRIP**");

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

AND WHEREAS the REIT has represented to the Decision Makers that:

1. The REIT is an unincorporated closed-end investment trust established under the laws of the Province of Québec pursuant to a contract of trust dated October 18, 2002, as it may be amended, supplemented and/or restated from time to time;

2. The REIT is not a “mutual fund” as defined in the Legislation because the unitholders of the REIT (the “**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 REIT as contemplated in the definition of ‘mutual fund” in the Legislation;

3. The REIT is currently a reporting issuer under the Legislation. On December 13, 2002, the REIT filed a prospectus (final) (the “**Prospectus**”) in connection with an initial public offering (the “**Offering**”) of its units (the “**Units**”) in each of the Jurisdictions. On the same date, the Commission des valeurs mobilières du Québec, on behalf of each Decision Maker, issued a receipt for the Prospectus;

4. Each Unit represents a proportionate undivided ownership interest in the REIT and entitles Unitholders to one vote at any meeting of Unitholders and to participate pro rata in the distributions of the REIT. The REIT is authorized to issue an unlimited number of Units. As of the date hereof, one Unit is issued and outstanding;

5. The REIT has applied to have the Units listed and posted for trading on The Toronto Stock Exchange (the “**TSX**”);

6. The REIT was establish to acquire from the Alexis Nihon group of companies, on or prior to the closing of the Offering, directly and through certain associates of the REIT, up to twenty-five (25) income-producing office, retail, industrial and mixed-use properties, including a multi-family residential property, all located in the Greater Montreal Area, as well as certain other assets related to such properties;

7. The objectives of REIT are to: (i) provide Unitholders with stable and growing cash distributions, payable monthly and to the maximum extent practicable, income tax-deferred, from the REIT’s investments in diversified portfolio of income-producing properties located primarily in the Greater Montreal Area; and (ii) to improve and maximize Unit value through future acquisitions of additional income-producing properties and the

ongoing management of the REIT's properties or interests therein;

8. The REIT intends to distribute to Unitholders monthly on or about the 15th of each calendar month (other than January) and on December 31st of each calendar year, in cash, not less than 85% of its distributable income, for the preceding calendar month, and in the case of distributions made on December 31, for the calendar month then ended;

9. The REIT 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 (the "**Additional Units**") as an alternative to receiving cash distributions. The DRIP will not be available to Unitholders who are not Canadian residents;

10. Distributions due to participants in the DRIP (the "**DRIP Participants**") will be paid to National Bank Trust Inc. in its capacity as agent under the DRIP (in such capacity, the "**DRIP Agent**") and applied to purchase Additional Units. All Additional Units purchased under the DRIP will be purchased by the DRIP Agent directly from the REIT. The price of Additional Units purchased with such cash distributions will be the volume weighted average of the trading price for the Units on the TSX for the five trading days immediately preceding the relevant distribution date. DRIP Participants will receive a further bonus distribution payable in Units (the "**Bonus Units**", the Additional Units and the Bonus Units being hereinafter referred to as "**Plan Units**") equal in value to 3% of each distribution that is reinvested under the DRIP;

11. No commissions, service charges or brokerage fees will be payable by the DRIP Participants in connection with the DRIP and all administrative costs will be borne by the REIT;

12. The Plan Units will be registered in the name of the DRIP Agent, as agent for the DRIP Participants in the DRIP. An account will be maintained by the DRIP Agent or its nominee for each DRIP Participant. Accounts under the DRIP will be maintained in the names on which Units were registered at the time DRIP Participants enrolled in the DRIP;

13. Participation in the DRIP may be terminated by a DRIP Participant at any time except during the time between a distribution record date and the corresponding distribution date, inclusively, by giving written notice to the DRIP Agent;

14. The REIT may amend, suspend or terminate the DRIP at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of the DRIP Participants;

15. Legislation in some of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for reinvestment plans. Such examinations are not available to the REIT because such exemptions are with respect to the distribution of one or more of the following: (i) dividends; (ii) interest; (iii) distributions of capital gains; or (iv) distributions out of earnings or surplus. Technically, the distributions payable to Unitholders will be distributions of income and may not fall within any of these categories;

16. In addition, Legislation in some of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for reinvestment plans of mutual funds. However, such exemptions are technically not available to the REIT because the REIT is not a "mutual fund" as defined under the Legislation of such Jurisdictions;

17. Legislation in the Jurisdictions provides that the first trade in securities acquired by a DRIP Participant will be a distribution unless such first trade complies with the applicable resale conditions contained in the Legislation including that the REIT has been, a reporting issuer for at least 12 months prior to the first trade. Because the REIT only became a reporting issuer on December 13, 2002, Unitholders who receive Plan Units under the DRIP up to December 13, 2003 will be unable to trade the Plan Units they receive under the DRIP;

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 Plan Units by the REIT to the DRIP Participants pursuant to the DRIP shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

(a) at the time of the trade the REIT is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;

(b) no sales charge is payable in respect of the distributions of Plan Units from treasury;

(c) the REIT has caused to be sent to the person or company to whom the Plan Units are traded, 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 Additional Units on the making of a distribution by the REIT; and

(ii) instructions on how to exercise the right referred to in 0;

(d) except in Québec, the first trade of Plan Units acquired pursuant to the DRIP in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation unless the conditions in paragraphs 2 through 5 of subsection 2.6(4) of Multilateral Instrument 45-102 are satisfied; and

(e) in Québec, the first trade (alienation) of Plan Units acquired pursuant to the DRIP shall be deemed a distribution or primary distribution to the public unless;

(i) at the time of the first trade the REIT is a reporting issuer in Québec and is not in default of any of the requirements of securities legislation in Québec;

(ii) no unusual effort is made to prepare the market or to create a demand for the Plan Units;

(iii) no extraordinary commission or consideration is paid to a person or company other than the vendor of the Plan Units in respect of the trade; and

(iv) the vendor of the Plan Units, if in a special relationship with the REIT, has no reasonable grounds to believe that the REIT is in default of any requirements of the securities legislation in Québec.

(f) disclosure of the distribution of the Plan Units is made to the relevant Jurisdictions by providing the particulars of the date of the distribution of such Plan Units, the number of such Plan Units and the purchase price paid or to be paid for such Plan 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 REIT distributes such Plan Units for the first time and thereafter, not less frequently than annually, unless the aggregate number of Plan Units so traded in any months exceeds 1% of the Units outstanding at the beginning of a month in which the Plan Units were traded, in which case a separate report shall be filed in each relevant Jurisdiction in respect of that month within ten days of the end of such month.

January 10, 2003.

“Josée Deslauriers”

2.1.3 PATHFINDER Income Fund - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - open-end investment trust exempt from prospectus and registration requirements in connection with the sale of units repurchased from existing unit holders pursuant to market purchase program - first trade in repurchased units deemed a distribution unless made in compliance with MI 45-102.

Applicable Ontario Statutory Provisions

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

Multilateral Instrument Cited

Multilateral Instrument 45-102 Resale of Securities (2001), 24 OSCB 5522.

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

AND

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

AND

IN THE MATTER OF
PATHFINDER INCOME FUND

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Yukon (the "Jurisdictions") has received an application from PATHFINDER *Income Fund* (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 (the "Units") which have been repurchased by the Trust pursuant to either the mandatory or discretionary market purchase program of the Trust nor to the resale of such Units which have been distributed by the Trust;

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, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS THE TRUST has represented to the Decision Makers that:

1. The Trust is an unincorporated closed-end investment trust established under the laws of the Province of Ontario by a declaration of trust dated as of September 25, 2002 (the "Declaration of Trust").

2. The Trust is not considered to be a "mutual fund" as defined in the Legislation because the holders of Units ("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.

3. The Trust became a reporting issuer or the equivalent thereof in the Jurisdictions on September 26, 2002 upon obtaining a receipt for its final prospectus dated September 25, 2002 (the "Prospectus"). As of the date hereof, the Trust is not in default of any requirements under the Legislation.

4. Each Unit represents an equal, undivided interest in the net assets of the Trust and is redeemable at net asset value of the Trust ("Net Asset Value") per Unit on November 30 of each year commencing in 2003.

5. Each whole Unit is entitled to one vote at all meetings of Unitholders and is entitled to participate equally with all other Units with respect to any and all distributions made by the Trust.

6. Middlefield PATHFINDER Management Limited (the "Manager"), which was incorporated pursuant to the *Business Corporations Act* (Ontario) on July 31, 2002, is the manager and the trustee of the Trust.

7. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the trading symbol "PAZ.UN". As December 19, 2002, 15,254,600 Units were issued and outstanding.

8. In order to enhance liquidity and to provide market support for the Units, pursuant to the Declaration of Trust and the terms and conditions that attach to the Units, the Trust shall, subject to compliance with any applicable regulatory requirements, be obligated to purchase (the "Mandatory Purchase Program") any Units offered in the market on a

business day at the then prevailing market price if, at any time after the closing of the Trust's initial public offering pursuant to the Prospectus, the price at which Units are then offered for sale is less than 95% of the Net Asset Value per Unit determined as at the close of business in Toronto, Ontario on the immediately preceding business day, provided that:

(a) the maximum number of Units that the Trust shall purchase in any three month period (commencing with the three month period that begins on the first day of the month following the month in which the closing of the Trust's initial public offering occurs) will be 2.50% of the number of Units outstanding at the beginning of each such three month period; and

(b) the Trust shall not be required to purchase Units pursuant to the Mandatory Purchase Program if:

(i) in the opinion of the Manager, the Trust lacks the cash, debt capacity or resources in general to make such purchases; or

(ii) in the opinion of the Manager, the making of any such purchases by the Trust would adversely affect the ongoing activities of the Trust or the remaining Unitholders.

9. In addition, the Declaration of Trust provides that the Trust, subject to applicable regulatory requirements and limitations, shall have the right, but not the obligation, exercisable in its sole discretion, at any time, to purchase outstanding Units in the market at then prevailing market prices (the "Discretionary Purchase Program" and, together with the Mandatory Purchase Program, the "Programs"). Such discretionary purchases may be made through the facilities and under the rules of any exchange or market on which the Trust Units are listed (including the TSX) or as otherwise permitted by applicable securities laws.

10. Purchases of Units made by the Trust under the Programs (such Units shall be referred to as "Repurchased Units") are exempt from the issuer bid requirements of the Legislation pursuant to exemptions contained therein.

11. The Trust desires to, and the Declaration of Trust provides that the Trust shall, have the ability to sell through one or more securities dealers Repurchased Units, in lieu of cancelling such Repurchased Units and subject to obtaining all necessary regulatory approvals.

12. In order to effect sales of Repurchased Units by the Trust, the Trust intends to sell, in its sole discretion and at its option, any Repurchased Units purchased by it under the Programs primarily through one or more securities dealers and through the facilities of the TSX (or such other exchange on which the Units are then listed).

13. Repurchased Units which the Trust does not sell within seven months of the purchase of such Repurchased Units will be cancelled.

14. Prospective Purchasers who subsequently acquire Repurchased Units will have equal access to all of the continuous disclosure documents of the Trust, which will be filed on SEDAR, commencing with the Prospectus.

15. Legislation in some of the Jurisdictions provides that a trade by or on behalf of an issuer in previously issued securities of that issuer that have been purchased by that issuer is a distribution subject to the Registration and Prospectus Requirements.

16. Legislation in some of the Jurisdictions provides that the first trade in Repurchased Units acquired by a purchaser will be a distribution subject to the Registration and Prospectus Requirements unless such first trade is made in reliance on an exemption therefrom.

17. The Prospectus disclosed that the Trust may repurchase Units under the Mandatory Purchase Program and the Discretionary Purchase Program and that, subject to receiving all necessary regulatory approvals, the Trust may arrange for one or more dealers to find purchasers for any Repurchased Units.

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 Repurchased Units pursuant to the Programs shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

(a) the Repurchased Units are sold by the Trust through the facilities of and in accordance with the regulations and policies of the TSX or the market on which the Units are then listed;

(b) the Trust complies with the insider trading restrictions imposed by securities

legislation with respect to the trades of Repurchased Units;

(c) the Trust complies with the conditions of paragraphs 1 through 5 of subsection 2.8(2) of Multilateral Instrument 45-102 with respect to the sale of the Repurchased Units; and

(d) the resale of Repurchased Units acquired by a purchaser from the Trust pursuant to the Programs in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation unless the conditions of paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 are satisfied.

February 17, 2003.

"Robert W. Korthals" "Robert L. Shirriff"

2.1.4 Fairvest Corporation and Institutional Shareholder Services, Inc. - MRRS Decision

Headnote

MRRS – advisor registration relief for company that provides proxy advisory services – subject to certain conditions.

Applicable Ontario Statutory Provisions

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

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

AND

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

AND

IN THE MATTER OF
FAIRVEST CORPORATION
AND INSTITUTIONAL SHAREHOLDER SERVICES, INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan, Northwest Territories and Nunavut (the "Jurisdictions") has received an application from Fairvest Corporation ("Fairvest") and Institutional Shareholder Services, Inc. ("ISS") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to be registered as an advisor (the "Registration Requirements") do not apply to Fairvest, ISS or their officers and employees;

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

3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 or in Quebec Securities Commission Notice 14-101;

4. AND WHEREAS Fairvest and ISS have represented to the Decision Makers that:

4.1 Fairvest is a corporation, incorporated under the Nova Scotia Companies Act and a wholly owned subsidiary of ISS, carrying on business as a proxy advisory service in which it provides proxy voting advice to institutional investors in Canada with respect to matters to be voted on at meetings of shareholders of issuers incorporated or organized in Canada;

4.2 Fairvest advises its institutional clients with respect to their voting as shareholders of public issuers on issues presented to them in management proxy circulars in connection with annual and other shareholder meetings;

4.3 Fairvest's advice is usually based on corporate governance considerations and is provided to its clients by electronic means;

4.4 in some instances Fairvest undertakes to exercise voting rights on behalf of an institutional client in accordance with the client's proxy voting guidelines, in which case the voting is administered by employees of ISS in Rockville, Maryland;

4.5 ISS is a Delaware Corporation with its head office in Rockville, Maryland, U.S.A., which provides similar proxy advisory services to institutional investors;

4.6 Fairvest also provides its proxy advisory services under the ISS rubric to institutional clients of ISS;

4.7 the majority of ISS's clients are institutional investors in the United States, including pension funds subject to the U.S. Employee Retirement Income Security Act of 1974 ("ERISA"), as a result of which ISS is subject to supervision by the U.S. Department of Labor with respect to services performed for such pension funds;

4.8 ISS is registered as an investment adviser under the U.S. Investment Advisers Act of 1940 and is therefore also subject to supervision by the U.S. Securities and Exchange Commission ("SEC");

4.9 apart from services performed by Fairvest for ISS's institutional clients, ISS provides its proxy advisory services with respect to shareholder issues relating to corporations incorporated in the United States, the United Kingdom, Europe, Japan and emerging markets;

4.10 most of the clients who receive these services are institutional investors in the United States, but a few of these clients are institutional investors in Canada, some of which are also clients of Fairvest;

4.11 Fairvest's institutional clients and ISS's institutional clients in Canada include public and private pension funds, managers of mutual funds and portfolio managers registered as advisors under applicable securities legislation, all of whom hold investment assets of at least $100 million;

4.12 these institutional clients look to Fairvest or ISS for proxy voting advice with respect to corporate proposals coming before meetings of shareholders of issuers in which they hold securities, but not for advice with respect to investing in such issuers or the merits of such investments, as they have internal or external portfolio managers who perform their own investment analysis concerning investments or are themselves registered portfolio managers;

4.13 although a number of portfolio managers provide Fairvest or ISS with their corporate governance guidelines on the basis of which Fairvest or ISS may exercise proxies on their behalf, Fairvest and ISS do not consider their investment guidelines in providing services to them;

4.14 Fairvest also provides access to its proxy voting advice to a small number of subscribers who are interested in its voting recommendations for informational purposes;

4.15 in the course of their proxy advisory services, Fairvest and ISS sometimes provide advice on corporate transactions such as amalgamations, mergers and other types of reorganizations which may result in a trade in securities by their institutional clients;

4.16 voting advice on such transactions may take into account the merits of a proposed transaction;

4.17 such transactions represent a small proportion of the proposals on which Fairvest and ISS provide proxy voting advice (less than two per cent in 2002),

and any trades that may result from a vote by shareholders on an amalgamation, merger or similar transaction are incidental to their business of providing proxy advisory services;

4.18 because a vote on an amalgamation, merger or similar transaction may result in a trade in securities, some doubt exists whether Fairvest and ISS are "advisors" under the Legislation and, therefore, whether they are subject to the Registration Requirements;

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

6. 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;

7. THE DECISION of the Decision Makers under the Legislation is that the Registration Requirements shall not apply to Fairvest, ISS or their officers and employees, provided that proposals to approve corporate transactions of the type described in paragraph 4.15 do not exceed five per cent of the proposals on which Fairvest and ISS provide proxy voting advice to clients in Canada in any year.

February 19, 2003.

"Glenda A. Campbell" "Jerry A. Bennis"

2.1.5 JML Resources Ltd. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Issuer granted relief under National Instrument 43-101 from the requirement that the author of a technical report be a member in good standing of a professional association.

Applicable Ontario Statutory Provision

National Instrument 43-101 Standards of Disclosure for Mineral Projects.

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

AND

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

AND

IN THE MATTER OF
JML RESOURCES LTD.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker" and, collectively, the "Decision Makers") in each of Ontario, Nova Scotia And Alberta ("the Jurisdictions") has received an application (the "Application") from JML Resources Ltd. (the "Corporation") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that: (1) the Corporation is exempt from the requirement contained in National Instrument 43-101 ("NI 43-101") that the author of a technical report or other information upon which disclosure of a scientific or technical nature is based be a member in good standing of a professional association in order for the author to be considered a "qualified person" as defined in NI 43-101 (the "Membership Qualification Requirement"); and (2) the Corporation is exempt from the requirement contained in the Legislation to pay a fee in connection with the Application (the "Application Fee Requirement");

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 represented to the Decision Makers that:

1. The Corporation is a company incorporated under the laws of the Province of Ontario.

2. The Corporation's head office is located in Toronto, Ontario.

3. The Corporation is a reporting issuer or the equivalent in each of the Jurisdictions and is not in default of any requirement of the Legislation.

4. The Corporation's common shares are listed for trading on the TSX Venture Exchange.

5. The Corporation is a mineral exploration company. Its exploration projects are located near North Bay, Ontario.

6. The Corporation has retained Kenneth J. Lapierre as author of the technical reports required to be filed by the Corporation pursuant to NI 43-101 and to prepare information upon which the Corporation's disclosure of a scientific or technical nature may be based.

7. Kenneth J. Lapierre is a member of the Association of Geoscientists of Ontario ("AGO"). AGO was a professional association as defined in NI 43-101 until February 1, 2002.

8. AGO is being replaced in Ontario by the Association of Professional Geoscientists of Ontario ("APGO"). APGO is a professional association as defined in NI 43-101.

9. Kenneth J. Lapierre has applied to become a member of APGO and would be a "qualified person" as defined in NI 43-101 except only for not yet being a member in good standing of a "professional association".

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 Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Corporation is exempt from the Membership Qualification Requirement and the Application Fee Requirement in connection with the technical reports or other information prepared by Kenneth J. Lapierre provided that:

1. Kenneth J. Lapierre complies with all other elements of the definition of "qualified person" in NI 43-101; and

2. the relief granted in this Decision shall terminate on the earlier of: (1) the date Kenneth J. Lapierre becomes a member of APGO or is advised that his application for membership to APGO has been denied; and (2) May 1, 2003.

February 21, 2003.

"Iva Vranic"

2.2 Orders

2.2.1 OILEXCO INCORPORATED - ss. 83.1(1)

Headnote

Subsection 83.1(1) – reporting issuer in Alberta and British Columbia listed on the TSX Venture Exchange- deemed to be a reporting issuer in Ontario.

Statutes Cited

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

Policies Cited

Policy 12-602 - Deeming an Issuer from Certain Other Canadian Jurisdictions to be a Reporting Issuer in Ontario (2001) 24 OSCB 1531.

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

AND

IN THE MATTER OF
OILEXCO INCORPORATED

ORDER
(Section 83.1(1))

UPON the application of OILEXCO INCORPORATED (the "Corporation") to the Ontario Securities Commission (the "Commission") for an order under Section 83.1(1) of the *Securities Act* (Ontario) (the "Act") deeming the Corporation to be a reporting issuer for the purposes of Ontario securities law;

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

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

1. The Corporation is a company governed by the *Business Corporations Act* (Alberta). Its head and registered offices are located in Calgary, Alberta.

2. The Corporation or its predecessors became a "reporting issuer" under the *Securities Act* (Alberta) on December 23, 1993 after the issuance of a receipt for its initial public offering prospectus, and under the *Securities Act* (British Columbia) on September 26, 1991 as a result of the filing of a Local Statement of Material Facts. The Corporation is not a reporting issuer or its equivalent under the securities legislation of any other jurisdiction in Canada.

3. The Corporation's predecessor's common shares were listed on The Alberta Stock Exchange (the "ASE" on December 23, 1993. The Corporation's common shares currently trade on the Toronto Stock Exchange B Capitalized Venture Exchange ("TSX Venture Exchange"), the successor to the ASE, under the symbol "OIL".

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

5. The materials filed by the Corporation or its predecessors as a reporting issuer in the Provinces of Alberta, and British Columbia since March 3, 1997 are available on the System for Electronic Document Analysis and Retrieval.

6. The authorized capital of the Corporation consists of unlimited common shares of which 17,842,388 common shares are outstanding, and an unlimited number of preferred shares, of which none are currently outstanding. An aggregate of 1,784,000 of the Corporation's common shares are also reserved for issuance on the exercise of stock options granted by the Corporation to its directors, officers and employees.

7. The Corporation has a significant connection to Ontario in that greater than 20 per cent of the Corporation's registered and beneficial shareholders reside in Ontario.

8. The Corporation is not in default of any requirements of the B.C. Act, the Alberta Act, or any of the rules and regulations thereunder, and is not on the lists of defaulting reporting issuers maintained under the B.C. Act or the Alberta Act. To the knowledge of management of the Corporation, the Corporation has not been the subject of any enforcement actions by the British Columbia or Alberta Securities Commissions or by the TSX Venture Exchange.

9. Neither the Corporation nor any of its directors, officers nor, to the best knowledge of the Corporation and 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.

10. Neither the Corporation nor any of its directors, officers nor, to the best knowledge of the Corporation, 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.

11. John Cowan, a director of the Corporation, was a director and officer of CanEnerco Limited ("Canerco"), an Ontario private company, form 1995 to 1999. CanEnerco filed for bankruptcy in 1999 and has yet to be discharged. Aside from Mr. Cowan, none of the directors or officers of the Corporation, nor to the best knowledge of the Corporation, 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 Corporation 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-manger 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 under Section 83.1(1) of the Act that the Corporation be deemed to be a reporting issuer for the purposes of Ontario securities law.

February 17, 2003.

"Iva Vranic"

2.2.2 Canadian Blackhawk Energy Inc. et al. - ss. 144(1)

Headnote

Section 144 – variation of cease trade order to permit certain trades of securities pursuant to a proposal under the Bankruptcy and Insolvency Act – issuer is insolvent person under the Bankruptcy and Insolvency Act.

Statutes Cited

Securities Act, R.S.O., c. S.5, as am., ss. 127 and 144.

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

AND

IN THE MATTER OF
CANADIAN BLACKHAWK ENERGY INC.

AND

IN THE MATTER OF
NEW NORTH RESOURCES LTD.

AND

IN THE MATTER OF
TM ENERGY LTD.

ORDER
Section 144(1)

WHEREAS the securities of Canadian Blackhawk Energy Inc. ("Canadian Blackhawk") currently are subject to a temporary order made by the Director on behalf of the Ontario Securities Commission (the "Commission"), pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, on June 21, 2002 as extended by a further order of the Director made on July 3, 2002, on behalf of the Commission pursuant to subsection 127(8) of the Act (collectively, the "Cease Trade Order"), directing that trading in securities of Canadian Blackhawk cease until the Cease Trade Order is revoked by a further order of revocation;

AND WHEREAS New North Resources Ltd. ("New North") and TM Energy Ltd. ("TM") have applied to the Director pursuant to section 144 of the Act for an order varying the Cease Trade Order;

AND WHEREAS New North and TM have represented to the Director that:

1. Canadian Blackhawk is a corporation incorporated under the *Business Corporations Act* (Alberta)(the "ABCA");

2. the principal offices of Canadian Blackhawk are in Calgary, Alberta;

3. Canadian Blackhawk is a reporting issuer in Alberta, British Columbia and Ontario;

4. the authorized capital of Canadian Blackhawk consists of an unlimited number of common shares ("Canadian Blackhawk Shares"), an unlimited number of first preferred shares, series 1 ("Series 1 Preferred Shares"), an unlimited number of first preferred shares, series 2 ("Series 2 Preferred Shares"), an unlimited number of first preferred shares, series 3 ("Series 3 Preferred Shares") and an unlimited number of second preferred shares;

5. there are 12,249,246 Canadian Blackhawk Shares and no first preferred shares or second preferred shares outstanding;

6. the Canadian Blackhawk Shares were formerly listed for trading on the Canadian Venture Exchange;

7. the Canadian Blackhawk Shares were delisted from the Canadian Venture Exchange on June 5, 2002 for failure by Canadian Blackhawk to pay the required sustaining fees;

8. there are no securities of Canadian Blackhawk listed or quoted on any public market;

9. New North is a corporation incorporated under the ABCA;

10. the principal offices of New North are in Calgary, Alberta;

11. New North is a reporting issuer in Alberta and British Columbia;

12. the authorized capital of New North consists of an unlimited number of common shares;

13. as of June 30, 2002, there were 8,185,000 common shares of New North outstanding;

14. the common shares of New North are listed on the TSX Venture Exchange;

15. TM is a corporation incorporated under the ABCA;

16. the principal offices of TM are in Calgary, Alberta;

17. all of the issued and outstanding securities of TM are indirectly owned by Hugh Thomson, the President and a director of New North;

18. the Cease Trade Order was issued as a result of Canadian Blackhawk's failure to file audited financial statements for the year ended December 31, 2001 and interim financial statements for the quarter ended March 31, 2002;

19. in addition to the defaults that gave rise to the Cease Trade Order, Canadian Blackhawk is in default of the requirement to file and send to its shareholders interim financial statements for the periods ended June 30, 2002 and September 30, 2002;

20. Canadian Blackhawk is an insolvent person under the *Bankruptcy and Insolvency Act* (the "BIA");

21. all former officers and directors of Canadian Blackhawk have either resigned or ceased to act in such capacity, with the exception of Martin Heppner, who continues to act as a director and as Chief Executive Officer;

22. Canadian Blackhawk and New North entered into an agreement dated September 3, 2002 (the "Acquisition Agreement") pursuant to which New North agreed to acquire all of the outstanding Canadian Blackhawk Shares at a price of $0.01 per share;

23. New North will assign its rights under the Acquisition Agreement to TM, such that TM will have agreed to acquire all of the outstanding Canadian Blackhawk Shares at a price of $0.01 per share;

24. the Acquisition Agreement contemplates that the acquisition be completed by means of an arrangement under the ABCA (the "Arrangement");

25. the Arrangement would be conducted concurrently with the approval of a proposal by Canadian Blackhawk under the BIA (the "Proposal") which would compromise the outstanding claims of creditors against Canadian Blackhawk;

26. the Proposal is conditional on completion of the Arrangement;

27. the Arrangement will be subject to the approval of the holders of Canadian Blackhawk Shares and the Court of Queen's Bench of Alberta;

28. the holders of Canadian Blackhawk Shares will be provided with an information circular fully describing the Arrangement, the Proposal and the financial condition of Canadian Blackhawk in connection with the meeting of those shareholders that will be held to approve the Arrangement;

29. prior to or concurrently with the Arrangement, and conditional on the approval thereof by the holders of Canadian Blackhawk Shares, New North and certain of its wholly owned subsidiaries will transfer certain partnerships interests and securities to Canadian Blackhawk in exchange for specified numbers of Series 1 Preferred Shares, Series 2 Preferred Shares and Series 3 Preferred

Shares of Canadian Blackhawk (the "Preferred Share Trades");

30. the Preferred Share Trades will be conducted in order to facilitate the tax structure desired by New North in connection with the Arrangement;

31. New North and TM have conducted such due diligence with respect to Canadian Blackhawk as they feel is necessary to satisfy themselves of the financial condition of Canadian Blackhawk;

32. subject to further negotiations, the current intention of TM and New North is that the Canadian Blackhawk Shares will be transferred to New North from TM at a future date (the "Post-Arrangement Trade");

33. following the trades of the Canadian Blackhawk Shares by the holders thereof to TM pursuant to the Arrangement, the Preferred Share Trades and the Post-Arrangement Trade, all of the outstanding securities of Canadian Blackhawk will be beneficially held directly or indirectly by New North or TM, all of the securities of Canadian Blackhawk will continue to be subject to the Cease Trade Order, and TM or New North will cause Canadian Blackhawk to apply to be deemed to have ceased to be a reporting issuer under the Act;

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

IT IS ORDERED pursuant to section 144 of the Act that the Cease Trade Order is varied solely to permit:

(i) the trades of Canadian Blackhawk Shares by the holders thereof to TM pursuant to the Arrangement;

(ii) the Preferred Share Trades; and

(iii) the Post-Arrangement Trade.

December 30, 2002.

"John Hughes"

2.2.3 1020078 Alberta Ltd. - s. 147

Headnote

Section 147 of the Act - issuer is exempt from the payment of the fee otherwise payable under section 7.3 of Rule 45-501 in connection with a dual structure transaction.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 147.

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., subsection 18(1) of Schedule I.

Rules Cited

Ontario Securities Commission Rule 45-501 - Exempt Distributions, s. 7.3.

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

AND

IN THE MATTER OF
1020078 ALBERTA LTD.

ORDER
(Section 147)

WHEREAS the Ontario Securities Commission (the "Commission") has received an application on behalf of 1020078 Alberta Ltd. ("102 Alberta" or the "Applicant") for an order under section 147 of the *Securities Act* (Ontario) (the "Act") exempting 102 Alberta from the payment of duplicative fees otherwise payable under section 7.3 of Rule 45-501 of the Commission ("Rule 45-501") in connection with certain trades by 102 Alberta to Ontario Teachers' Pension Plan Board ("Teachers'") and BPC Penco Corporation ("BPC"), as described below.

AND WHEREAS the Applicant has represented to the Commission that:

1. 102 Alberta is an Alberta corporation that is a wholly-owned subsidiary of BC Gas Inc.

2. 102 Alberta is not a reporting issuer in any jurisdiction and is not in default of any requirement of the securities acts or regulations applicable in each of the provinces of Canada.

3. Express LP is a Delaware limited partnership.

4. Under a series of transactions, all of which occurred on January 9, 2003, Teachers' invested $142,000,000 in the aggregate in Express LP, consisting of 4,000 ordinary units issued to Teachers' by Express LP for $28,400,000 and an

interest bearing debenture of Express LP with a principal amount of $113,600,000 transferred to Teachers' by 102 Alberta.

5. The acquisition by Teachers' of the securities of Express LP described in paragraph 4 occurred as follows:

   (a) on January 9, 2003, 102 Alberta transferred to Teachers', in satisfaction of a loan by Teachers' to 102 Alberta in the principal amount of $142,000,000:

      (i) a non-interest bearing demand promissory note in the principal amount of $28,400,000 issued to 102 Alberta by Express LP (the "**Teachers' Note**"); and

      (ii) an unsecured subordinated debenture in the principal amount of $113,600,000 issued to 102 Alberta by Express LP (the "**Teachers' Debenture**"); and

   (b) subsequently, on January 9, 2003, Express LP issued 4,000 ordinary units for an aggregate cost of $28,400,000 to Teachers' (the "**Teachers' Units**") in satisfaction of the Teachers' Note.

6. The trades from 102 Alberta of the Teachers' Note and the Teachers' Debenture and the issuance by Express LP of the Teachers' Units to Teachers' were made in reliance on the prospectus and registration exemptions under section 2.3 of Rule 45-501.

7. 102 Alberta has filed a Form 45-501F1 in connection with the transfer by 102 Alberta to Teachers' of the Teachers' Debenture and has paid fees totalling $18,176 under section 7.3 of Rule 45-501.

8. Express LP has filed a Form 45-501F1 in connection with the issuance of the Teachers' Units to Teachers' and has paid fees totalling $4,544 under section 7.3 of Rule 45-501.

9. In connection with the transfer to Teachers' of the Teachers' Note, 102 Alberta has filed a Form 45-501F1 and has deposited a cheque with the Commission for the required fees, with the request that the cheque be either returned to 102 Alberta or cashed by the Commission, according to the outcome of this application.

10. Under a series of transactions, all of which occurred on January 9, 2003, BPC invested $142,000,000 in the aggregate in Express LP, consisting of 4,000 ordinary units issued to BPC by Express LP for $28,400,000 and an interest bearing debenture of Express LP with a principal amount of $113,600,000 transferred to BPC by 102 Alberta.

11. The acquisition by BPC of the securities of Express LP described in paragraph 10 occurred as follows:

   (a) on January 9, 2003, 102 Alberta transferred to BPC, in satisfaction of a loan by BPC to 102 Alberta in the principal amount of $142,000,000:

      (i) a non-interest bearing demand promissory note in the principal amount of $28,400,000 issued to 102 Alberta by Express LP (the "**BPC Note**"); and

      (ii) an unsecured subordinated debenture in the principal amount of $113,600,000 issued to 102 Alberta by Express LP (the "**BPC Debenture**") ; and

   (b) subsequently, on January 9, 2003, Express LP issued 4,000 ordinary units for an aggregate cost of $28,400,000 to BPC (the "**BPC Units**") in satisfaction of the BPC Note.

12. The trades from 102 Alberta of the BPC Note and the BPC Debenture and the issuance by Express LP of the BPC Units to BPC were made in reliance on the prospectus and registration exemptions under section 2.3 of Rule 45-501.

13. 102 Alberta has filed a Form 45-501F1 in connection with the trade by 102 Alberta to BPC of the BPC Debenture and has paid fees totalling $18,176 under section 7.3 of Rule 45-501.

14. Express LP has filed a Form 45-501F1 in connection with the issuance of the BPC Units to BPC and has paid fees totalling $4,544 under section 7.3 of Rule 45-501.

15. In connection with the transfer to BPC of the BPC Note, 102 Alberta has filed a Form 45-501F1 and has deposited a cheque with the Commission for the required fees, with the request that the cheque be either returned to 102 Alberta or cashed by the Commission, according to the outcome of this application.

AND WHEREAS this Order evidences the decision of the Commission;

AND WHEREAS the Commission is of the opinion that it would not be prejudicial to the public interest to make this Order;

IT IS ORDERED, under section 147 of the Act, that the Applicant is exempt from the requirement to pay the fees otherwise payable under section 7.3 of Rule 45-501 in connection with the transfer of the Teachers' Note by the Applicant to Teachers' and in connection with the transfer of the BPC Note by the Applicant to BPC.

February 21, 2003.

"Robert W. Korthals" "Robert L. Shirriff"

2.2.4 Fidelity Investments Canada Limited and Mackenzie Financial Corporation - cl. 80(b)(iii)

Headnote

Exemption from the requirement to deliver comparative annual financial statements for the year ending June 30, 2003 and from the requirement to deliver interim financial statements for the financial period ended December 31, 2002 to registered securityholders of certain private mutual funds.

Statutes Cited

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

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

AND

IN THE MATTER OF
THE FUNDS LISTED IN SCHEDULE "A"
(the "Funds")

ORDER
(clause 80(b)(iii) of the Act)

UPON the application (the "Application") of Fidelity Investments Canada Limited and Mackenzie Financial Corporation (collectively the "Managers") and the Funds to the Ontario Securities Commission (the "Commission") for an Order pursuant to clause 80(b)(iii) of the Act for relief from the requirement to deliver comparative annual financial statements and interim financial statements (collectively, "financial statements") of the Funds to certain securityholders of the Funds unless they have requested to receive them.

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

AND UPON the Managers having represented to the Commission that:

1. The Funds are open-ended mutual fund trusts established under the laws of Ontario.

2. Each Manager acts as trustee and manager of the Funds set out in Schedule "A".

3. The Funds are offered pursuant to statutory or discretionary exemptive relief and as such are not reporting issuers.

4. Each of the Funds is required to deliver annually, within 140 days of its financial year-end, to each holder of its securities ("Securityholders"), comparative financial statements in the prescribed form pursuant to the Act.

5. Each of the Funds is required to deliver to Securityholders within 60 days of the date to which they are made up, interim financial statements in the prescribed form pursuant to the Act.

6. Each Manager will send to Securityholders who hold securities of the Funds in client name (whether or not the Manager is the dealer) (the "Direct Securityholders") in each year, a notice advising them that they will not receive the annual financial statements of the Funds for the year then ended or interim financial statements for the relevant period unless they request same, and providing them with a request form to send back, by fax or prepaid mail, if they wish to receive the annual financial statements or interim financial statements. The notice will advise the Direct Securityholders how financial statements can be obtained. Each Manager would send such financial statements to any Direct Securityholder who requests them in response to such notice or who subsequently requests them.

7. Securityholders will be able to access financial statements of the Funds on the SEDAR website and through the means set out in Schedule "A".

8. There would be substantial cost savings if the Funds are not required to print and mail financial statements to those Direct Securityholders who do not want them.

9. The Canadian Securities Administrators ("CSA") have published for comment proposed National Instrument 81-106 ("NI 81-106") which, among other things, would permit a Fund not to deliver annual financial statements or interim financial statements to those of its Securityholders who do not request them, if the Funds provide each Securityholder with a request form under which the Securityholder may request, at no cost to the Securityholder, to receive the mutual fund's annual financial statements for that financial year or interim financial statements for the relevant period.

10. NI 81-106 would also require a Fund to have a toll-free telephone number for or accept collect calls from persons or companies that want to receive a copy of, among other things, the annual financial statements or interim financial statements of the Fund.

AND UPON the Commission being satisfied to do so would not be prejudicial to the public interest and that in the circumstances there is adequate justification for so doing;

AND UPON the Commission being satisfied that making the Order will not adversely affect the rule-making process with respect to proposed National Instrument 81-106;

IT IS ORDERED that pursuant to clause 80(b)(iii) of the Act:

(i) the Funds; and

(ii) mutual funds created subsequent to the date hereof that are offered pursuant to either statutory or discretionary exemptive relief and managed by the Manager,

shall not be required to deliver their comparative annual financial statements for the year ending June 30, 2003 or interim financial statements for the financial period ended December 31, 2002 to their Direct Securityholders other than those Direct Securityholders who have requested to receive them provided that:

(a) the Manager shall file on SEDAR, under the relevant financial statements category, confirmation of mailing of the request forms that have been sent to the Direct Securityholders as described in clause (6) of the representations within 90 days of mailing the request forms;

the Manager shall file on SEDAR, under the relevant financial statements category, information regarding the number and percentage of requests for annual financial statements or interim financial statements, as the case may be, made by the return of the request forms, on a province-by-province basis within 30 days after the end of each quarterly period beginning from the date of mailing the request forms and ending 12 months from the date of mailing;

the manager shall record the number and summary of complaints received from Direct Securityholders about not receiving the annual financial statements or interim financial statements and shall file on SEDAR, under the relevant financial statements category, this information within 30 days after the end of each quarterly period beginning from the date of mailing the request forms and ending 12 months from the date of mailing;

the Manager shall, if possible, measure the number of "hits" on the annual financial statements or interim financial statements, as the case may be, of the Funds on the Manager's website and shall file on SEDAR, under the relevant financial statements category, this information within 30 days after the end of each quarterly period beginning from the date of mailing the request forms and

ending 12 months from the date of mailing;

the Manager shall file on SEDAR, under the relevant financial statements category, estimates of the cost savings resulting from the granting of this Decision within 90 days of mailing the request forms.

February 18, 2003.

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

SCHEDULE "A"

LIST OF APPLICANT MANAGERS AND THEIR FUNDS

1. Fidelity Investments Canada Limited
483 Bay Street, Suite 200
Toronto, Ontario
M5G 2N7

Securityholders will be able to access financial statements of the Fidelity-managed Funds through the following means:

(a) by calling toll-free 1-800-263-4077;

(b) by sending an email to cs.english@fmr.com or sc.francais@fmr.com; and

(c) by requesting a copy through letter correspondence to the above address.

Campbell Soup Company Stock Fund
Delta Stock Fund
Ford Stock Fund
General Motors $1 2/3 Par Value Common Stock Fund
General Motors Class H Common Stock Fund
Gillette Stock Fund
Lear Stock Fund
The Owens Corning Stock Fund
PPG Industries Stock Fund
The Sherwin-Williams Company Stock Fund
UNUMProvident Stock Fund

2. Mackenzie Financial Corporation
150 Bloor Street West
Suite M111
Toronto, Ontario
M5S 3B5

Securityholders will be able to access financial statements of the Mackenzie-managed Funds through the following means:

(a) by calling toll-free 1-800-387-0614;

(b) by visiting the website www.mackenziefinancial.com (if securityholder acknowledges that she or he is a qualified purchaser and is not a Québec resident);

(c) by sending an email to service@mackenziefinancial.com;

(d) by requesting a copy through letter correspondence to the above address; and

(e) through the securityholder's dealer.

Mackenzie Alternative Strategies Fund
Mackenzie Long/Short Equity Fund

2.2.5 Hollister Capital Corporation - s. 147

Headnote

Section 147 of the Act - issuer is exempt from the payment of the fee otherwise payable under section 7.3 of Rule 45-501 in connection with a dual structure transaction where prospectus fees have already been paid.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 147.

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., subsection 18(2) of Schedule I.

Rules Cited

Ontario Securities Commission Rule 45-501 - Exempt Distributions, s. 7.3.

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

AND

IN THE MATTER OF
HOLLISTER CAPITAL CORPORATION AND
BOND TRUST

ORDER
(Section 147)

UPON the application (the "Application") of Hollister Capital Corporation (the "Trustee") to the Ontario Securities Commission (the "Commission") for an order under section 147 of the Act exempting Bond Trust (the "Bond Trust") from the payment of fees otherwise payable under section 7.3 of Commission Rule 45-501 – *Exempt Distributions* ("Rule 45-501") in connection with the distribution of units of the Bond Trust;

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

AND UPON the Trustee having represented to the Commission as follows:

1. The Trustee is a corporation incorporated under the laws of Ontario on June 6, 2002. The registered office of the Trustee is located in Toronto, Ontario;

2. The Trustee acts as the manager and trustee of Investment Grade Trust (the "Trust") and the Bond Trust;

3. The Trust is an investment trust established under the laws of the Province of Ontario under a declaration of trust made as of January 28, 2003;

4. The Trust is authorized to issue an unlimited number of redeemable, transferable units (the "Trust Units"), each of which represents an equal undivided beneficial interest in the net assets of the Trust;

5. On January 28, 2003, the Trust filed a final prospectus (the "Trust Prospectus") relating to the offering of Trust Units with all of the provincial securities regulatory authorities. A final receipt for this prospectus was issued on June 29, 2003;

6. The Trust is a reporting issuer in each of the provinces of Canada and is not in default of any requirements of Canadian securities legislation;

7. The Trust will invest its assets in a portfolio of common shares of Canadian public companies (the "Common Share Portfolio"). The Trust will enter into a forward purchase and sale agreement (the "Forward Agreement") with a major global financial institution (the "Counterparty") under which the Counterparty will agree to pay to the Trust on or about December 31, 2012 (the "Termination Date") as the purchase price for the Common Share Portfolio an amount equal to 100% of the redemption proceeds of a corresponding number of units of the Bond Trust;

8. The Bond Trust is an investment trust established under the laws of the Province of Ontario under a declaration of trust made as of January 28, 2003;

9. The Bond Trust filed a final non-offering prospectus, dated January 29, 2003, with the Commission des valeurs mobilières du Québec (the "CVMQ") to enable the Bond Trust to become a reporting issuer under the *Securities Act* (Québec). A receipt for the Bond Trust prospectus, dated January 31, 2003, was issued by the CVMQ;

10. The Bond Trust is a reporting issuer in the Province of Québec and is not in default of any requirements of the Québec Act or the Regulations to the Québec Act;

11. The Bond Trust was established for the purpose of acquiring two investment portfolios as follows:

    (a) Capital Repayment Portfolio: a portfolio which will be structured to pay, at the Termination Date, $10.00 per Unit, and

    (b) Distribution Portfolio: a portfolio which will be structured to pay approximately $0.25 per Unit semi-annually commencing June 30 through to the Termination Date;

    (the Capital Repayment Portfolio and the Distribution Portfolio, collectively, the "Bond Trust Portfolios"). The return to holders of Trust Units and the Trust will be dependent upon the return in connection with the Bond Trust and the Bond Trust Portfolios by virtue of the Forward Agreement.

12. To provide the Bond Trust with the funds to purchase the Bond Trust Portfolios, units of the Bond Trust will be issued to the Counterparty or an affiliate of the Counterparty. The issuance of units of the Bond Trust to the Counterparty or an affiliate of the Counterparty will be made in reliance on the prospectus and registration exemptions under section 2.3 of the Rule.

13. Under section 18(1) of Schedule 1 of Ontario Regulation 1015 made under the Act, the Trust has paid fees to the Commission in connection with the filing of the Trust Prospectus qualifying the distribution of the Trust Units.

14. Section 7.3 of the Rule requires the Bond Trust to make payments to the Commission in respect of the distribution of units of the Bond Trust to the Counterparty or an affiliate of the Counterparty.

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

IT IS HEREBY ORDERED, under section 147 of the Act, that the Bond Trust is exempt from the requirement to pay the fees required under section 7.3 of Rule 45-501 in connection with the distribution of units of the Bond Trust to the Counterparty or an affiliate of the Counterparty.

February 21, 2003.

"Robert W. Korthals" "Robert L. Shirriff"

2.2.6 Scotia Cassels U.S. Investment Counsel Inc. and Scotia Cassels Investment Counsel Limited - ss. 74(1)

Headnote

U. S. registered investment adviser operating out of Ontario exempted from the adviser registration requirement of the Act in connection with providing securities-related advisory services to clients that are resident in the U.S. - advisors acting on behalf of the U.S. adviser also exempted provided they act through the U.S. adviser and both the U.S. adviser and advisors acting on its behalf comply with the U.S. securities law.

Statutes Cited

Securities Act (Ontario), R.S.O. 1990 c. S.5, as am., ss. 25(1)(c) & 74(1).
U.S. Investment Advisors Act of 1940, s. 203.

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

AND

IN THE MATTER OF
SCOTIA CASSELS U.S. INVESTMENT COUNSEL INC. AND
SCOTIA CASSELS INVESTMENT COUNSEL LIMITED

ORDER
(Subsection 74(1) of the Act)

UPON the application (the Application) of Scotia Cassels U.S. Investment Counsel Inc. (Scotia Cassels U.S.) and Scotia Cassels Investment Counsel Limited (Scotia Cassels), to the Ontario Securities Commission (the Commission) for an order pursuant to Subsection 74(1) of the Act, that Scotia Cassels U.S., and certain individuals (the Scotia Cassels U.S. Advisers), who act as advisers on behalf of Scotia Cassels U.S. and, at the relevant times, are registered to act as advisers on behalf of Scotia Cassels, shall not be subject to section 25 of the Act which prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the Act, or is registered under the Act as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser;

AND WHEREAS Scotia Cassels U.S. and Scotia Cassels have represented to the Commission that:

1. Scotia Cassels U.S. is a corporation incorporated under the laws of Canada and is a wholly owned subsidiary of The Bank of Nova Scotia (the Bank). Scotia Cassels U.S. is a wholly owned subsidiary of Scotia Cassels and is an indirect wholly owned subsidiary of the Bank. The executive office of Scotia Cassels U.S. is in Toronto, Ontario.

2. Scotia Cassels U.S. was established as a vehicle to provide advice with respect to securities to persons or companies (the U.S. Clients) that are at the relevant time resident in the United States of America. Scotia Cassels U.S. is not a registrant under the Act.

3. Scotia Cassels U.S. is registered as an investment adviser under section 203 of the *United States Investment Advisers Act of 1940* to carry on the business of an adviser.

4. Scotia Cassels is a corporation incorporated under the laws of Canada. Scotia Cassels is a wholly owned subsidiary of the Bank. The registered and head office of Scotia Cassels is located in Toronto, Ontario.

5. Scotia Cassels is registered under the Act as an adviser in the categories of investment counsel and portfolio manager.

6. None of the Scotia Cassels U.S. Advisers will act on behalf of Scotia Cassels U.S. for a U.S. Client in the Province of Ontario unless the Scotia Cassels U.S. Adviser is, at the relevant time, registered under the Act as a representative or officer of Scotia Cassels and is acting on behalf of Scotia Cassels, which is, in turn, registered to act as an adviser under the Act.

7. Scotia Cassels U.S. Advisers will act on behalf of Scotia Cassels U.S. as advisers to the U.S. Clients out of the offices of Scotia Cassels.

8. Scotia Cassels U.S. and the Scotia Cassels U.S. Advisers will comply with all registration and other requirements of applicable United States securities laws in respect of advising U.S. Clients. Scotia Cassels U.S. will not act as an adviser to any person or company that is then resident in Canada.

9. U.S. Clients of Scotia Cassels U.S. may include persons or companies who were but are no longer residents of Canada. U.S. Clients may also include persons or companies who are neither former Canadian residents nor former clients of Scotia Cassels.

10. All U.S. Clients of Scotia Cassels U.S. will be asked to enter into an advisory agreement with Scotia Cassels U.S., at which time written disclosure will be provided to the U.S. Client that the U.S. Client is not the responsibility of Scotia Cassels. U.S. Clients will also receive a retail client brochure and such other documents as mandated under applicable United States securities laws. Scotia Cassels U.S. Advisers will have business cards and letterhead which will identify them to the U.S. Clients as working on behalf of Scotia Cassels U.S., and all communication by Scotia Cassels U.S. Advisers

with U.S. Clients, on behalf of Scotia Cassels U.S., will be through Scotia Cassels U.S.

11. U.S. Clients will be advised at the time they enter into an advisory agreement with Scotia Cassels U.S. (and periodically thereafter) that, if they return to Canada in circumstances that no longer require them to be serviced by Scotia Cassels U.S. according to United States securities legislation, their accounts must either be transferred to Scotia Cassels or to another person or company authorized to carry on the business of an adviser in the relevant province or territory.

IT IS ORDERED THAT Section 25 of the Act shall not apply to Scotia Cassels U.S., or to the Scotia Cassels U.S. Advisers acting on its behalf, in acting as an adviser to U.S. Clients, as described above, provided that:

in acting as an adviser to the U.S. Clients, Scotia Cassels U.S., and the Scotia Cassels U.S. Advisers acting on its behalf, comply with all applicable registration and other requirements of United States securities legislation; and

in acting as an adviser to the U.S. Clients, Scotia Cassels U.S. acts only through Scotia Cassels U.S. Advisers.

February 18, 2003.

“Paul Moore” “Robert W. Korthals”

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 Reasons for Decision

3.1.1 Terry G. Dodsley

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

AND

IN THE MATTER OF
TERRY G. DODSLEY

REASONS OF THE
ONTARIO SECURITIES COMMISSION

1. The Statement of Allegations alleges that Terry G. Dodsley ("Dodsley"), who has never been registered with the Ontario Securities Commission ("OSC") in any capacity, has been trading and advising in securities contrary to subsections 25(1)(a) and 25(1)(c) of the *Ontario Securities Act* (the "*Act*"), and the public interest. Staff of the OSC seek an Order pursuant to section 127 and section 127.1 of the *Act*.

2. The facts in this matter are not in dispute. What is in issue is whether they amount to activity which is contrary to subsections 25(1)(a) and 25(1)(c) of the *Act*. Dodsley's position is that they are not and, alternatively, if they are, asks for relief under the *Constitution Act 1982* in that he argues that the sections are an infringement of his rights under section 2(b) of the Charter.

The Facts

3. Commencing in October of 1999, Dodsley, for a two-week period, placed in a community newspaper the following advertisement in the form of a business card.

4. About the same time, Dodsley had a website www.cashgalore.com/comtrade.htm. The website appeared as follows:

5. An OSC investigator, using a pseudonym, responded and requested that Dodsley send him information. In replying to the request, Dodsley advised the Staff investigator that:

(i) he would realize $100,000.00 on commodity trading or else Dodsley would not get paid his commission;

(ii) he was an expert in this specialized field and that one benefits from "our years of research that provide the top money makers in the world to manage your account for you";

(iii) that his fee was 20% payable only if profits exceeded $100,000.00.

6. In another e-mail from Dodsley to the Staff investigator, it was stated:

> "You have heard of mutual funds? Forget them. The client earns 34 times the profit from commodity trading. Our clients are guaranteed income of $100,000.00 R.O.I. which is substantiated in one year using 15 methods such as daily bank statements."

7. Following the receipt of this, the Staff investigator wrote to Dodsley requesting material from him as to how he could make money in commodities trading and as to how he could get involved through Dodsley in such trading.

8. In response, Dodsley sent to the investigator a package of material which included the following:

(a) a two-page statement by Dodsley entitled "UNLIMITED PROFIT NO RISK" in which Dodsley promotes commodity trading as an investment alternative that pays a higher R.O.I. than mutual funds, stocks, equities or bonds. In the statement, Dodsley advises -- that he receives no fee unless the client makes profits exceeding $100,000.00 -- that he acts as an intermediary between "my clients, superbrokers, and commodity trading advisers" -- that one can purchase his research material for $490.00;

(b) an affidavit marked "Draft Copy" signed by Terry Dodsley in which he sets out the terms of his fee which is that a client deposits with him $20,000.00 in escrow which will be returned to the client after 12 months unless profits are made of $100,000.00;

(c) a disclaimer document which states: "to comply with stringent regulatory requirements and avoid any misunderstandings, this disclosure document identifies Mr. Terry Dodsley as an intermediary --- consultant --- representative --- information broker --- paralegal agent providing assistance by research. ... Mr. Dodsley is and does not act as a commodity trading adviser nor

> sell or buy any commodity or futures contract or handle or control any of the client's funds. ... Mr. Dodsley does not directly advise accounts for compensation on the current status of trading in futures contracts or options, nor offer advice, opinions, or judgment. ... All trading decisions are your own based on educational materials supplied.";

(d) a two-page document written by Dodsley which included the following statements: "Consulting assistance and 7 years of expertise from an experienced trader including on-going research. ... Weekly advisory service by e-mail showing Commodity Trading Adviser recommended trades, entry and exit prices plus open equity";

(e) a further document prepared by Dodsley in which he describes himself as the client's agent and attaches a sheet which compares commodity futures returns of 186% average to a 15% return anticipated in mutual funds;

(f) a printed document entitled "commodities as an investment - the opportunity of a lifetime";

(g) a page prepared by Dodsley which lists a number of commodity traders with telephone numbers;

(h) a brochure on a program offered by J & K Global Marketing Corporation which brochure states it is: "another fantastic high yield program";

(i) material on what is described as "a loan program that will return 10 to 1 every four months operated by Roman Riquelme Foundation;

(j) information on a program operated by G.B.C. which is headlined as "returns from 20-32% per month";

(k) information on a loan program operated by Special Invite XI which promotes a loan program for profit return of 10 - 30% per month in addition to interest.

Discussion

(1) Acting as an Adviser

9. Subsection 25(1)(c) of the *Act* prohibits any person or company from acting as an adviser unless the person or company is registered as an adviser with the OSC. Adviser is defined in the Act as meaning: "a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities...".

10. Staff counsel and counsel for Dodsley agree that the leading case on the meaning of "adviser" is the decision of the British Columbia Securities Commission in *Re Donas*. In that decision it was stated:

> The concise Oxford Dictionary of Current English (1990 ed.) defines "advice" as "words given or offered as an opinion or recommendation about future action or behaviour...".
> It is because the very nature of advising involves the offering of an opinion or recommendation to others that the *Act* requires advisers to be registered and to meet certain conditions as to their education and experience. This requirement is intended to protect the public, as was acknowledged by L'Heureux-Dubé J. in *Brosseau v. Alberta Securities Commission* (SCC) 57 D.L/R. (4th) 458 at p. 467...";
>
> > Securities Acts in general can be said to be aimed at regulating the market and protecting the general public. This role was recognized by this court in *Gregory & Co. Inc. v. Quebec Securities Commission* (1961), 28 D.L.R. (2d) 721 at p. 725, [1961] S.C.R. 584 at p. 588, where Fauteux J. observed:
> >
> > > The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the Province or elsewhere, from being defrauded as a result of certain activities initiated in the Province by persons therein carrying on such a business.
>
> As indicated by the definition of "advice", the nature of the information given or offered by a person is the key factor in determining whether that person is advising with respect to investment in or the purchase or sale of securities. A person who does nothing more than provide factual information about an issuer and its business activities is not advising in securities. A person who recommends an investment in an issuer or the purchase or sale of an issuers securities, or who distributes or offers an opinion on the investment merits of an issuer or an issuers securities, is advising in securities. If a person advising in securities is distributing or offering the advice in a manner that reflects a business purpose, the person is required to be registered under the Act." [emphasis added]

> *Re Donas*, [1995] B.C.S.C.W.S. 39 [Quicklaw version, pp. 4-5]

11. On the basis of the material sent to the Staff investigator, the advertisement in the community newspaper and the website, we find that Dodsley acted contrary to subsection 25(1)(c). Dodsley held himself out as an investment consultant, specified his consulting fee for the services he offered, and clearly advertised certain specific and types of investments.

12. Counsel for Dodsley argued that the nature of the information provided by Dodsley was authored by third parties and Dodsley simply recommended or offered an opinion on the merits of investing in commodities generally and that each person is asked to exercise his or her own judgment as to the merits of an investment. We do not accept that position. While certain of the materials were authored by third parties, much was authored by Dodsley and that which was authored by third parties was sent in a package which contained handwritten notes of Dodsley and was sent in a manner in which he expressly or impliedly made recommendations as to investments.

13. It was also argued that the disclaimer contained in the material expressly advised clients that Dodsley's services are other than as an adviser. Again, we do not accept that position in that the material distributed by Dodsley and its contents are not consistent with the content of the disclaimer. Further, we are of the view that having regard to the purpose of section 25 of the *Act*, it would be inappropriate for one who acts in contravention of section 25 to seek to avoid the consequences thereof by some form of disclaimer. Section 25 has been enacted to protect investors and it would be contrary to that purpose to be able to avoid its requirements simply through a disclaimer. To give any credit to such a disclaimer, in the circumstances, is to avoid the very purpose for which section 25 of the *Act* was enacted.

(2) Trading in Securities

14. Subsection 25(1) of the *Act* prohibits one from trading in securities unless the person is registered as specified in the subsection. The definition of trade in the *Act* includes any act, advertisement or conduct directly or indirectly in furtherance of any sale or disposition of a security for valuable consideration. The issue here is not whether Dodsley specifically sold any security but whether he was acting directly or indirectly in furtherance of a sale of a security for valuable consideration.

15. In the material, Dodsley promotes commodity trading and certain other specific securities. He provides a list of brokers who deal in commodities. He also promotes the sale of the material he has assembled in order that the recipient will have access to various brokers and other entities selling those securities. These are all actions directly or indirectly in furtherance of a trade of those securities. Accordingly, we find that the conduct of Dodsley is contrary to subsection 25(1)(a) of the *Act*.

The Constitutional Argument

16. As noted previously, Dodsley has made an alternative submission that the requirements of subsection 25(1)(a) and subsection 25(1)(c) infringe subsection 2(b) of the Charter. Assuming, without deciding, that there is an infringement of subsection 2(b), we are of the view, having considered the tests in *Regina v. Oakes,* [1986] 1 S.C.R. 103 that the restrictions set forth in section 25 of the *Act* are reasonable and justified. We come to that conclusion having regard to the purposes of the *Act* as found in subsection 1.1 and the requirements found in section 25 to implement those purposes. For those reasons, we find that subsection 25(1) of the *Act* does not infringe Dodsley's rights under the Charter.

Conduct Contrary to the Public Interest and Sanction

17. The conduct of Dodsley in this matter well demonstrates the need for the requirements found in section 25 of the *Act*. His activities in advising and promoting the acquisition of commodities and other specific securities, and suggesting unreasonable returns with little or no risk can only be described as dangerous and contrary to the public interest. The conduct and lack of judgement exhibited by Dodsley should be considered if he ever seeks to be a registrant under the *Act*.

18. By reason of the findings herein, we find that it is in the public interest that Dodsley shall cease trading, directly or indirectly, in any securities for a period of ten years from this date save and except for trading directly in securities beneficially owned by him for his own personal account. The Temporary Order dated December 20, 2000 against Dodsley no longer has any force or effect. We make no order under section 127.1 of the *Act*.

February 18, 2003.

"H. Lorne Morphy" "Robert L. Shirriff"

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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 Lapse/Revoke
ACEnetx Inc.	26 Feb 03	10 Mar 03		
Allnet Secom Inc.	19 Feb 03	03 Mar 03		
Aludra Inc.	14 Feb 03	26 Feb 03		
Lyndex Explorations Limited	20 Feb 03	04 Mar 03		
Martin Health Group Inc.	20 Feb 03	04 Mar 03		
New Inca Gold Ltd.	20 Feb 03	04 Mar 03		
World Wise Technologies Inc.	21 Feb 03	05 Mar 03		

4.3.1 Issuer CTO's Revoked

Company Name	Date of Revocation
Curran Bay Resources Ltd.	25 Feb 03

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Chapter 6

Request for Comments

6.1.1 Notice of Proposed Multilateral Instrument 55-103 and Companion Policy 55-103CP - Insider Reporting for Certain Derivative Transactions (Equity Monetization)

NOTICE OF PROPOSED MULTILATERAL INSTRUMENT 55-103
AND COMPANION POLICY 55-103CP

INSIDER REPORTING FOR
CERTAIN DERIVATIVE TRANSACTIONS
(EQUITY MONETIZATION)

This Notice is accompanied by a proposed Multilateral Instrument and Companion Policy, each of which is being published for comment.

The proposed Multilateral Instrument and Companion Policy are initiatives of the Canadian Securities Administrators (the "CSA"). The CSA have developed the Multilateral Instrument and Companion Policy to respond to concerns that the existing insider reporting requirements may not cover certain derivative-based transactions, including equity monetization transactions (described below), which satisfy one or more of the fundamental policy rationale for insider reporting. We believe that timely public disclosure of such transactions is necessary in order to maintain and enhance the integrity of and public confidence in the insider reporting regime in Canada.

The Multilateral Instrument is expected to be adopted as a rule in each of Alberta, Manitoba, Ontario and Nova Scotia, a Commission regulation in Saskatchewan, and a policy in most other jurisdictions represented by the CSA. The Companion Policy is expected to be implemented as a policy in most jurisdictions represented by the CSA. The British Columbia Securities Commission has participated in developing the proposed Multilateral Instrument and Companion Policy, but has decided to implement similar requirements by seeking amendments to the British Columbia *Securities Act* instead. Consequently, British Columbia will not be adopting the Multilateral Instrument and Companion Policy.

Substance and Purpose of Proposed Multilateral Instrument and Companion Policy

1. Purpose of the Multilateral Instrument

The Multilateral Instrument seeks to maintain the integrity of and public confidence in the insider reporting regime by:

- ensuring that insider transactions which have a similar effect in economic terms to insider trading activities are fully transparent to the market;
- ensuring that, where an insider enters into a transaction which satisfies one or more of the policy rationale for insider reporting, the insider is required to file an insider report, even though the transaction may, for technical reasons, fall outside of the existing rules governing insider reporting; and
- reducing uncertainty relating to what arrangements and transactions are subject to an insider reporting requirement and what are not.

2. What are equity monetization transactions?

Equity monetization transactions are transactions which allow an investor to receive a cash amount similar to proceeds of disposition, and to transfer part or all of the economic risk and/or return associated with securities of an issuer, without actually transferring the legal and beneficial ownership of such securities. (The term “monetization” generally refers to the conversion of an asset (such as securities) into cash.)

We are concerned that, if an *insider of a reporting issuer* enters into a monetization transaction, and does not disclose the existence or material terms of this transaction, there is potential for harm to investors and the integrity of the insider reporting regime because:

- an insider in possession of material undisclosed information, although prohibited from trading in securities of the issuer,

may be able improperly to profit from such information by entering into derivative-based transactions which mimic trades in securities of the reporting issuer;

- market efficiency will be impaired since the market is deprived of important information relating to the market activities of the insider; and

- requirements relating to the public reporting of such holdings (e.g., in an insider report or proxy circular) may in fact materially mislead investors, since the insider's publicly reported holdings no longer reflect the insider's true economic position in the issuer.

Although we believe that many such transactions fall within the existing rules governing insider reporting, we recognize that, in certain cases at least, there may be a genuine question whether the existing insider reporting rules apply. Accordingly, we have developed the Multilateral Instrument to address these concerns. The Multilateral Instrument reflects a principles-based approach to monetization transactions. If an insider enters into a transaction which satisfies one or more of the policy rationale for insider reporting, but for technical reasons, it may legitimately be argued that the insider falls outside of the existing insider reporting requirements, the insider will be required to file an insider report under the Multilateral Instrument. In this way, the market can make its own determination as to the significance, if any, of such arrangements.

3. When does the Multilateral Instrument apply?

If you are an "insider" of a reporting issuer, and you enter into an agreement, arrangement or understanding of any kind which

- changes your "economic exposure" to your reporting issuer, or

- changes your "economic interest in a security" of your reporting issuer,

and you are not required under any other provision of Canadian securities law to file an insider report about this agreement, arrangement or understanding, you must file an insider report under the Multilateral Instrument, unless you are covered by one of the exemptions.

The terms "economic exposure" and "economic interest in a security" are defined in the Multilateral Instrument. Additional guidance is provided in the Companion Policy. The concept of "economic exposure" also appears in section 6.2 of National Policy 46-201 *Escrow for Initial Public Offerings*. The definition of "economic interest in a security" has been drafted to be generally consistent with the definition of "pecuniary interest" which appears in the U.S. insider reporting requirements.

4. Exemptions

The Multilateral Instrument contains a number of broad exemptions. These include:

- arrangements which do not involve, directly or indirectly, a security of the reporting issuer or a derivative which involves a security of the reporting issuer;

- a compensation arrangement such as a phantom stock plan, deferred share unit ("DSU") plan or stock appreciation right ("SAR") plan which would otherwise be caught by the Instrument if:

  i) the existence and material terms of the compensation arrangement are disclosed in any public document (such as the annual audited financial statements of the issuer or an annual filing made under any provision of Canadian securities legislation);

  or

  ii) the material terms of the compensation arrangement are set out in a written document, and the alteration to economic exposure or economic interest referred to in section 2.1 occurs as a result of the satisfaction of a pre-established condition or criteria described in the document, and does not involve a discrete investment decision by the insider.

- a person or company exempt from the insider reporting requirements under a provision of NI 55-101, to the same extent and on the same conditions as are applicable to such exemption;

- a person or company who has obtained exemptive relief in a jurisdiction from the insider reporting requirements of that jurisdiction, to the same extent and on the same conditions as are applicable to such exemptive relief; and

- a transfer, pledge or encumbrance of securities by a person or company for the purpose of giving collateral for a debt

made in good faith so long as there is no limitation on the recourse available against the person or company for any amount payable under such debt.

5. Pre-existing arrangements which continue to have effect after the coming into force of the Multilateral Instrument

The Multilateral Instrument contemplates that, in certain circumstances, it will be necessary for insiders to disclose the existence of pre-existing monetization arrangements.

If an insider of a reporting issuer, prior to the effective date of the Multilateral Instrument,

- entered into an agreement, arrangement or understanding in respect of which the insider would have been required to file an insider report under this Instrument if the agreement, arrangement or understanding had been entered into on or after the effective date,

  and

- the agreement, arrangement or understanding remains in effect on or after the effective date of the Instrument,

then the insider will be required to file a report under the Instrument.

We believe it is necessary for the Multilateral Instrument to address pre-existing arrangements which continue in force after the effective date. If insiders are not required to disclose such pre-existing arrangements, the market will have no way of determining whether an insider's publicly reported holdings truly reflect the insider's economic position in the insider's reporting issuer.

For example, if an insider, *before* the Multilateral Instrument comes into force, enters into a monetization arrangement which has the effect of divesting the insider of substantially all of the economic risk and return associated with the insider's securities in the reporting issuer, and the insider then files an insider report *after* the Multilateral Instrument comes into force that indicates that the insider continues to have a substantial ownership position in the issuer, we believe the pre-existing arrangement will render the insider report (and all future insider reports) materially misleading. The insider report will not convey an accurate picture of the insider's true economic position in the issuer.

6. Method of Reporting

An insider will file the same form of insider report as he or she would in the case of an ordinary purchase or sale of securities of the reporting issuer in question.

A CSA staff notice containing examples of various types of monetization arrangements, together with examples of completed forms for such arrangements, will be published on or before the time the Multilateral Instrument takes effect. The staff notice will also explain how such arrangements should be reported under the System for Electronic Disclosure by Insiders (SEDI).

Authority for the Proposed Multilateral Instrument

In those jurisdictions in which the proposed Multilateral Instrument is to be adopted as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the proposed Multilateral Instrument.

The proposed Multilateral Instrument is being proposed for implementation in Ontario as a rule. In Ontario, the following provisions of the *Securities Act* (Ontario) (the Ontario Act) provide the Ontario Securities Commission (the Ontario Commission) with authority to adopt the proposed Multilateral Instrument as a rule:

- Paragraph 143(1)(10) of the Ontario Act authorizes the Ontario Commission to prescribe requirements in respect of the books, records and other documents required by subsection 19(1) of the Ontario Act to be kept by market participants.

- Paragraph 143(1)(11) of the Ontario Act authorizes the Ontario Commission to make rules regulating the listing or trading of publicly traded securities including requiring reporting of trades and quotations.

- Paragraph 143(1)(30) of the Ontario Act authorizes the Ontario Commission to make rules varying or providing for exemptions from any requirement of the insider trading provisions of the Ontario Act contained in Part XXI of the Ontario Act.

- Paragraph 143(1)(35) of the Ontario Act authorizes the Ontario Commission to regulate or vary the Act in respect of derivatives, including,

i. providing exemptions from any requirement of the Act,

ii. prescribing disclosure requirements and requiring or prohibiting the use of particular forms or types of offering documents or other documents, and

iii. prescribing requirements that apply to mutual funds, non-redeemable investment funds, commodity pools or other issuers.

- Paragraph 143(1)(39) of the Ontario Act authorizes the Ontario Commission to make rules, among other things, respecting the media, format, preparation, form, content, execution and certification of documents required under the Ontario Act.

Related Instruments

The proposed Multilateral Instrument and proposed Companion Policy are related to each other as they deal with the same subject matter. In Ontario, the proposed Companion Policy is related to sections 106 to 109 of the *Securities Act* (Ontario) and Part VIII of the Regulation to the Act.

Alternatives Considered

We have developed the Multilateral Instrument to respond to concerns that the existing insider reporting requirements in Canadian securities legislation may not in all cases cover certain derivative-based transactions, including equity monetization transactions, which satisfy one or more of the fundamental policy rationale for insider reporting. At the outset of this initiative, we considered a number of alternative approaches to address these concerns, including proceeding by way of technical amendments to the definition of "beneficial ownership" in Canadian securities legislation to address such transactions. However, in view of the fact that such transactions may be structured in a wide variety of ways, and the fact that such transactions may be expected to continue to change over time, we concluded that a principles-based approach tied to the rationale for insider reporting was preferable.

We have also considered proceeding by way of enforcement action in connection with certain types of transactions with a view to removing any ambiguity as to the application of the existing insider reporting requirements to such transactions. Although we believe that many such transactions fall within the existing rules governing insider reporting, we recognize that, in certain cases at least, there may be a genuine question whether the existing insider reporting requirements apply. Consequently, we believe that the Multilateral Instrument and Companion Policy will assist market participants by reducing uncertainty relating to what arrangements and transactions are subject to an insider reporting requirement and what are not. Adoption of the Multilateral Instrument and Companion Policy does not preclude the Commissions from taking enforcement action in appropriate circumstances based on non-compliance with existing legislative requirements.

Unpublished Materials

In proposing the Multilateral Instrument and Companion Policy, the CSA has not relied on any significant unpublished study, report, decision or other written materials.

Anticipated Costs and Benefits

We have developed the Multilateral Instrument and Companion Policy to respond to concerns that the existing insider reporting requirements may not cover certain derivative-based transactions, including equity monetization transactions, which satisfy one or more of the fundamental policy rationale for insider reporting. We believe that timely public disclosure of such transactions is necessary in order to maintain and enhance the integrity of and public confidence in the insider reporting regime in Canada. We are concerned that, in the absence of such disclosure, the benefits associated with an insider reporting system will be substantially diminished, since there will be no assurance that an insider's publicly reported position in the insider's reporting issuer will reflect the insider's true economic position in that issuer. Consequently, we are of the view that the benefits of the proposed Multilateral Instrument outweigh the costs.

Comments

Interested parties are invited to make written submissions with respect to the proposed Multilateral Instrument. Submissions received by May 31, 2003 will be considered.

Submissions should be sent to all of the Canadian securities regulatory authorities listed below in care of the Ontario Commission, in duplicate, as indicated below:

Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Department of Government Services and Lands, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

A diskette containing the submissions (in DOS or Windows format, preferably Word) should also be submitted. As securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published, confidentiality of submissions received cannot be maintained.

Questions may be referred to any of:

Agnes Lau
Deputy Director, Capital Markets
Alberta Securities Commission
Tel.: (780) 422-2191
Fax: (780) 422-0777
Agnes.lau@seccom.ab.ca

Barbara Shourounis
Director
Saskatchewan Securities Commission
(306) 787-5842
Tel: (306) 787-5842
Fax: (306) 787-5899
Bshourounis@ssc.gov.sk.ca

Iva Vranic
Manager, Corporate Finance
Ontario Securities Commission
Tel.: (416) 593-8115
Fax: (416) 593-3683
Ivranic@osc.gov.on.ca

Paul Hayward
Legal Counsel, Corporate Finance
Ontario Securities Commission
Tel.: (416) 593-3657
Fax: (416) 593-8244
Phayward@osc.gov.on.ca

Ann Leduc
Chef du service de la réglementation
Commission des valeurs mobilières du Québec
Tel. (514) 940-2199 x. 4572
Fax: (514) 873-7455
Ann.leduc@cvmq.com

Text of Proposed Multilateral Instrument and Companion Policy

The text of the proposed Multilateral Instrument and Companion Policy follows, together with footnotes that are not part of the Multilateral Instrument or Companion Policy but have been included to provide background and explanation.

February 28, 2003.

6.1.2 Multilateral Instrument 55-103 Insider Reporting for Certain Derivative Transactions (Equity Monetization)

MULTILATERAL INSTRUMENT 55-103

INSIDER REPORTING FOR CERTAIN DERIVATIVE TRANSACTIONS (EQUITY MONETIZATION)

PART 1 DEFINITIONS

1.1 Definitions – In this Instrument

"compensation arrangement"[1] includes, but is not limited to, any plan, contract, authorization or arrangement, whether or not set forth in any formal document and whether or not applicable to only one individual, under which cash, securities, options, SARs, phantom stock, warrants, convertible securities, restricted shares or restricted share units, performance units and performance shares, or similar instruments may be received or purchased;

"derivative"[2] means an instrument, agreement or security, the market price, value or payment obligations of which are derived from, referenced to or based on an underlying security, interest, benchmark or formula;

"economic exposure"[3] in relation to a reporting issuer means the extent to which the economic, financial or pecuniary interests of a person or company are aligned with the trading price of securities of the reporting issuer or the economic, financial or pecuniary interests of the reporting issuer;

"economic interest in a security" means the extent to which a person or company is entitled to receive, bears or is subject to

(a) an economic, financial or pecuniary[4] reward, benefit or return from a particular security, or

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1 The term "compensation arrangement" in the Instrument is similar to the definition of "plan" in Ont. Reg. 1015, Form 40 *Statement of Executive Compensation* ("OSC Form 40"). The concluding language from the definition of "plan" (reproduced in italics below) has been deleted as it is unnecessary in the present context and would have unduly narrowed the scope of the compensation arrangement exemption:

> "plan" includes, but is not limited to, any plan, contract, authorization or arrangement, whether or not set forth in any formal document and whether or not applicable to only one individual, under which cash, securities, options, SARs, phantom stock, warrants, convertible securities, restricted shares or restricted share units, performance units and performance shares, or similar instruments may be received or purchased, *but does not include the Canada Pension Plan or similar government plans or any group life, health, hospitalization, medical reimbursement or relocation plan that does not discriminate in scope, terms or operation in favour of executive officers or directors of the issuer and is available generally to all salaried employees*;

2 The definition of "derivative" in the Instrument is similar to the definition of "derivative" in subsection 1.1(3) of OSC Rule 14-501 *Definitions*:

> "derivative" means an instrument, agreement or security, the market price, value or payment obligations of which is derived from, referenced to or based on an underlying interest, other than a contract as defined for the purposes of the *Commodity Futures Act*

The above definition has been simplified to allow the definition to serve as a stand-alone definition in a Multilateral Instrument.

3 The concept of "economic exposure" also appears in section 6.2 of National Policy 46-201 *Escrow for Initial Public Offerings.*

> ***6.2 Restrictions on dealing with escrow securities***
>
> Escrow restricts the ability of holders to deal with their escrow securities while they are in escrow. The standard form of escrow agreement sets out these restrictions. Except to the extent that the escrow agreement expressly permits, a principal cannot sell, transfer, assign, mortgage*, enter into a derivative transaction concerning,* or otherwise deal in any way with the holder's escrow securities or any related share certificates or other evidence of the escrow securities. A private company, controlled by one or more principals of the issuer, that holds escrow securities of the issuer, *may not participate in a transaction that results in* a change of its control *or a change in the economic exposure* of the principals to the risks of holding escrow securities.
>
> [Emphasis added.]

4 We have added a reference to "pecuniary interest" to the definition of "economic interest in a security" in the Instrument for the reason that the insider reporting requirements under U.S. securities legislation use this term. One of the objectives underlying the adoption of the Instrument is to introduce greater consistency in the reporting requirements under U.S. securities law and Canadian securities laws in relation to monetization arrangements. Under U.S. securities law requirements, insiders are generally required to report any transaction resulting in a change in "beneficial ownership" of equity securities of the issuer. For reporting purposes, a person is deemed to be the "beneficial owner" of securities if the person has a "pecuniary interest" in the securities. The term "pecuniary interest" in any class of equity securities is defined to mean "the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities". See generally SEC Rule 16a-1(a)(2). Consequently, the reference to an "economic,

(b) an economic, financial or pecuniary loss or risk of loss in respect of a particular security,

and includes, without limitation, the extent to which such person or company has or shares the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in such security or a transaction which directly or indirectly involves such security;

"effective date" means the date specified in Part 5 of this Instrument;

"exemptive relief" has the same meaning as is ascribed to that term in National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications*;

"insider report" means a report in the form prescribed for insider reports under securities legislation;

"NI 55-101" means National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements*;

"security of a reporting issuer" shall be deemed to include[5]

(a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer; and

(b) a security, the market price of which varies materially with the market price of a security of the reporting issuer; and

"stock appreciation right" ("SAR")[6] means a right, granted by an issuer or any of its subsidiaries as compensation for services rendered or otherwise in connection with office or employment, to receive a payment of cash or an issue or transfer of securities based wholly or in part on changes in the trading price of publicly traded securities.

PART 2 REPORTING FOR CERTAIN DERIVATIVE TRANSACTIONS

2.1 **Reporting Requirement** – If an insider of a reporting issuer

(a) enters into an agreement, arrangement or understanding of any nature or kind, the effect of which is to alter either or both of

i) the insider's economic exposure to the reporting issuer, or

ii) the insider's economic interest in a security of the reporting issuer; and

(b) is not otherwise required to file an insider report in respect of such agreement, arrangement or understanding under any provision of Canadian securities legislation, then

the insider shall file a report in accordance with Section 3.1 of this Instrument.

2.2 **Exemptions** – Section 2.1 does not apply to

(a) an agreement, arrangement or understanding which does not involve, directly or indirectly, a security of the reporting issuer or a derivative in respect of which the underlying interest is or includes as a material component a security of the reporting issuer;

(b) an agreement, arrangement or understanding in the nature of a compensation arrangement between the insider and the reporting issuer or an affiliate of the reporting issuer if

(i) the existence and material terms of the compensation arrangement are, or are required to be, described in

(A) the annual audited financial statements of the reporting issuer;

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financial or pecuniary reward, benefit or return" in the definition of "economic interest" in the Instrument is intended to clarify that insider transactions which are reportable under U.S. securities law requirements will also generally be covered by Canadian securities law requirements, unless covered by one of the exemptions.

5 The definition of "security of a reporting issuer" in the Instrument is substantially similar to the definition of that term in s. 76(6) of the *Securities Act* (Ontario).

6 The definition of "stock appreciation right" is identical to the definition of that term in OSC Form 40.

(B) an annual filing of the reporting issuer relating to executive compensation, or any other filing required to be made under any provision of Canadian securities legislation; or

(C) any public filing required to be made under the rules or policies of a stock exchange or market on which securities of the reporting issuer are listed or trade; or

(ii) the terms of the compensation arrangement are set out in a written document, and the alteration to economic exposure or economic interest referred to in section 2.1 occurs as a result of the satisfaction of a pre-established condition or criterion described in the written document and does not involve a discrete investment decision by the insider;[7]

(c) a person or company exempt from the insider reporting requirements under a provision of NI 55-101, to the same extent and on the same conditions as are applicable to such exemption;

(d) a person or company who has obtained exemptive relief in a jurisdiction from the insider reporting requirements of that jurisdiction, to the same extent and on the same conditions as are applicable to such exemptive relief; or

(e) a transfer, pledge or encumbrance of securities by a person or company for the purpose of giving collateral for a debt made in good faith so long as there is no limitation on the recourse available against the person or company for any amount payable under such debt.

2.3 **Existing agreements which continue in force** – If an insider of a reporting issuer, prior to the effective date of this Instrument, entered into an agreement, arrangement or understanding in respect of which

(a) the insider would have been required to file an insider report under this Instrument if the agreement, arrangement or understanding had been entered into on or after the effective date, and

(b) the agreement, arrangement or understanding remains in effect on or after the effective date of this Instrument,

then the insider shall file a report in accordance with Section 3.2 of this Instrument.

PART 3 FORM AND TIMING OF REPORT

3.1 A person or company who is required under Section 2.1 of this Instrument to file a report shall, within 10 days from the day on which the person or company enters[8] into the agreement, arrangement or understanding described in Section 2.1 of this Instrument, or such shorter period as may be prescribed, file a report in the form prescribed for insider reports under securities legislation disclosing the existence and material terms of the agreement, arrangement or understanding.

3.2 A person or company who is required under Section 2.3 of this Instrument to file a report shall, within 10 days, or such shorter period as may be prescribed, from the effective date of this Instrument, file a report in the form prescribed for insider reports under securities legislation disclosing the existence and material terms of the agreement, arrangement or understanding.

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7 Subparagraph 2.2(b)(ii) provides an exemption for a compensation arrangement which is not publicly disclosed, and which has the effect of altering the insider's economic exposure to the reporting issuer, or the insider's economic interest in securities of the reporting issuer, if

- the compensation arrangement is described in a written document,
- the alteration occurs as a result of the satisfaction of a pre-established condition or criterion described in the document (such as the insider's retirement from office or ceasing to be a director), and
- the alteration does not involve a "discrete investment decision" by the insider.

Part 5 of NI 55-101 provides a similar exemption from the insider reporting requirements for securities which are acquired under an "automatic securities purchase plan". Section 4.2 of the Companion Policy to NI 55-101, Companion Policy 55-101 CP *Exemption from Certain Insider Reporting Requirements*, similarly refers to the concept of a "discrete investment decision".

8 Under Canadian securities legislation, an insider is ordinarily required to file an insider report within 10 days from the day on which there is a change in the insider's direct or indirect beneficial ownership or control over securities of the reporting issuer. See, for example, s. 107(2) of the *Securities Act* (Ontario). The 10-day period referred to in section 3.1 of the Instrument commences on the date the insider enters into the arrangement which satisfies the test in s. 2.1, since the arrangement may not involve a change in beneficial ownership or control over securities of the reporting issuer.

PART 4 EXEMPTION

4.1 The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

4.2 Despite section 4.1, in Ontario only the regulator may grant such an exemption.

PART 5 EFFECTIVE DATE

5.1 Effective Date - This Instrument comes into force on •

COMPANION POLICY 55-103CP
TO MULTILATERAL INSTRUMENT 55-103

INSIDER REPORTING FOR
CERTAIN DERIVATIVE TRANSACTIONS
(EQUITY MONETIZATION)

The members of the Canadian Securities Administrators (the CSA) that have adopted Multilateral Instrument 55-103 *Insider Reporting for Certain Derivative Transactions (Equity Monetization)* (the Multilateral Instrument) have adopted this Policy to clarify their views on several matters relating to the Instrument including:

- the regulatory objectives underlying the Multilateral Instrument and the reasons why we feel the Multilateral Instrument is necessary;
- the general approach taken by the Multilateral Instrument to certain derivative-based transactions by insiders; and
- other information that we believe will be helpful to insiders and other market participants in understanding the operation of the Multilateral Instrument.

Part 1 – Purpose

1. What is the purpose of the Multilateral Instrument?

We have developed the Multilateral Instrument to respond to concerns that the existing insider reporting requirements in Canadian securities legislation may not cover certain derivative-based transactions, including equity monetization transactions (described below), which satisfy one or more of the fundamental policy rationale for insider reporting. We believe that timely public disclosure of such transactions is necessary in order to maintain and enhance the integrity of, and public confidence in, the insider reporting regime in Canada.

The Multilateral Instrument seeks to maintain the integrity of, and public confidence in, the insider reporting regime in Canada by:

- ensuring that insider transactions which have a similar effect in economic terms to insider trading activities are fully transparent to the market;
- ensuring that, where an insider enters into a transaction which satisfies one or more of the policy rationale for insider reporting, the insider is required to file an insider report, even though the transaction may, for technical reasons, fall outside of the existing rules governing insider reporting; and
- reducing uncertainty as to which arrangements and transactions are subject to an insider reporting requirement and which are not.

These objectives are discussed in greater detail below.

2. What are the current insider reporting rules?

Canadian securities legislation requires “insiders” of a reporting issuer (i.e., a public company) to file insider reports disclosing their ownership of and trading in securities of their reporting issuer (the insider reporting requirements).

The insider reporting requirements serve a number of functions, including deterring illegal insider trading and increasing market efficiency by providing investors with information concerning the trading activities of insiders of the issuer, and, by inference, the insiders’ views of their issuer’s prospects.

We have adopted the Multilateral Instrument in response to the concern that the existing insider reporting requirements may not in all cases cover certain derivative-based transactions, including equity monetization transactions.

3. What are equity monetization transactions?

In recent years, a variety of sophisticated derivative-based financial products have become available which permit investors to dispose, in economic terms, of an equity position in a public company without attracting certain tax and non-tax consequences associated with a conventional disposition (e.g., a sale) of such position.

These products, which are sometimes referred to as "equity monetization" products, allow an investor to receive a cash amount similar to proceeds of disposition, and transfer part or all of the economic risk and/or return associated with securities of an issuer, without actually transferring the legal and beneficial ownership of such securities. (The term "monetization" generally refers to the conversion of an asset (such as securities) into cash.)

4. What are the concerns with equity monetization transactions?

Where an *insider of a reporting issuer* enters into a monetization transaction, and does not disclose the existence or material terms of that transaction, there is potential for harm to investors and the integrity of the insider reporting regime because:

- an insider in possession of material undisclosed information, although prohibited from trading in securities of the issuer, may be able improperly to profit from such information by entering into derivative-based transactions which mimic trades in securities of the reporting issuer;
- market efficiency will be impaired since the market is deprived of important information relating to the market activities of the insider; and
- since the insider's publicly reported holdings no longer reflect the insider's true economic position in the issuer, requirements relating to the public reporting of such holdings (e.g., an insider report or proxy circular) may in fact materially mislead investors.

Although we believe that many such transactions fall within the existing rules governing insider reporting, we accept that, in certain cases, it may be unclear whether the existing insider reporting rules apply. Accordingly, we have developed the Multilateral Instrument to respond to this ambiguity.

The Multilateral Instrument reflects a principles-based approach to monetization transactions and ties the obligation to report to the fundamental policy rationale underlying the insider reporting regime. Consequently, if an insider enters into a transaction which satisfies one or more of the policy rationale for insider reporting, but for technical reasons it may legitimately be argued that the insider falls outside of the existing insider reporting requirements, the insider will be required to file an insider report under the Multilateral Instrument unless the insider is otherwise covered by one of the exemptions. In this way, the market can make its own determination as to the significance, if any, of the transaction in question.

5. Does the Multilateral Instrument prohibit insiders from entering into monetization transactions?

No. The Multilateral Instrument imposes a reporting requirement only. It does not prohibit insiders from entering into a monetization transaction. An insider may, however, be prohibited on other grounds from entering into a monetization transaction. For example, Canadian securities legislation generally prohibits insiders (and certain others) from trading in securities of a reporting issuer while in possession of material undisclosed information about that issuer (the insider trading prohibition). It should be noted that, in many cases, the scope of the insider trading prohibition is broader than the scope of the existing insider reporting obligation.

An insider may also be prohibited from entering into a monetization arrangement by the terms of an escrow agreement. The standard form of agreement prescribed by National Policy 46-201 *Escrow for Initial Public Offerings*, for example, contains restrictions on parties to the agreement entering into monetization arrangements.

6. Why do investors enter into monetization transactions?

Investors, including insiders, may have legitimate reasons for entering into monetization transactions. These reasons may include:

- *Tax planning* – where there has been significant appreciation in the value of securities held by an investor, a conventional disposition of such securities may trigger a significant tax liability; a monetization transaction may permit the investor to receive a cash amount similar to proceeds of disposition while deferring this tax liability.
- *Liquidity* – an investor may have a short-term need for cash and wish to borrow against his or her securities. A monetization arrangement may permit the investor to borrow an amount equal to a substantially higher proportion of the current market price of his or her securities (e.g., 90%) than he or she could with a simple pledge of the securities.
- *Retained ownership* – an investor may wish to monetize a portion of his or her position but retain the full voting rights and/or entitlement to dividends associated with that position.
- *Risk management/portfolio diversification* – an investor is able to "lock in" the present value of his or her position, and avoid the risk of a future decline in the value of the holding, by means of a monetization transaction. The investor may

use the funds released as a result of the transaction to diversify his or her portfolio, thereby avoiding the risk of having all of his or her assets "in one basket".

7. Does the requirement to report undermine any of these reasons for entering into a monetization transaction?

No. A requirement to report the existence and material terms of a monetization transaction is not inconsistent with any of these objectives and does not prevent the insider from achieving any of these objectives.

8. Does the Multilateral Instrument apply only to monetization transactions?

No. The Multilateral Instrument applies to any agreement, arrangement or understanding which satisfies the conditions in either section 2.1 or section 2.3 of the Instrument.

Part 2 – Application of the Multilateral Instrument

1. When does the Multilateral Instrument apply?

If you are an "insider" of a reporting issuer, and you enter into an agreement, arrangement or understanding of any kind which

- changes your "economic exposure" to your reporting issuer, or
- changes your "economic interest in a security" of your reporting issuer, *and*

you are not required under any other provision of Canadian securities law to file an insider report about this agreement, arrangement or understanding, you must file an insider report under the Multilateral Instrument, unless you are covered by one of the exemptions.

2. What does "economic exposure" mean?

The term "economic exposure" in relation to a reporting issuer is defined in the Multilateral Instrument to mean the extent to which the economic, financial or pecuniary interests of a person or company are aligned with the market price of securities of the reporting issuer or the economic, financial or pecuniary interests of the reporting issuer.

The concept of "economic exposure" also appears in section 6.2 of National Policy 46-201 *Escrow for Initial Public Offerings*:

> ***6.2 Restrictions on dealing with escrow securities***
>
> Escrow restricts the ability of holders to deal with their escrow securities while they are in escrow. The standard form of escrow agreement sets out these restrictions. Except to the extent that the escrow agreement expressly permits, a principal cannot sell, transfer, assign, mortgage*, enter into a derivative transaction concerning,* or otherwise deal in any way with the holder's escrow securities or any related share certificates or other evidence of the escrow securities. A private company, controlled by one or more principals of the issuer, that holds escrow securities of the issuer, *may not participate in a transaction that results in* a change of its control *or a change in the economic exposure* of the principals to the risks of holding escrow securities.
>
> [Emphasis added.]

The term "economic exposure" in relation to a reporting issuer generally refers to the link between a person's wealth or prospects and the wealth or prospects of the reporting issuer in which the person is an insider. The term is intended to have broad application and is best illustrated by way of example.

An insider with a substantial proportion of his or her personal wealth invested in securities of his or her reporting issuer will be highly exposed to changes in the fortunes of the reporting issuer. Conversely, an insider who holds no securities of a reporting issuer (and does not participate in a compensation arrangement involving securities of the reporting issuer such as a stock option plan) will generally have significantly less exposure to the reporting issuer. The insider's exposure will generally be limited to the insider's salary and other compensation arrangements which do not involve securities of the reporting issuer.

All other things being equal, if an insider changes his or her ownership interest in a reporting issuer (either directly, through a purchase or sale of securities of the reporting issuer, or indirectly, through a derivative transaction involving securities of the reporting issuer), the insider will generally be changing his or her economic exposure to the reporting issuer. Similarly, if an insider enters into a hedging transaction which has the effect of reducing the sensitivity of the insider to changes in the reporting issuer's share price or performance, the insider will generally be changing his or her economic exposure to the reporting issuer.

3. What does "economic interest" in a security mean?

The term "economic interest in a security" is defined in the Multilateral Instrument to mean the extent to which a person or company is entitled to receive, bears or is subject to

(a) an economic, financial or pecuniary reward, benefit or return from a particular security, or

(b) an economic, financial or pecuniary loss or risk of loss in respect of a particular security,

and includes, without limitation, the extent to which such person or company has or shares the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in such security or a transaction which directly or indirectly involves such security.

The term is intended to have broad application and is intended to refer to the economic attributes ordinarily associated with beneficial ownership of a security, such as the following:

- the potential for gain in the nature of interest, dividends or other forms of distributions of income on the security;
- the potential for gain in the nature of a capital gain realized on a disposition of the security, to the extent that the proceeds of disposition exceed the beneficial owner's tax cost (that is, gains associated with an appreciation in the security's value); and
- the potential for loss in the nature of a capital loss on a disposition of the security, to the extent that the proceeds of disposition are less than the beneficial owner's tax cost (that is, losses associated with a fall in the security's value).

The beneficial owner could, for example, eliminate the risk associated with a fall in the value of the securities, while retaining legal and beneficial ownership of the securities, by entering into a derivative transaction such as an equity swap. If the beneficial owner is an insider, and the securities are securities of the insider's reporting issuer, such a transaction would likely trigger the test in section 2.1 of the Instrument. (Such a transaction might also be covered by the existing insider reporting rules, depending on the particular facts and circumstances of the transaction.)

4. Why is it necessary to refer to both "economic exposure" in relation to a reporting issuer and "economic interest" in a security of the reporting issuer? How are they different?

In many cases, an arrangement which satisfies the "economic exposure" test in subparagraph 2.1(a)(i) will also satisfy the "economic interest" test in subparagraph 2.1(a)(ii). However, the tests are not identical. For example, there will be arrangements which satisfy the first test, but not the second test, but which would nevertheless impinge upon the policy rationale for insider reporting.

For example, if an insider holds no securities of his or her reporting issuer, and enters into a short position (a "naked short") in the expectation that the share price will fall, the test in s. 2.1(a)(ii) would likely not apply, since the insider would not be altering his or her economic interest in any securities of the reporting issuer. A similar result would occur if the number of securities sold short exceeded the number of securities held. Such arrangements would appear to satisfy the policy rationale for insider reporting, and should be transparent to the market.

An additional reason for retaining the test in s. 2.1(a)(i) of the Instrument is that it directly ties the requirement for insider reporting to one of the fundamental policy rationale underlying the insider reporting requirement. One of the purposes of an insider reporting system is to enhance market efficiency: insider reports provide investors with timely information concerning the trading activities of insiders of the issuer, and, by inference, the insiders' views of their issuer's prospects. For the same reason, we believe that insiders should be required to disclose arrangements which directly or indirectly mimic trades. Such arrangements similarly may give rise to an inference as to the insiders' views of the issuer's prospects.

Although it may be argued that the "economic interest in a security" test may be subsumed within the "economic exposure" test, we believe there are advantages to retaining this test as a separate test. The economic interest test references the means by which an insider may alter his or her economic exposure to the reporting issuer. We believe that, in some cases, this test may be easier to understand, and consequently easier to apply, than the economic exposure test, since this test references the direct economic consequences of a monetization transaction. Accordingly, if an insider enters into an arrangement which has the effect, for example, of divesting the insider of the risk that certain securities owned by the insider may fall in value, and none of the exemptions in the Instrument otherwise applies, s. 2.1(a)(ii) makes it clear that there is a reporting obligation. It is not necessary to then consider the issue of whether this arrangement has the effect of altering the insider's economic exposure.

An additional reason for retaining the economic interest test is that this test generally approximates the approach taken by the U.S. insider reporting requirements. Under the U.S. insider reporting requirements, insiders are generally required to report any

transaction resulting in a change in "beneficial ownership" of equity securities of the issuer. For reporting purposes, a person is deemed to be the "beneficial owner" of securities if the person has a "pecuniary interest" in the securities. The term "pecuniary interest" in any class of equity securities is defined to mean "the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities". See generally SEC Rule 16a-1(a)(2). One of the objectives underlying the adoption of the instrument is to introduce greater consistency in the reporting requirements under U.S. securities law and Canadian securities laws in relation to monetization arrangements. Consequently, the reference to an "economic, financial or pecuniary reward, benefit or return" in the definition of "economic interest" in the Instrument is intended to clarify that monetization transactions which are reportable under U.S. insider reporting requirements will also generally be covered by Canadian insider reporting law requirements, unless covered by one of the exemptions.

5. What are the exemptions to the insider reporting requirement contained in the Multilateral Instrument?

The Multilateral Instrument contains a number of exemptions for insider transactions which satisfy one of the tests in section 2.1 of the Multilateral Instrument. These include:

- arrangements which do not involve, directly or indirectly, a security of the reporting issuer or a derivative in respect of which the underlying interest is or includes as a material component a security of the reporting issuer;
- a compensation arrangement such as a phantom stock plan, deferred share unit ("DSU") plan or stock appreciation right ("SAR") plan which would otherwise be caught by the Instrument if:
    - the existence and material terms of the compensation arrangement are disclosed in any public document (such as the annual audited financial statements of the issuer or an annual filing made under any provision of Canadian securities legislation); *or*
    - the material terms of the compensation arrangement are set out in a written document, and the alteration to economic exposure or economic interest referred to in section 2.1 occurs as a result of the satisfaction of a pre-established condition or criterion described in the document, and does not involve a discrete investment decision by the insider.
- a person or company exempt from the insider reporting requirements under a provision of NI 55-101, to the same extent and on the same conditions as are applicable to such exemption;
- a person or company who has obtained exemptive relief in a jurisdiction from the insider reporting requirements of that jurisdiction, to the same extent and on the same conditions as are applicable to such exemptive relief; and
- a transfer, pledge or encumbrance of securities by a person or company for the purpose of giving collateral for a debt made in good faith so long as there is no limitation on the recourse available against the person or company for any amount payable under such debt.

6. What does the reference to "material component" in paragraph 2.2(a) of the Multilateral Instrument mean?

This is intended to ensure that if an insider entered into a derivative arrangement which satisfied one of the alteration tests in section 2.1, and in respect of which the underlying interest was a basket of securities or an index which included securities of the reporting issuer, such arrangement would trigger a reporting requirement only if the derivative involved securities of the reporting issuer "as a material component". In determining materiality, similar considerations to those involved in the concepts of material fact and material change would apply.

7. Why is there an exemption for compensation arrangements?

Many compensation arrangements are specifically adopted for the purpose of creating incentives for the directors, officers and employees who participate in such arrangements to improve their performance. Such arrangements are specifically intended to align the economic, financial or pecuniary interests of the recipient with the economic, financial or pecuniary interests of the employer. In many cases, such arrangements would likely satisfy the economic exposure test contained in section 2.1 of the Instrument.

Many compensation arrangements, such as stock option plans, phantom stock plans, deferred share unit plans and stock appreciation right plans, involve, directly or indirectly, a security of the reporting issuer or a derivative which involves a security of the reporting issuer. Consequently, the exemption in subsection 2.2(a) would likely not be available for such plans.

We have added a broad exemption in subsection 2.2(b) to address compensation arrangements, as compensation arrangements are not the primary focus of the Multilateral Instrument. In most cases, we do not expect there to be any change to the existing approach to reporting (or not reporting) such compensation arrangements.

A compensation arrangement will only be caught by the Multilateral Instrument if:

- the insider "is not otherwise required to file an insider report in respect of such ... arrangement ... under any provision of Canadian securities legislation"; (see s. 2.1(b))

- the arrangement "... involve[s], directly or indirectly, a security of the reporting issuer or a derivative in respect of which the underlying interest is or includes as a material component a security of the reporting issuer"; (see 2.2(a))

- the arrangement is not disclosed in any public document (such as audited annual financial statements or any other regulatory filing); and (see 2.2(b)(i))

- the insider is able to alter his or her economic interest in securities of the reporting issuer, or his or her economic exposure to the reporting issuer, through discrete investment decisions. (see 2.2(b)(ii))

We believe that most compensation arrangements will be excluded on several grounds. To the extent a compensation arrangement is not excluded on any of these grounds, we believe that there is a compelling case for public disclosure of such arrangement.

Subparagraph 2.2(b)(i) provides an exemption for a compensation arrangement which is required to be disclosed, or is disclosed, in a public document such as audited annual financial statements or another form of regulatory filing. For example, an issuer may establish a deferred share unit (DSU) plan with a view to enhancing the alignment of the interests of its directors with those of its shareholders. Assuming that the DSU plan is not otherwise covered by the insider reporting requirements under Canadian securities legislation, an insider who participated in the plan would likely be required to file insider reports as a result of the insider's participation in the plan since the plan would likely satisfy the economic exposure test contained in section 2.1 of the Instrument. However, if the DSU plan is disclosed in a public document such as a Management Proxy Circular, an insider who participated in the DSU plan would not be required to file insider reports relating to the insider's participation in the plan, since the insider would be entitled to rely on the exemption in subparagraph 2.2(b)(i).

Subparagraph 2.2(b)(ii) provides an exemption for a compensation arrangement which is not publicly disclosed, and which has the effect of altering the insider's economic exposure to the reporting issuer, or the insider's economic interest in securities of the reporting issuer, if

- the compensation arrangement is described in a written document,

- the alteration occurs as a result of the satisfaction of a pre-established condition or criterion described in the document (such as the insider's retirement from office or ceasing to be a director), and

- the alteration does not involve a "discrete investment decision" by the insider.

Part 5 of NI 55-101 provides a similar exemption from the insider reporting requirements for securities which are acquired under an "automatic securities purchase plan". Section 4.2 of the Companion Policy to NI 55-101, Companion Policy 55-101 CP *Exemption from Certain Insider Reporting Requirements*, similarly refers to the concept of a "discrete investment decision".

8. Why is the exemption for a pledge of securities as collateral for a good faith debt limited to a debt in which there is no limitation on recourse?

We believe that it is important to restrict the debt exemption to debts in which there is no limitation on recourse for the reason that a limitation on recourse may effectively allow the borrower to "put" the securities to the lender in satisfaction of the debt. The limitation on recourse may effectively represent a transfer of the risk that the securities may fall in value from the insider to the lender. We believe that, in these circumstances, the transaction should be transparent to the market.

Part 3 – Other Information

1. How do I complete an insider report for an arrangement covered by the Multilateral Instrument?

An insider will file the same form of insider report as he or she would in the case of an ordinary purchase or sale of securities of the reporting issuer in question.

A CSA staff notice containing examples of various types of monetization arrangements, together with examples of completed forms for such arrangements, will be published on or before the date the Multilateral Instrument takes effect.

2. Why does the Multilateral Instrument require disclosure of certain arrangements which were entered into prior to the effective date of the Instrument?

The Multilateral Instrument contemplates that, in certain circumstances, it will be necessary for insiders to disclose the existence of *pre-existing* monetization arrangements.

If an insider of a reporting issuer, prior to the effective date of the Multilateral Instrument, entered into an agreement, arrangement or understanding in respect of which

- the insider would have been required to file an insider report under this Instrument if the agreement, arrangement or understanding had been entered into on or after the effective date, *and*

- the agreement, arrangement or understanding remains in effect on or after the effective date of the Instrument,

then the insider will be required to file a report under the Multilateral Instrument.

We believe it is necessary for the Multilateral Instrument also to address pre-existing arrangements *which continue in force after the effective date* since, if such arrangements are not disclosed, the insider reporting regime will continue to convey materially misleading information about certain insiders' true economic positions in their issuers.

For example, if an insider, *before* the Multilateral Instrument comes into force, enters into a monetization arrangement which has the effect of divesting the insider of substantially all of the economic risk and return associated with the insider's securities in the reporting issuer, and the insider then files an insider report *after* the Multilateral Instrument comes into force that indicates that the insider continues to have a substantial ownership position in the issuer, we believe the pre-existing arrangement will render the insider report (and all future insider reports) materially misleading. The insider report will not convey an accurate picture of the insider's true economic positions in his or her issuer.

For these reasons, we believe that it is necessary for insiders to disclose the existence of pre-existing monetization arrangements which have a continuing impact on publicly reported holdings.

6.1.3 Notice of Proposed Amendments to Rule 61-501 - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions and Companion Policy 61-501CP

NOTICE OF PROPOSED AMENDMENTS TO RULE 61-501 - *INSIDER BIDS, ISSUER BIDS, GOING PRIVATE TRANSACTIONS AND RELATED PARTY TRANSACTIONS* AND COMPANION POLICY 61-501CP

Substance and Purpose of Proposed Amendments

The Commission is proposing to amend Rule 61-501 - *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* (the "Rule") and Companion Policy 61-501CP (the "Companion Policy"). The Rule provides security holders of issuers involved in specified types of transactions with the benefits of enhanced disclosure requirements and, in certain cases, independent valuations and majority of minority security holder approval.

The amendments are primarily intended to clarify grey areas, reduce the necessity for applications for exemptive relief and generally make the Rule more user-friendly. Some of the proposed changes are also designed to eliminate regulatory burdens of which the costs to issuers and their security holders may not outweigh the benefits, particularly for junior issuers.

Summary of Proposed Amendments

A number of the proposed amendments are drafting changes that do not affect the substance of the Rule or Companion Policy. These and the substantive changes are noted in the footnotes to the draft of the proposed amended versions of the Rule (the "amended Rule") and Companion Policy, copies of which follow this notice. The following are the most significant amendments.

1. Going Private Transaction - Definition

The Commission proposes to substitute the term "business combination" for "going private transaction" throughout the Rule and make other changes to the definition for purposes of clarification.

When the Rule came into effect, it replaced Commission Policy 9.1. One of the fundamental differences between the Rule and Policy 9.1 was in the definition of "going private transaction". In Policy 9.1, the term was defined in the traditional manner, essentially covering plans of arrangement or similar transactions in which security holders could receive cash (or non-participating securities) in exchange for their publicly traded securities without their consent. In the Rule (in subsection 1.1(3)), the definition was narrowed in that it applied only if the transaction was "with or involving a related party of the issuer", and the related party was treated differently from other security holders, subject to certain exceptions. The definition was also broadened in that it no longer excluded transactions in which the security holders received participating securities in substitution for their securities of the issuer.

The changes in the definition that were brought about by the Rule have given rise to some confusion among market participants and their advisers as to the definition's application. One of the reasons for this confusion is that the definition is somewhat counter-intuitive, in that it does not match the normal English meaning of the defined term. As defined in other legislation, including corporate statutes, a "going private transaction" does not entail the substitution of one publicly traded participating security for another. As a result, there have been instances in which issuers have not realized that their transactions were "going private transactions" within the Rule's definition.

Another area of uncertainty in the definition relates to its introductory words, which refer to involvement of a related party, and paragraph (e) of the definition, which essentially removes a transaction from the definition if the related party is only entitled to receive consideration that is identical to the consideration paid to the other security holders. The Commission's commentary that accompanied the requests for comments preceding the enactment of the Rule made it clear that the intention of the definition was to capture conflict of interest situations, which included transactions that were at arm's length as between the main parties but which entailed unequal treatment or a collateral benefit for a related party to the issuer. The definition was also intended to capture the circumstance where a related party was "taking the issuer private", even if no collateral benefit was being provided. Some users of the Rule have suggested that the definition does not apply to one or both of these types of transactions, although the Commission does not share this interpretation. The definition also does not clearly address its application to non-voting and subordinate voting shares, and to payments for non-participating securities held by related parties. The definition has been revised in the amended Rule (and relocated so that it is together with the rest of the amended Rule's definitions in section 1.1) to clarify these areas.

2. Collateral Benefit - Definition

The Commission proposes to add a definition of "collateral benefit" to the Rule.

Collateral benefits in the context of going private transactions are addressed in the current Rule in clause (c)(i)(B) of the definition of "interested party", subparagraph (e)(ii) of the definition of "going private transaction", and the minority approval

requirements in Part 8. Among other things, the concept comes into play in the determination of which security holders are excluded from voting when minority approval is required.

The general wording of the Rule's provisions on collateral benefits has given rise to inconsistencies in the manner in which participants in transactions covered by the Rule and their advisers have interpreted the concept. This is particularly the case regarding arrangements for employees in the context of a going private transaction. Questions of interpretation also have arisen when a related party has proposed to carry out a transaction with an issuer, such as a property acquisition, concurrently with the issuer undergoing a business combination.

One of the policy concerns regarding collateral benefits is that they could unfairly constitute extra consideration paid to some security holders to the exclusion of others for the purpose, in fact or perception, of inducing those security holders to tender to a bid or support a business combination. Even where the motives are above reproach, collateral benefits can cause a transaction to have economic consequences that vary among the security holders that vote on the transaction, which could distort the benefit of a minority vote. These concerns are less likely to arise in the context of employee arrangements if the number of securities held by the employees in question is not sufficiently high to have a likely effect on the outcome of the minority vote.

Accordingly, the Commission is proposing that where the benefits in question relate to employment, and are consistent with customary industry practices, the benefits will not be regarded as "collateral benefits" under the Rule if related parties of the issuer who receive the benefits do not hold, in the aggregate, more than 10% of the outstanding securities of the affected class. If the 10% threshold is not exceeded, it will be up to the issuer to determine whether the benefits are consistent with customary industry practices. The issuer may have to defend this determination subsequently if challenged.

It should be noted that neither the current Rule nor the amended Rule confines the collateral benefit concept to circumstances where the benefit is provided by, or negotiated with, the acquiring party (except in the determination of which securities acquired in a take-over bid can be counted as votes in favour of a subsequent "second step" business combination). Since a fundamental purpose of the Rule is to address conflicts of interest, the Rule's treatment of collateral benefits reflects the Commission's view that minority approval of a price that security holders are offered in a business combination may not be meaningful if a significant component of that approval is represented by security holders who are, in substance, receiving a higher price through collateral benefits. The level of the conflict of interest, or its possible effect on the outcome of a vote of security holders, does not depend on the circumstances under which the conflict arose or when the collateral benefit was negotiated.

The amended Rule would also clarify that if, for example, an amalgamation is carried out in conjunction with a sale of assets of one of the amalgamating issuers to a related party of that issuer, the amalgamation is caught by the amended Rule's definition of "business combination".

3. Downstream Transactions and Business Combinations - Definitions

The Commission proposes to exclude downstream transactions in the definition of "business combination".

A definition of "downstream transaction" has been added to the amended Rule. A downstream transaction for an issuer essentially means a transaction between the issuer and an entity in which the issuer holds a control block, as long as another related party of the issuer does not also hold a significant position in that entity. Although a downstream transaction is carried out among related parties, it does not give rise to the type of conflict of interest, from the standpoint of the party holding the control block, that the Rule was designed to address. The Rule recognizes this for related party transactions by providing valuation and minority approval exemptions in paragraph 10 of section 5.6 and paragraph 3 of section 5.8, respectively, but it does not provide similar exemptions for going private transactions. The proposed revisions would remove this discrepancy.

4. Lock-up and Support Agreements - Definition of "Joint Actors"

The Commission proposes to move the interpretive guidance regarding "acting jointly or in concert" in subsection 2.3(2) of the current Companion Policy to the definition of "joint actors" in the amended Rule. The definition of "joint actors" would replace the definition of "acting jointly or in concert" that is in paragraph 1.2(1)(b) of the current Rule.

Subsection 2.3(2) of the current Companion Policy sets out the Commission's view that a lock-up or support agreement does not, in and of itself, constitute acting jointly or in concert for the purposes of the Rule. The decision of the British Columbia Court of Appeal in *Re Sepp's Gourmet Foods Ltd.* (2002), 211 D.L.R. (4th) 542, in which the court did not apply the interpretation in the Companion Policy in considering the effect of a support agreement on a security holder's right to vote on a going private transaction, illustrates that the interpretation should be in the Rule, rather than the Companion Policy. Pending the coming into force of the amended Rule, the Commission is continuing to interpret the Rule as stated in the current Companion Policy.

5. Insider Bids - Obligations of Independent Committee - Paragraph 2.3(2)(c) of amended Rule

The Commission proposes to add a requirement that the independent committee of the target issuer's board use its best efforts to ensure that the formal valuation for an insider bid is completed and provided to the offeror in a timely manner. This change has been made to address concerns that have been expressed by offerors carrying out unfriendly insider bids.

6. Circumstances where Formal Valuation Required

The Commission proposes to make additions to the existing circumstances in which the Rule does not require the preparation of a formal valuation.

While the formal valuation requirement is a fundamental component of the Rule, the Commission recognizes that the expense of a formal valuation, which often is borne directly or indirectly by the security holders the Rule is designed to protect, may outweigh the benefits. This is reflected in the current version of the Rule, but additional examples have emerged, in the context of applications for exemptive relief, where exceptions to the formal valuation requirement have been considered justified.

There is also a growing recognition among securities regulators that there are circumstances where regulatory accommodations for junior issuers with limited resources may be justified. Examples are in the areas of continuous disclosure and corporate governance, for which new requirements are currently under consideration.

It should be noted that for all the circumstances under which the Commission is proposing to eliminate the formal valuation requirement in the Rule, the minority approval requirement would remain.

(a) **Business Combination with an Unrelated Party:** Under **subsection 4.3(1)** of the amended Rule, a formal valuation will not be required for a transaction that meets the definition of "business combination" solely because a related party is receiving a collateral benefit. If a related party is a party to a substantial transaction, such as a sale of assets, that is connected to the business combination, a formal valuation for the business combination will be required.

(b) **Issuer not Listed on Senior Market:** Formal valuation exemptions for issuers that are not listed on specified markets have been introduced in **paragraph 2 of subsection 4.4(1)** (business combinations) **and paragraph 3 of section 5.5** (related party transactions) of the amended Rule. These exemptions would replace the current exemptions in paragraphs 13 and 17 of section 5.6 of the current Rule for related party transactions smaller than $500,000 and for certain types of transactions by issuers listed on the TSX Venture Exchange, respectively. In order for the exemption to apply, the issuer must have at least one independent director, as defined in the Rule, and at least two-thirds of the independent directors must approve the transaction.

These exemptions recognize that a valuation can impose a significant cost to junior issuers relative to their size and level of development. In addition, the transactions undertaken by these issuers are often of a speculative nature, not lending themselves to traditional valuation techniques.

(c) **Types of Related Party Transactions Requiring Valuations:** Under **subsection 5.4(1), paragraph 4 of section 5.5, and subsection 6.3(2)** of the amended Rule, a formal valuation of most types of financial assets involved in a related party transaction will no longer be required, including securities of a public company if all material information regarding the issuer and its securities has been publicly disclosed. It is reasonable to expect that security holders may prefer issuers not to incur the expense of a formal valuation of these types of assets in the context of a related party transaction, as long as there is proper disclosure and, in appropriate cases, the issuer obtains minority approval.

(d) **Securities Offered in Insider Bids, Issuer Bids and Business Combinations:** Under **subsection 6.3(2)** of the amended Rule, if the consideration in an insider bid, issuer bid or business combination is comprised of securities for which a liquid market exists, a formal valuation of those securities will only be required, subject to certain conditions, if they constitute more than 25% of the outstanding class, up from 10% in the current Rule. The Commission considers the higher threshold to be sufficient given the additional requirement for the valuator to be of the opinion that a valuation of the securities is not required.

7. Connected Related Party Transactions - Section 5.5 subpara. 2(c) of amended Rule

The amended Rule contains a new provision to clarify how the formal valuation and minority approval exemptions for a related party transaction that is not larger than 25 per cent of the issuer's market capitalization applies to multiple transactions. The subject is covered to some extent in section 6.1 of the current Companion Policy, but experience has demonstrated that more precise guidance is needed.

8. Amendments to Securities - Subsection 5.7(2) of amended Rule

The amended Rule contains a new provision to clarify that where a related party transaction is a material amendment to a security, the test for determining the availability of the minority approval exemption for a transaction that is not larger than 25 per cent of the issuer's market capitalization must be applied to the whole transaction as amended, and not just to the amendment. (A formal valuation will not be required in this type of circumstance under the amended Rule.) An amendment to a security can fundamentally change the original transaction.

As an illustration, an issuer with a market capitalization of $10 million may have an insider who holds an "out-of-the-money" $6 million convertible debenture of the issuer. The issuer may propose to lower the conversion price to a price that is "in the money". The amended Rule would clarify that the size test for the minority approval exemption would be applied on the basis of a $6 million transaction, and not on the difference between the number of underlying shares issuable as between the old and new conversion prices. This treatment is justified on the basis that, without the amendment of the conversion price, there may be no share dilution whatsoever to existing shareholders.

9. Downward Adjustments in Formal Valuations - Para. 6.4(2)(d) of amended Rule

Paragraph 6.4(1)(d) of the current Rule provides that a formal valuation of securities must not include a downward adjustment to reflect the liquidity of the securities, the effect of the transaction on the securities or the fact that the securities do not form part of a controlling interest. In the amended Rule, this provision is confined to the valuation of offeree securities and affected securities. A valuation of securities that are to be received by the holders of offeree or affected securities should include adjustments affecting the value of the securities to the intended recipients.

10. Security Holders Excluded from Voting in a Minority Vote - Para. 8.1(2)(c) of amended Rule

Due to the wide net cast by the definition of "related party" in the Rule, some categories of security holders may be disenfranchised in a minority vote, even though the conflict of interest issue the Rule is intended to address is not applicable or significant.

An example is where an issuer proposes to carry out a transaction with its parent company. In this case, all directors and senior officers of affiliates of the issuer, including affiliates that are sister companies and subsidiaries of the issuer, are excluded from voting on the transaction, because those affiliates are related parties to the parent company. The amended Rule will permit the directors and senior officers of the sister companies and subsidiaries to vote if they are not otherwise related to the parent company.

Companion Policy

Several amendments are proposed for the Companion Policy to reflect the proposed changes to the Rule and to provide additional interpretive guidance. Some parts of the Companion Policy that could be construed as being prescriptive have been moved to the amended Rule or eliminated. Explanations for the changes to the Companion Policy are in the footnotes.

Policy Q-27 of the Quebec Securities Commission

The Commission recognizes the desirability of maintaining the existing harmonization of Rule 61-501 with Policy Q-27 of the Quebec Securities Commission and is pursuing this objective in regard to the proposed amendments.

Authority for the Proposed Amendments

The following sections of the Act provide the Commission with the authority to make the amendments to the Rule. Subsection 1(1.1) of the Act provides that "going private transaction", "insider bid" and "related party transactions" may be defined in a Rule. (Section 1.5 of the amended Rule defines "going private transaction", for purposes of the Act, as having the meaning ascribed to the term "business combination" in the amended Rule.) Paragraph 143(1)28 authorizes the Commission to make rules to regulate issuer bids, insider bids, going private transactions and related party transactions, including, in clause v, prescribing requirements for disclosure, valuations, review by independent committees of boards of directors and approval by minority security holders.

Unpublished Materials

In proposing these amendments, the Commission has not relied on any significant unpublished study, report or other materials.

Anticipated Costs and Benefits

The Commission believes that the proposed amendments will enhance efficiency for market participants that are subject to the Rule, as there will be greater clarity regarding the application of the Rule and reduced circumstances requiring valuations and exemptive relief. To the extent that the amendments are substantive in nature, they will have benefits in terms of reduced regulatory burdens, particularly for junior issuers, that will outweigh the costs, if any.

Comments

Interested parties are invited to make written submissions with respect to the proposed amended Rule and Companion Policy. Submissions received by June 9, 2003 will be considered.

Submissions should be made to:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
jstevenson@osc.gov.on.ca

A diskette containing the submission in Word format should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to:

Ralph Shay
Director, Take-over/Issuer Bids, Mergers & Acquisitions
Ontario Securities Commission
(416) 593-2345

Texts of the Proposed Amended Rule and Companion Policy

The texts of the proposed amended Rule and Companion Policy follow, together with footnotes that are not part of the proposed amended Rule and Companion Policy but have been included to provide both background and explanation.

February 28, 2003.

6.1.4 OSC Rule 61-501 Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions

ONTARIO SECURITIES COMMISSION RULE 61-501
INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS[1]
AND RELATED PARTY TRANSACTIONS

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[1] "Business combination" has been substituted for "going private transaction" throughout the amended Rule.

ONTARIO SECURITIES COMMISSION RULE 61-501
INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS
AND RELATED PARTY TRANSACTIONS

PART 1 INTERPRETATION

1.1 Definitions and Interpretations[2] **-** In this Rule

"affected security" means

(a) for a business combination of an issuer, an equity security[3] of the issuer in which the interest of a holder[4] would be terminated as a consequence of the transaction, and

(b) for a related party transaction of an issuer, an equity security of the issuer;

"affiliated entity": a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company;[5]

"arm's length" has the meaning ascribed to that term in section 251 of the *Income Tax Act* (Canada), or any successor to that legislation, and, in addition to that meaning, an entity is deemed not to deal at arm's length with a related party of the entity;[6]

"associated entity", where used to indicate a relationship with an entity, has the meaning ascribed to the term "associate" in subsection 1(1) of the Act and also includes any person of which the entity beneficially owns voting securities carrying more than 10 per cent of the voting rights attached to all outstanding voting securities of the person;[7]

"beneficially owns" includes direct or indirect beneficial ownership,[8] and

(a) despite subsection 1(6) of the Act, a person or company is not deemed to beneficially own securities that are beneficially owned by its affiliated entity, unless the affiliated entity is also its subsidiary entity,[9] and

(b) for the purposes of the definitions of control block holder and related party, section 90 of the Act applies in determining beneficial ownership of securities;

"bona fide lender" means a person or company that

(a) holds securities sufficient to affect materially the control of an issuer

(i) solely as collateral for a debt under a written pledge agreement entered into by the person or company as a lender, or

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2 The definitions and interpretations in sections 1.1, 1.2, 1.4 and 1.5 of the current Rule have been combined alphabetically in a single section of the amended Rule to assist users of the Rule.

3 "Equity security" replaces "participating security" throughout the amended Rule because the definition of participating security in the current Rule is virtually identical to the definition of equity security in subsection 89(1) of the Act. Both terms are used in the current Rule.

4 "Holder" replaces "beneficial owner" in a number of parts of the amended Rule where it is not considered necessary or desirable to apply the broad legal concept of beneficial ownership.

5 The words "or if each of them is controlled by the same person or company" have been removed as not being strictly necessary, because that concept is incorporated in the words "both are subsidiary entities of the same person or company" in the definition.

6 Replaces section 1.4 of the current Rule and part of section 2.11 of the current Companion Policy to remove some of the subjectivity from the concept, particularly for transactions involving relatives.

7 New. The definition has been added to include a person, such as a partnership or trust, that would be an associate under clause (a) of the definition of "associate" in subsection 1(1) of the Act but for the fact that the person is not a company. "Associated entity" has been substituted for "associate" throughout the amended Rule.

8 The introductory words have been added to enable reduced repetition of the words "directly or indirectly" in the Rule.

9 New. Under subsection 1(6) of the Act, a company is deemed to own securities beneficially owned by its affiliates. Because "affiliates" include parent and sister companies, subsection 1(6) could have unintended consequences if applied to parts of the Rule, including the definitions of "issuer insider" and "subsidiary entity". This new provision in the amended Rule preserves the aspect of subsection 1(6) of the Act that should apply to the Rule, and it also covers subsidiary entities that are not companies.

(ii) solely as collateral acquired under a written agreement by the person or company as an assignee or transferee of the debt and collateral referred to in subparagraph (i),

(b) is not yet legally entitled to dispose of the securities for the purpose of applying proceeds of realization in repayment of the secured debt, and

(c) was not a related party of the issuer at the time the pledge agreement referred to in subparagraph (a)(i) or the assignment or transfer referred to in subparagraph (a)(ii) was entered into;

"business combination"[10] means, for an issuer, an amalgamation, arrangement, consolidation, amendment to the terms of a class of equity securities or any other transaction of the issuer, as a consequence of which the interest of a holder of an equity security of the issuer may be terminated without the holder's consent, regardless of whether the equity security is replaced with another security,[11] but does not include

(a) an acquisition of an equity security of the issuer under a statutory right of compulsory acquisition,

(b) a consolidation of securities that does not have the effect of terminating the interests of holders of equity securities of the issuer in those securities without their consent, through the elimination of post-consolidated fractional interests or otherwise, except to an extent that is nominal in the circumstances,[12]

[13]

(c) a downstream transaction for the issuer,[14] or

(d) a transaction in which no person or company that is a related party of the issuer at the time the transaction is agreed to

(i) would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,[15]

(ii) is a party to any connected transaction to the transaction,[16] or

(iii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) consideration per security that is not identical in amount and form to the entitlement of the general body of holders in Canada of equity securities of the same class,[17]

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10 Substituted term for "going private transaction".

11 The reference to involvement of a related party has been removed from the introductory words of the definition, as this subject is covered in paragraph (d) of the definition in the amended Rule (see also note 44). The last of the introductory words have been added to highlight the fact that the definition is not confined to transactions where holders of equity securities cease to be holders of publicly traded securities.

12 Changed to include securities other than shares and to clarify the meaning of the paragraph.

13 Paragraphs (c) and (d) of the definition in the current Rule have been removed. The terms referred to in paragraph (c) are not normally attached to equity securities. Paragraph (d) is covered by subparagraph (d)(iii) of the definition in the amended Rule, to the extent that it should be covered.

14 New. "Downstream transaction" is a new defined term in the amended Rule. A downstream transaction does not give rise to the conflict of interest and disclosure issues the Rule is intended to address and therefore has been added to the list of exceptions in the definition of "business combination".

15 New. Paragraph (e) of the definition in the current Rule frames the exception for equal treatment of security holders primarily in terms of consideration received by related parties. This has caused some confusion regarding the categorization of transactions that are clearly intended to be caught by the definition, such as a transaction in which a related party takes the issuer private by acquiring all of the issuer, but does not receive greater consideration for securities of the issuer than other security holders.

16 New. This provision is intended to clarify the Rule's application where, for example, an amalgamation is carried out in conjunction with a sale of assets of one of the amalgamating issuers to a related party of that issuer. This has been an area of uncertainty under the current Rule. "Connected transactions" is a new defined term in the amended Rule.

17 Rewording of subparagraph (e)(i) of the definition in the current Rule. "General body of holders" has been substituted for "all other beneficial owners" throughout the amended Rule to prevent the Rule from applying in unintended circumstances. Without this change, for example, a transaction in which a non-related party acquired the issuer would technically be caught by the definition of "business combination" if that non-related party held only one equity security of the issuer prior to the acquisition, even if all the other security holders, including the related parties, were treated identically to each other. In addition to this change, equal treatment of

(B) a collateral benefit,[18]

(C) consideration for securities of the issuer if those securities are neither equity securities nor employee stock options,[19] or

(D) consideration for securities of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless that consideration is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;[20]

"class" includes a series of a class;

"collateral benefit", for a transaction of an issuer, means any benefit that a related party of the issuer is entitled to receive, directly or indirectly, as a consequence of the transaction, including, without limitation, an increase in salary, a lump sum payment, a payment for surrendering stock options, or other enhancement in benefits related to past or future employment with the issuer or another entity, regardless of the existence of any offsetting costs to the related party or whether the benefit is provided, or agreed to, by the issuer or by another party to the transaction, but does not include

(a) a payment or distribution per security that is identical in amount and form to the entitlement of the general body of holders in Canada of equity securities of the same class,

(b) an enhancement of employee benefits resulting from participation by the related party in a group plan, other than an incentive plan, for employees of a successor to the business of the issuer, if the benefits provided by the group plan are reasonably consistent with customary industry practices and are generally provided to employees of the successor to the business of the issuer who hold positions of a similar nature to the position held by the related party, or

(c) a benefit, not described in paragraph (b), that is received solely in connection with the past or future employment of the related party with the issuer, an affiliated entity of the issuer or a successor to the business of the issuer, if

(i) the conferring of the benefit is reasonably consistent with customary industry practices,

(ii) the conferring of the benefit is not conditional on the related party supporting the transaction in any manner,

(iii) related parties, and associated entities of related parties, of the issuer that are entitled to receive benefits described in this paragraph (c) do not, at the time the transaction is agreed to, whether alone or with joint actors, beneficially own or exercise control or direction over, in the aggregate, more than 10 per cent of the outstanding securities of any class of equity securities of the issuer, and

(iv) full particulars of the benefits described in this paragraph (c) are disclosed in any disclosure document sent to security holders of the issuer in connection with the transaction;[21]

"connected transactions" means two or more transactions that have at least one party in common, directly or indirectly, and

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security holders is addressed in this clause and in a number of other parts of the amended Rule in terms of identical entitlement, rather than identical payment made, to reflect the fact that transactions often provide choices to the general body of security holders.

18 Replaces subparagraph (e)(ii) of the definition in the current Rule, which has been the subject of some uncertainty as to its application. The new provision is intended to clarify the definition as it relates to collateral benefits. "Collateral benefit" is a new defined term in the amended Rule.

19 Equity securities are covered in clauses (A) and (D), and employee stock options are addressed in clause (B) and the definition of "collateral benefit". See also the next note.

20 Clauses (C) and (D) in the amended Rule replace subparagraph (e)(iii) in the current Rule and are intended to clarify the definition as it relates to multiple classes of securities. The application of clause (D) is discussed in subsection 2.1(2) of the amended Companion Policy.

21 New definition, intended to address the existing uncertainty regarding the regulatory treatment of collateral benefits under the Rule.

(a) are negotiated or completed at approximately the same time, or

(b) the completion of at least one of the transactions is conditional on the completion of each of the other transactions,

other than transactions relating solely to employment;[22]

"control block holder" of an entity means a person or company, other than a bona fide lender, that, whether alone or with joint actors, beneficially owns or exercises control or direction over securities of the entity sufficient to affect materially the control of the entity, and in the absence of evidence to the contrary, beneficial ownership or control or direction over voting securities to which are attached more than 20 per cent of the votes attached to all of the outstanding voting securities of the entity is considered sufficient to affect materially the control of the entity;[23]

"controlled": for the purposes only of the definition of "subsidiary entity", an entity is considered to be controlled by a person or company if

(a) in the case of an entity that has directors

(i) the person or company beneficially owns or exercises control or direction over voting securities of the entity carrying more than 50 per cent of the votes for the election of directors, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the entity,

(b) in the case of a partnership or other entity that does not have directors, other than a limited partnership, the person or company beneficially owns or exercises control or direction over more than 50 per cent of the interests in the partnership or other entity, or

(c) in the case of an entity that is a limited partnership, the person or company is the general partner or controls the general partner within the meaning of paragraph (a) or (b);[24]

"convertible" means convertible into, exchangeable for, or carrying the right to purchase or cause the purchase of, another security;[25]

"director", for an issuer that is a limited partnership, includes a director of the general partner of the issuer, except for the purposes of the definition of "controlled";[26]

"disclosure document" means

(a) for an insider bid,

(i) a take-over bid circular sent to holders of offeree securities, or

(ii) if the insider bid takes the form of a stock exchange insider bid, the disclosure document sent to holders of offeree securities that is deemed to be a take-over bid circular under subsection 131(10) of the Act,

(b) for an issuer bid,

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22 New definition. The subject of connected transactions arises in a number of parts of the current Rule and Companion Policy, where they are referred to as "related transactions".

23 The interpretation of the control block concept has been moved from subsection 1.1(2) of the current Rule and changed to a defined term to enable reduced repetition in the Rule, particularly in the definition of "related party". The "bona fide lender" exception in the definition of "related party transaction" in the current Rule has been moved to the definition of "control block holder".

24 Minor changes have been made to the definition, primarily to cover the possibility that an entity other than a partnership might not have directors. Also, control of the general partner is considered to constitute control of the limited partnership under the amended Rule.

25 New. Enables reduced repetition in the Rule.

26 New. This provision transfers the concept in section 2.1 of the current Companion Policy into the Rule, to eliminate the uncertainty regarding the circumstances under which a director of the general partner of a limited partnership is considered to be a director of the limited partnership under the Rule.

(i) an issuer bid circular sent to holders of offeree securities, or

(ii) if the issuer bid takes the form of a stock exchange issuer bid, the disclosure document sent to holders of offeree securities that is deemed to be an issuer bid circular under subsection 131(10) of the Act,

(c) for a business combination, an information circular sent to holders of affected securities, or, if no information circular is required, another document sent to holders of affected securities in connection with a meeting of holders of affected securities, and

(d) for a related party transaction,

(i) an information circular sent to holders of affected securities,

(ii) if no information circular is required, another document sent to holders of affected securities in connection with a meeting of holders of affected securities, or

(iii) if no information circular or other document referred to in subparagraph (ii) is required, a material change report filed for the transaction;

"downstream transaction" means, for an issuer, a transaction between the issuer and a related party of the issuer if, at the time the transaction is agreed to

(a) the issuer is a control block holder of the related party, and

(b) to the knowledge of the issuer after reasonable inquiry, no related party of the issuer, other than a wholly-owned subsidiary entity of the issuer, beneficially owns or exercises control or direction over, other than through its interest in the issuer, more than five per cent of any class of voting or equity securities of the related party that is a party to the transaction;[27]

"entity" means a person or company;[28]

"equity security" has the meaning ascribed to that term in subsection 89(1) of the Act;[29]

"fair market value" means, except as provided in paragraph 6.4(2)(d), the monetary consideration that, in an open and unrestricted market, a prudent and informed buyer would pay to a prudent and informed seller, each acting at arm's length with the other and under no compulsion to act;

"formal bid" has the meaning ascribed to that term in subsection 89(1) of the Act;

"formal valuation" means a valuation prepared in accordance with Part 6;[30]

"freely tradeable" means, for securities, that

(a) the securities are transferable,[31]

(b) the securities are not subject to any escrow requirements,

(c) the securities do not form part of the holdings of any person or company or combination of persons or companies referred to in paragraph (c) of the definition of "distribution" in the Act,

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27 New definition. The concept is taken from paragraph 10 of section 5.6 of the current Rule, which is a formal valuation exemption for related party transactions. Downstream transactions have been explicitly excluded from the definition of "business combination" and from being subject to the requirements for related party transactions in the amended Rule.

28 New. "Entity" has been substituted for "person or company" and other words in parts of the amended Rule to reduce verbiage or to increase clarity where a provision relates to more than one person or company.

29 New. This cross-reference is not technically necessary but it has been added to assist users of the Rule, since the definition of "equity security" is not in the general definition section of the Act.

30 The definition has been shortened by the removal of requirements that are in Part 6 of the amended Rule.

31 Changed from "not non-transferable".

(d) the securities are not subject to any cease trade order imposed by a Canadian securities regulatory authority,

(e) all hold periods imposed by Canadian securities legislation before the securities can be traded without a prospectus or in reliance on a prospectus exemption have expired, and

(f) any period of time imposed by Canadian securities legislation for which the issuer has to have been a reporting issuer in a jurisdiction before the securities can be traded without a prospectus or in reliance on a prospectus exemption has passed;[32]

"incentive plan" means an employee group plan that provides for stock options or other equity incentives, profit sharing, bonuses, or other performance-based payments;[33]

"independent committee" means, for an issuer, a committee consisting exclusively of one or more independent directors of the issuer;

"independent director" means, for an issuer in respect of a transaction, a director who is independent as determined in section 7.1;[34]

"independent valuator" means, for a transaction, a valuator that is independent of all interested parties in the transaction, as determined in section 6.1;

"insider bid" means a take-over bid made by

(a) an issuer insider of the offeree issuer,

(b) an associated or affiliated entity of an issuer insider of the offeree issuer,

(c) an associated or affiliated entity of the offeree issuer, or

(d) a joint actor with a person or company referred to in paragraphs (a), (b) or (c);

"interested party" means

(a) for an insider bid, the offeror or a joint actor with the offeror,[35]

(b) for an issuer bid

(i) the issuer, and

(ii) any control block holder of the issuer, or any person or company that would reasonably be expected to be a control block holder of the issuer upon successful completion of the issuer bid,

(c) for a business combination, a related party of the issuer at the time the transaction is agreed to,[36] if the related party

(i) would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,[37]

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32 Seasoning period restrictions imposed by jurisdictions other than Ontario are included by this change.

33 New. The term is used in the definition of "collateral benefit" in the amended Rule.

34 The criterion that a director not be an interested party has been moved to section 7.1, so that all the criteria are together in one place in the Rule.

35 Joint actors have been added to ensure that independent directors and the valuator are independent of the offeror's joint actors.

36 Minor drafting changes to specify when the related party status is to be determined and to delete words considered not strictly necessary.

37 New. See note 15 regarding the corresponding change to the definition of "going private transaction" ("business combination" in the amended Rule).

(ii) is a party to any connected transaction to the business combination,[38] or

(iii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) consideration per security that is not identical in amount and form to the entitlement of the general body of holders in Canada of affected securities of the same class,[39]

(B) a collateral benefit,[40]

(C) consideration for securities of the issuer if those securities are neither equity securities nor employee stock options,[41] or

(D) consideration for securities of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless that consideration is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities,[42] and

(d) for a related party transaction, a related party of the issuer at the time the transaction is agreed to,[43] if the related party

(i) is a party to the transaction,[44] unless it is a party only in its capacity as a holder of affected securities and is treated identically to the general body of holders in Canada of securities of the same class on a per security basis, or

(ii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) a collateral benefit,[45]

(B) a payment or distribution made to one or more holders of securities of the issuer if those securities are not equity securities, or

(C) a payment or distribution made to one or more holders of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless the amount of that payment or distribution is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;[46]

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38 New. See note 16.

39 Rewording of clause (c)(i)(A) of the definition in the current Rule. See note 17.

40 Replaces clause (c)(i)(B) of the definition in the current Rule. See note 18.

41 Equity securities are covered in clauses (A) and (D), and employee stock options are addressed in clause (B) and the definition of "collateral benefit". See also the next note.

42 Clauses (C) and (D) in the amended Rule replace subparagraph (c)(ii) in the current Rule and are intended to clarify interested party status as it relates to multiple classes of securities. The application of clause (D) is discussed in subsection 2.1(2) of the amended Companion Policy.

43 Changed to specify when the related party status is to be determined.

44 The reference to involvement in the transaction has been removed from this definition and from the definitions of "business combination" ("going private transaction" in the current Rule) and "related party transaction", to give greater clarity to the scope of the definitions. While section 2.8 of the current Companion Policy provides some guidance, the variety of the possible meanings of "involved" in the context of a transaction has lent a degree of uncertainty to the definitions. With the removal of the concept, the Rule would still be expected to cover the transactions it is intended to cover, due to the wide-ranging scope of the Rule's definition of "related party".

45 The definition of "interested party" for a related party transaction has been changed to include related parties receiving collateral benefits and to exclude identically treated security holders in pro rata transactions. These changes enable reduced repetition in a number of parts of the Rule.

46 Clauses (B) and (C) are new and are intended to clarify interested party status as it relates to pro rata and other related party transactions in which holders of different classes of securities of an issuer are treated differently. The application of clause (C) is discussed in subsection 2.1(2) of the Companion Policy.

"issuer insider" means, for an issuer

(a) every director or senior officer of the issuer,

(b) every director or senior officer of an entity[47] that is itself an issuer insider or subsidiary entity of the issuer, and

(c) a person or company that beneficially owns voting securities of the issuer or that exercises control or direction over voting securities of the issuer, or a combination of both, carrying more than 10 per cent of the voting rights attached to all voting securities of the issuer for the time being outstanding, other than voting securities beneficially owned by the person or company as an underwriter in the course of a distribution;

"joint actors", when used to describe the relationship among two or more entities, means persons or companies "acting jointly or in concert" as defined in section 91 of the Act, with necessary modifications where the term is used in the context of a transaction that is not a take-over bid or issuer bid, but a security holder is not considered to be a joint actor with an offeror making a formal bid, or with a person or company involved in a business combination or related party transaction, solely because there is an agreement, commitment or understanding that the security holder will tender to the bid or vote in favour of the transaction;[48]

"liquid market" means a market that meets the criteria specified in section 1.2;

"market capitalization" of an issuer means, for a transaction, the aggregate market price of all outstanding securities of all classes of equity securities of the issuer, the market price of the outstanding securities of a class being

(a) in the case of equity securities of a class for which there is a published market, the product of

(i) the number of securities of the class outstanding as of the close of business on the last business day of the calendar month preceding the calendar month in which the transaction is agreed to or, if no securities of the class were outstanding on that day, on the first business day after that day that securities of the class became outstanding, so long as that day precedes the date the transaction is agreed to, and

(ii) the market price of the securities at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections 183(1), (2) and (4) of the Regulation,

(b) in the case of equity securities of a class for which there is no published market but that are currently convertible into a class of equity securities for which there is a published market, the product of

(i) the number of equity securities into which the convertible securities were convertible as of the close of business on the last business day of the calendar month preceding the calendar month in which the transaction is agreed to or, if no convertible securities were outstanding or convertible on that day, on the first business day after that day that the convertible securities became outstanding or convertible, so long as that day precedes the date the transaction is agreed to, and

(ii) the market price of the securities into which the convertible securities were convertible, at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections 183(1), (2) and (4) of the Regulation, and

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47 "Entity" has been substituted for "company".

48 The definition in the amended Rule incorporates subsection 2.3(2) of the current Companion Policy, which sets out the Commission's view that a lock-up or support agreement does not, in and of itself, constitute acting jointly or in concert for the purposes of the Rule. The current Rule lacks the clarity of the current Companion Policy on this point, as illustrated by the decision of the British Columbia Court of Appeal in *Re Sepp's Gourmet Foods Ltd.* (2002), 211 D.L.R. (4th) 542, in which the court interpreted the Rule differently from the Companion Policy's interpretation. Pending the coming into force of the amended Rule, the Commission is continuing to interpret the Rule as stated in the Companion Policy. "Joint actor" has replaced "jointly or in concert" to alert users of the Rule that they should not look solely to the Act for the interpretation of the term as it applies to the Rule.

(c) in the case of equity securities of a class not referred to in paragraphs (a) or (b), the amount determined by the issuer's board of directors in good faith to represent the fair market value[49] of the outstanding securities of that class;

"minority approval" means, for a business combination or related party transaction of an issuer, approval of the proposed transaction by a majority of the votes as specified in Part 8, cast by holders of each class of affected securities at a meeting of security holders of that class called to consider the transaction;

"OBCA" means the *Business Corporations Act*;

"offeree security" means a security that is subject to a take-over bid[50] or issuer bid;

"offeror" has the meaning ascribed to that term in subsection 89(1) of the Act;

[51]

"prior valuation" means a valuation or appraisal of an issuer or its securities or material assets, whether or not prepared by an independent valuator, that, if disclosed, would reasonably be expected to affect the decision of a security holder to vote for or against a transaction, or to retain or dispose of affected securities or offeree securities, other than

(a) a report of a valuation or appraisal prepared by an entity other than the issuer, if

(i) the report was not solicited by the issuer, and

(ii) the entity preparing the report did so without knowledge of any material information concerning the issuer, its securities or any of its material assets, that had not been generally disclosed at the time the report was prepared,

(b) an internal valuation or appraisal prepared for the issuer in the ordinary course of business that has not been made available to, and has been prepared without the participation of

(i) the board of directors of the issuer, or

(ii) any director or senior officer of an interested party, except a senior officer of the issuer in the case of an issuer bid,

(c) a report of a market analyst or financial analyst that

(i) has been prepared by or for and at the expense of an entity other than the issuer, an interested party, or an associated or affiliated entity of the issuer or an interested party, and

(ii) is either generally available to clients of the analyst or of the analyst's employer or of an associated or affiliated entity of the analyst's employer or, if not, is not based, so far as the entity required to disclose a prior valuation is aware, on any material information concerning the issuer, its securities or any of its material assets, that had not been generally disclosed at the time the report was prepared,

(d) a valuation or appraisal prepared by an entity or a person or company retained by the entity, for the purpose of assisting the entity in determining the price at which to propose a transaction that resulted in the entity becoming an issuer insider, if the valuation or appraisal is not made available to any of the independent directors of the issuer, or

(e) a valuation or appraisal prepared by an interested party or an entity retained by the interested party, for the purpose of assisting the interested party in determining the price at which to propose a transaction that, if pursued, would be an insider bid, business combination or related party

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49 "Fair market value" has been substituted for "market price" to increase clarity.

50 "Take-over bid" has been substituted for "insider bid" because the amended Rule refers to offeree securities in the context of a bid that precedes a second step business combination, and that bid may not necessarily be an insider bid.

51 The definition of "participating security" has been deleted because it is virtually identical to the definition of "equity security" in subsection 89(1) of the Act. "Equity security" has been substituted for "participating security" throughout the amended Rule.

transaction, if the valuation or appraisal is not made available to any of the independent directors of the issuer;[52]

"related party" of an entity[53] means a person or company that, at the relevant time and after reasonable inquiry, is known by the entity or a director or senior officer of the entity to be

(a) a control block holder[54] of the entity,

(b) a person or company of which a person or company referred to in paragraph (a) is a control block holder,

(c) a person or company of which the entity is a control block holder,

(d) a person or company that beneficially owns or exercises control or direction over voting securities of the entity carrying more than 10 per cent of the voting rights attached to all of the outstanding voting securities of the entity,

(e) a director or senior officer of

(i) the entity, or

(ii) a person or company described in any other paragraph of this definition,[55]

(f) a person or company that manages or directs, to any substantial degree, the affairs or operations of the entity under an agreement, arrangement or understanding between the person or company and the entity, including the general partner of an entity that is a limited partnership, but excluding a person or company appointed under bankruptcy or insolvency law,[56]

(g) a person or company of which persons or companies described in any paragraph of this definition beneficially own, in the aggregate, more than 50 per cent of the securities of any outstanding class of equity securities,[57] or

(h) an affiliated entity of any person or company described in any other paragraph of this definition;[58]

"related party transaction" means, for an issuer, a transaction between the issuer and a person or company that is a related party of the issuer at the time the transaction is agreed to, whether or not there are also other parties to the transaction, as a consequence of which, either through the transaction itself or together with connected transactions, the issuer directly or indirectly[59]

(a) purchases or acquires an asset from the related party for valuable consideration,

(b) purchases or acquires, as a joint actor with the related party, an asset from a third party if the proportion of the asset acquired by the issuer is less than the proportion of the consideration paid by the issuer,

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52 Minor drafting changes to the definition to increase clarity.

53 "Entity" has been substituted for "issuer or interested party" throughout the definition to address confusion that has arisen from the current wording, and the bona fide lender exception has been removed from this definition and incorporated into the new "control block holder" definition.

54 The new defined term "control block holder" replaces the lengthier language in the current Rule throughout the definition.

55 Paragraph letters are not individually listed here and in similar cross-references in the definition.

56 Bankruptcy or insolvency exclusion is new.

57 New paragraph added to ensure that a person or company that, for example, is owned entirely by two or more related parties of the entity but not controlled by any one of them is caught by the definition of "related party".

58 The references to a person controlling, and a company controlled by, a related party have been removed as not being strictly necessary, because the concepts are incorporated in the definition of "affiliated entity".

59 The reference to involvement in the transaction has been removed from the introduction to the definition (see note 44), as have some other words that are not strictly necessary. "Connected transactions" is a new defined term in the amended Rule.

(c) sells, transfers or disposes of an asset to the related party,[60]

(d) sells, transfers or disposes of, as a joint actor with the related party, an asset to a third party if the proportion of the consideration received by the issuer is less than the proportion of the asset sold, transferred or disposed of by the issuer,

(e) leases property to or from the related party,

(f) acquires the related party, or combines with the related party, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,[61]

(g) issues a security to the related party or subscribes for a security of the related party,

(h) amends the terms of a security of the issuer if the security is beneficially owned, or is one over which control or direction is exercised, by the related party, or agrees to the amendment of the terms of a security of the related party if the security is beneficially owned by the issuer or is one over which the issuer exercises control or direction,[62]

(i) assumes or otherwise becomes subject to a liability of the related party,

(j) borrows money from or lends money to the related party, or creates a credit facility with the related party,[63]

(k) releases, cancels or forgives a debt or liability owed by the related party,

(l) materially amends the terms of an outstanding debt or liability owed by or to the related party, or the terms of an outstanding credit facility with the related party,[64] or

(m) provides a guarantee or collateral security for a debt or liability of the related party, or materially amends the terms of the guarantee or security;

"senior officer", for an issuer that is a limited partnership, includes a senior officer of the general partner of the issuer;[65]

"stock exchange insider bid" means an insider bid described in subclause (b)(i) of the definition of "formal bid" in subsection 89(1) of the Act;

"stock exchange issuer bid" means an issuer bid described in subclause (b)(i) of the definition of "formal bid" in subsection 89(1) of the Act;

"subsidiary entity": a person or company is considered to be a subsidiary entity of another person or company if

(a) it is controlled by

(i) that other,

(ii) that other and one or more persons or companies, each of which is controlled by that other, or

(iii) two or more persons or companies, each of which is controlled by that other, or

(b) it is a subsidiary entity of a person or company that is that other's subsidiary entity; and

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60 The order of the components of the definition has been rearranged to group together the types of transactions for which section 5.4 of the amended Rule does not require a valuation.

61 Combines paragraphs (l) and (m) of the definition in the current Rule.

62 The reference to the issuer agreeing to the amendment of the terms of a security of the issuer has been removed as not being strictly necessary.

63 The reference to a credit facility has been added.

64 New. Covers changes in addition to those described in paragraph (k) in the amended Rule.

65 New. Provides consistency with the interpretation of "director".

[66]

"wholly-owned subsidiary entity": a person or company is considered to be a wholly-owned subsidiary entity of an issuer if the issuer owns, directly or indirectly, all the voting and equity securities and securities convertible into voting and equity securities of the person or company.

1.2 Liquid Market

(1) For the purposes of this Rule, a liquid market in a class of securities of an issuer in respect of a transaction exists at a particular time only

(a) if

(i) there is a published market for the class of securities,

(ii) during the period of 12 months before the date the transaction is agreed to in the case of a related party transaction, or 12 months before the date the transaction is publicly announced in the case of an insider bid, issuer bid or business combination[67]

(A) the number of outstanding securities of the class was at all times at least 5,000,000, excluding securities beneficially owned, or over which control or direction was exercised, by related parties and securities that were not freely tradeable,

(B) the aggregate trading volume of the class of securities on the published market on which the class was principally traded was at least 1,000,000 securities,

(C) there were at least 1,000 trades in securities of the class on the published market on which the class was principally traded, and

(D) the aggregate value of the trades in securities of the class on the published market on which the class was principally traded was at least $15,000,000,[68] and

(iii) the market value of the class of securities on the published market on which the class was principally traded, as determined in accordance with subsection (2), was at least $75,000,000 for the calendar month preceding the calendar month

(A) in which the transaction is agreed to, in the case of a related party transaction, or

(B) in which the transaction is publicly announced, in the case of an insider bid, issuer bid or business combination; or

(b) if the test set out in paragraph (a) is not met,

(i) there is a published market for the class of securities,

(ii) a person or company that is qualified and independent of all interested parties to the transaction, as determined on the same basis applicable to a valuator preparing a formal valuation under section 6.1,[69] provides an opinion to the issuer that there is a liquid market in the class at the date the transaction is agreed to in the case of a related party transaction, or at the date the transaction is publicly announced in the case of an insider bid, issuer bid or business combination,

(iii) the opinion is included in the disclosure document for the transaction, together with a statement that the published market on which the class is principally traded has sent a letter to the Director indicating concurrence with the opinion or providing a similar opinion, and

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[66] The definition of "valuation date" has been removed, as the term is not used in the amended Rule.

[67] Some repetition has been eliminated.

[68] Drafting change to clause (D) to increase clarity.

[69] The wording of the cross-reference to section 6.1 of the current Rule has been changed to eliminate the need for the several references in section 6.1 to the person or company providing a liquidity opinion.

(iv) the disclosure document for the transaction includes the same disclosure regarding the person or company providing the opinion as is required for a valuator under section 6.2.[70]

(2) For the purpose of determining whether an issuer satisfies the market value requirement of subparagraph (1)(a)(iii), the market value of a class of securities for a calendar month is calculated by multiplying

(a) the number of securities of the class outstanding as of the close of business on the last business day of the calendar month, excluding securities beneficially owned, or over which control or direction was exercised, by related parties of the issuer and securities that were not freely tradeable;[71] by

(b) if

(i) the published market provides a closing price for the securities, the arithmetic average of the closing prices of the securities of that class on the published market on which that class was principally traded for each of the trading days during the calendar month, or

(ii) the published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day, the arithmetic average of the simple averages of the highest and lowest prices of the securities of that class on the published market on which that class was principally traded for each of the trading days for which the securities traded during the calendar month.

(3) An issuer that relies on an opinion referred to in subparagraph (1)(b)(ii) shall cause the letter referred to in subparagraph (1)(b)(iii) to be sent promptly to the Director.

1.3 Transactions by Wholly-Owned Subsidiary Entity - In this Rule, a transaction of a wholly-owned subsidiary entity of an issuer is deemed to be a transaction of the issuer, and, for greater certainty, a formal bid made by a wholly-owned subsidiary entity of an issuer for securities of the issuer is deemed to be an issuer bid made by the issuer.[72]

1.4 Transactions by Underlying Operating Entity of Income Trust - In this Rule, a transaction of an underlying operating entity of an income trust is deemed to be a transaction of the income trust, and a related party of the underlying operating company is deemed to be a related party of the income trust.[73]

1.5 Application to Act, Regulations and Other Rules - For the purposes of the Act, the regulations and the rules, "going private transaction" has the meaning ascribed to the term "business combination" in section 1.1 of this Rule, and "insider bid" and "related party transaction" have the meanings ascribed to those terms in section 1.1 of this Rule.[74]

PART 2 INSIDER BIDS

2.1 Application

(1) This Part does not apply to an insider bid that is exempt from sections 95 to 100 of the Act[75] under

(a) clause 93(1)(a) of the Act, unless it is a stock exchange insider bid;

(b) clauses 93(1)(b) to (f) of the Act; or

(c) a decision made by the Commission under clause 104(2)(c) of the Act, unless the decision provides otherwise.

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70 This requirement has been moved here from section 6.2 of the current Rule to eliminate the need for the several references in section 6.2 to the person or company providing a liquidity opinion.

71 Subsection (3) in the current Rule has been incorporated in paragraph (2)(a) in the amended Rule.

72 New. Reflects Commission staff's current interpretation and incorporates subsection 2.4(1) of the current Companion Policy.

73 New. Added to ensure that security holders of income trusts receive the benefits of the Rule.

74 Adapted from the introductory words of subsection 1.1(3) of the current Rule, which contains definitions that, in the amended Rule, have been combined alphabetically with the Rule's other definitions in section 1.1.

75 To eliminate words that are not considered strictly necessary in subsections (1), (2) and (3), the fact that the Part applies to all non-exempted insider bids is not stated in subsection (1) in the amended Rule. Also, the exemptions in the Act technically do not apply to all of Part XX of the Act but just some sections of it. Similar changes have been made to section 3.1.

(2) This Part does not apply to a take-over bid that is an insider bid solely because of the application of section 90 of the Act to an agreement between the offeror and a security holder of the offeree issuer that offeree securities beneficially owned by the security holder, or over which the security holder exercises control or direction, will be tendered to the bid, if

(a) the security holder is not a joint actor with the offeror; and

(b) the general nature and material terms of the agreement to tender are disclosed in a news release and report filed under section 101 of the Act, or are otherwise generally disclosed.

(3) This Part does not apply to an insider bid in respect of which the offeror complies with National Instrument 71-101 - The *Multijurisdictional Disclosure System*, unless persons or companies whose last address as shown on the books of the offeree issuer is in Canada, as determined in accordance with subsections 12.1(2) to (4) of National Instrument 71-101, hold 20 per cent or more of the class of securities that is the subject of the bid.[76]

[77]

2.2 Disclosure

(1) The offeror shall disclose in the disclosure document for an insider bid

(a) the background to the insider bid;

(b) in accordance with section 6.8, every prior valuation in respect of the offeree issuer

(i) that has been made in the 24 months before the date of the insider bid, and

(ii) the existence of which is known, after reasonable inquiry, to the offeror or any director or senior officer of the offeror; and

(c) the formal valuation exemption, if any, on which the offeror is relying under section 2.4 and the facts supporting that reliance.[78]

(2) The offeror shall include in the disclosure document for a stock exchange insider bid the disclosure required by Form 33 of the Regulation, appropriately modified.

(3) The board of directors of the offeree issuer shall include in the directors' circular for an insider bid[79]

(a) disclosure, in accordance with section 6.8, of every prior valuation in respect of the offeree issuer not disclosed in the disclosure document for the insider bid

(i) that has been made in the 24 months before the date of the insider bid, and

(ii) the existence of which is known, after reasonable inquiry, to the offeree issuer or to any director or senior officer of the offeree issuer;

(b) a description of the background to the insider bid to the extent the background has not been disclosed in the disclosure document for the insider bid;

(c) disclosure of any bona fide prior offer that relates to the offeree securities or is otherwise relevant to the insider bid, which offer was received by the issuer during the 24 months before the insider bid was publicly announced, and a description of the offer and the background to the offer; and

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[76] The subsection has been revised to clarify that both the disclosure and valuation requirements of Part 2 do not apply if the conditions of the subsection are met.

[77] Subsection (4) in the current Rule has been removed in light of changes to subsection (3).

[78] The requirement to disclose the facts supporting reliance on an exemption has been moved here from subsection 2.4(1) of the current Rule. The exemption is usually identified in the disclosure document, but the current Rule is not clear as to whether this is a requirement.

[79] Minor drafting change to reduce repetition in the remainder of subsection (3).

(d) a discussion of the review and approval process adopted by the board of directors and the special committee,[80] if any, of the offeree issuer for the insider bid, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

2.3 Formal Valuation

(1) Subject to section 2.4, the offeror in an insider bid shall

(a) obtain, at its own expense, a formal valuation;

(b) provide the disclosure required by section 6.2;

(c) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the insider bid, unless the formal valuation is included in its entirety in the disclosure document; and

(d) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(2) An independent committee of the offeree issuer shall, and the offeror shall enable the independent committee to

(a) determine who the valuator will be;

(b) supervise the preparation of the formal valuation; and

(c) use its best efforts to ensure that the formal valuation is completed and provided to the offeror in a timely manner.[81]

2.4 Exemptions from Formal Valuation Requirement

(1) Section 2.3 does not apply to an offeror in connection with an insider bid in any of the following circumstances:[82]

1. Discretionary Exemption - The offeror has been granted an exemption from section 2.3 under section 9.1.

2. Lack of Knowledge and Representation - Neither the offeror nor any joint actor with the offeror has, or has had within the preceding 12 months, any board or management representation in respect of the offeree issuer, or has knowledge of any material information concerning the offeree issuer or its securities that has not been generally disclosed.[83]

3. Previous Arm's Length Negotiations - If

(a) the consideration per security under the insider bid is at least equal in value to and is in the same form as the highest consideration agreed to with one or more selling security holders of the offeree issuer in arm's length negotiations in connection with

(i) the making of the insider bid,

(ii) one or more other transactions agreed to within 12 months before the date of the first public announcement of the insider bid, or

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80 "Special" committee has been substituted for "independent" committee. The creation of an independent committee to carry out the functions referred to in this paragraph is not mandated by the Rule. Therefore, it is possible that this committee might not meet all of the criteria to qualify as an "independent committee", as defined in the Rule.

81 Paragraph (c) has been added to address concerns that have been expressed by offerors carrying out unfriendly insider bids.

82 The requirement to disclose the facts supporting reliance on an exemption in the disclosure document has been moved from this subsection to paragraph 2.2(1)(c) of the amended Rule, which also specifically requires disclosure of the exemption.

83 The reference to a joint actor has been added because the exemption should not apply if the offeror meets the criteria for the exemption but a joint actor with the offeror does not. The last words of the paragraph have been changed for purposes of drafting consistency with other parts of the Rule.

(iii) a combination of transactions referred to in clauses (i) and (ii),[84]

(b) at least one of the selling security holders party to an agreement referred to in clause (a)(i) or (ii) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell

(i) at least five per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), if the person or company that entered into the agreement with the selling security holder[85] beneficially owned 80 per cent or more of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), or

(ii) at least 10 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), if the person or company that entered into the agreement with the selling security holder beneficially owned less than 80 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2),

(c) one or more of the selling security holders party to any of the transactions referred to in subparagraph (a) beneficially own or exercise control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell, in the aggregate, at least 20 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (3), beneficially owned, or over which control or direction was exercised, by entities other than the person or company, and joint actors with the person or company, that entered into the agreements with the selling security holders,

(d) the offeror reasonably believes, after reasonable inquiry, that at the time of each of the agreements referred to in subparagraph (a)

(i) each selling security holder party to the agreement had full knowledge and access to information concerning the offeree issuer and its securities, and

(ii) any factors peculiar to a selling security holder party to the agreement, including non-financial factors, that were considered relevant by that selling security holder in assessing the consideration did not have the effect of reducing the price that would otherwise have been considered acceptable by that selling security holder,

(e) at the time of each of the agreements referred to in subparagraph (a), the offeror did not know[86] of any material information[87] in respect of the offeree issuer or the offeree securities that

(i) had not been generally disclosed, and

(ii) if generally disclosed, could have reasonably been expected to increase the agreed consideration,

(f) any of the agreements referred to in subparagraph (a) was entered into with a selling security holder by a person or company other than the offeror, the offeror reasonably believes, after reasonable inquiry, that at the time of that agreement, the person or company did not know of any material information in respect of the offeree issuer or the offeree securities that

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84 Drafting changes to shorten subparagraph (a).

85 "Person or company that entered into the agreement with the selling security holder" replaces "offeror" here and in clause (ii) and subparagraph (c), since the person or company that previously agreed to purchase might not be the offeror.

86 The condition that the offeror determine that the sellers did not know of material non-public information has been removed, as it is not relevant to the question of whether there was non-public information that, if generally disclosed, could have caused the agreed price in the previous arm's length negotiations to be higher.

87 The word "non-public" has been removed in a number of parts of the amended Rule. The word is not considered necessary if, as in subparagraph (e) in the current Rule, it is accompanied by a reference to the same information not having been generally disclosed. Where that reference does not appear, it has been substituted for "non-public" in the amended Rule for purposes of consistency.

(i) had not been generally disclosed, and

(ii) if disclosed, could have reasonably been expected to increase the agreed consideration, and

(g) the offeror does not know, after reasonable inquiry, of any material information in respect of the offeree issuer or the offeree securities since the time of each of the agreements referred to in subparagraph (a) that has not been generally disclosed and could reasonably be expected to increase the value of the offeree securities.

4. Auction - If

(a) the insider bid is publicly announced or made while

(i) one or more formal bids for securities of the same class that is the subject of the insider bid have been made and are outstanding, or

(ii) one or more transactions are outstanding that

(A) are business combinations in respect of securities of the same class that is the subject of the insider bid, or

(B) would be business combinations in respect of securities of the same class that is the subject of the insider bid, except that they come within the exception in paragraph (d) of the definition of business combination,

and ascribe a per security value to those securities,

(b) at the time the insider bid is made, the offeree issuer has provided equal access to the offeree issuer, and to information concerning the offeree issuer and its securities, to the offeror in the insider bid, all offerors in the other formal bids, and all other persons or companies that proposed the transactions described in clause (a)(ii),[88] and

(c) the offeror, in the disclosure document for the insider bid,

(i) includes all material information concerning the offeree issuer and its securities that is known to the offeror after reasonable inquiry but has not been generally disclosed, together with a description of the nature of the offeror's access to the issuer, and

(ii) states that the offeror does not know, after reasonable inquiry, of any material information concerning the offeree issuer and its securities other than information that has been disclosed under clause (i) or that has otherwise been generally disclosed.

(2) For the purposes of subparagraph 3(b) of subsection (1), the number of outstanding securities of the class of offeree securities

(a) is calculated at the time of the agreement referred to in clause 3(a)(i) or (ii) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time; or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report or under section 2.1 of National Instrument 62-102 - *Disclosure of Outstanding Share Data*, immediately preceding the date of the agreement referred to in clause 3(a)(i) or (ii) of subsection (1).

(3) For the purposes of subparagraph 3(c) of subsection (1), the number of outstanding securities of the class of offeree securities

[88] Minor drafting changes to subparagraphs (a) and (b) to reduce repetition and for clarification.

(a) is calculated at the time[89] of the last of the agreements referred to in subparagraph 3(a) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time; or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report or under section 2.1 of National Instrument 62-102, immediately preceding the date of the last of the agreements referred to in subparagraph 3(a) of subsection (1).

PART 3 ISSUER BIDS

3.1 Application

(1) This Part does not apply to an issuer bid that is exempt from sections 95 to 100 of Part XX of the Act[90] under

(a) clauses 93(3)(a) to (d) and (f) to (i) of the Act;

(b) clause 93(3)(e) of the Act, unless it is a stock exchange issuer bid; or

(c) a decision made by the Commission under clause 104(2)(c) of the Act, unless the decision provides otherwise.

(2) This Part does not apply to an issuer bid that complies with National Instrument 71-101 - *The Multijurisdictional Disclosure System*, unless persons or companies whose last address as shown on the books of the issuer is in Canada, as determined in accordance with subsections 12.1(2) to (4) of National Instrument 71-101, hold 20 per cent or more of the class of securities that is the subject of the bid.[91]

[92]

3.2 Disclosure

(1) The issuer shall include in the disclosure document for an issuer bid[93]

(a) the disclosure required by Item 16, "Right of Appraisal and Acquisition",[94] of Form 32 of the Regulation, to the extent applicable;

(b) a description of the background to the issuer bid;

(c) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer

(i) that has been made in the 24 months before the date of the issuer bid, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer;

(d) disclosure of any bona fide prior offer that relates to the offeree securities or is otherwise relevant to the issuer bid, which offer was received by the issuer during the 24 months before the issuer bid was publicly announced, and a description of the offer and the background to the offer;

(e) a discussion of the review and approval process adopted by the board of directors and the special committee,[95] if any, of the issuer for the issuer bid, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee;

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89 "Time" replaces "date".

90 See note 75 regarding corresponding changes to the equivalent provisions on insider bids.

91 The subsection has been revised to clarify that both the disclosure and valuation requirements of Part 3 do not apply if the conditions of the subsection are met.

92 Subsection (3) in the current Rule has been removed in light of the changes to subsection (2).

93 Minor drafting change to reduce repetition in the remainder of subsection (1).

94 The title of the item has been included to assist users of the Rule.

95 See note 80.

(f) a statement of the intention, if known to the issuer after reasonable inquiry, of every interested party to accept or not to accept the issuer bid;

(g) a description of the effect that the issuer anticipates the issuer bid, if successful, will have on the direct or indirect voting interest in the issuer of every interested party;[96] and

(h) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 3.4 and the facts supporting that reliance.[97]

(2) The issuer shall include in the disclosure document for a stock exchange issuer bid the applicable disclosure required by Form 33 of the Regulation.

3.3 Formal Valuation

(1) Subject to section 3.4, an issuer that makes an issuer bid shall

(a) obtain a formal valuation;

(b) provide the disclosure required by section 6.2;

(c) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the issuer bid, unless the formal valuation is included in its entirety in the disclosure document;

(d) if there is an interested party other than the issuer, state in the disclosure document who will pay or has paid for the valuation; and

(e) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(2) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be; and

(b) supervise the preparation of the formal valuation.

3.4 Exemptions from Formal Valuation Requirement - Section 3.3 does not apply to an issuer in connection with an issuer bid in any of the following circumstances:[98]

1. Discretionary Exemption - The issuer has been granted an exemption from section 3.3 under section 9.1.

2. Bid for Non-Convertible Securities - The issuer bid is for securities that are not equity securities and that are not, directly or indirectly, convertible into equity securities.

3. Liquid Market - The issuer bid is made for securities for which

(a) a liquid market exists,

(b) it is reasonable to conclude that, following the completion of the bid, there will be a market for holders of the securities who do not tender to the bid that is not materially less liquid than the market that existed at the time of the making of the bid, and

(c) if an opinion referred to in subparagraph (b)(ii) of subsection 1.2(1) is provided, the person or company providing the opinion reaches the conclusion described in subparagraph 3(b) of this section 3.4 and so states in its opinion.

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96 Subparagraphs (f)(i) and (f)(ii) in the current Rule are paragraphs (f) and (g) in the amended Rule.

97 The requirement to disclose the facts supporting reliance on an exemption has been moved here from section 3.4 of the current Rule. The exemption is usually identified in the disclosure document, but the current Rule is not clear as to whether this is a requirement.

98 The requirement to disclose the facts supporting reliance on an exemption in the disclosure document has been moved from this subsection to paragraph 3.2(1)(h) of the amended Rule, which also specifically requires disclosure of the exemption.

PART 4 BUSINESS COMBINATIONS

4.1 Application[99] **-** This Part does not apply to an issuer carrying out a business combination[100] if

(a) the issuer is not a reporting issuer;

(b) the issuer is a mutual fund; or

(c) (i) at the time the business combination is proposed,[101]

(A) persons or companies whose last address as shown on the books of the issuer is in Ontario hold less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

(B) the issuer reasonably believes that persons or companies who are in Ontario beneficially own less than two per cent of the outstanding securities of each class of affected securities of the issuer,[102] and

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities whose last address as shown on the books of the issuer is in Ontario.[103]

[104]

4.2 Meeting and Information Circular

(1) Without limiting the application of any other legal requirements that apply to meetings of security holders and information circulars, this section applies only to a business combination for which section 4.5 requires the issuer to obtain minority approval.[105]

(2) An issuer proposing to carry out a business combination shall call a meeting of holders of affected securities and send an information circular to those holders.

(3) The issuer shall include in the information circular

(a) the disclosure required by Form 33 of the Regulation, to the extent applicable and with necessary modifications;

(b) the disclosure required by Item 16, "Right of Appraisal and Acquisition", of Form 32 of the Regulation, to the extent applicable, together with a description of rights that may be available to security holders opposed to the transaction;[106]

(c) a description of the background to the business combination;

(d) disclosure in accordance with section 6.8 of every prior valuation in respect of the issuer

(i) that has been made in the 24 months before the date of the information circular, and

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99 Subsection 4.1(1) of the current Rule has been removed, as it is not strictly necessary.

100 In the amended Rule, the specified exclusions apply to the issuer, rather than the transaction, in recognition of the fact that an exclusion may apply to some, but not all, of the issuers involved in a business combination.

101 The timing for making the determination has been added.

102 Clauses (A) and (B) have been revised to make the exception inapplicable if the issuer reasonably believes that beneficial ownership of the securities in Ontario is not less than two per cent, or if the tests for the exemption are not met for any class of affected securities.

103 It is anticipated that there will be an additional exemption for foreign issuers in proposed National Instrument 71-102 - *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, published in (2002), 25 0SCB 3833 at 3840.

104 Paragraph (d) in the current Rule has been removed since it is no longer necessary.

105 New. Added for clarification.

106 The requirement to disclose legal developments has been removed, as it is covered by paragraph (a) of this subsection, in combination with Item 28 of Form 33.

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer;

(e) disclosure of any bona fide prior offer that relates to the subject matter of or is otherwise relevant to the transaction, which offer was received by the issuer during the 24 months before the transaction was publicly announced, and a description of the offer and the background to the offer;

(f) a discussion of the review and approval process adopted by the board of directors and the special committee,[107] if any, of the issuer for the transaction, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee;

(g) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 4.4 and the facts supporting that reliance;[108] and

(h) disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the business combination is obtained.[109]

(4) If, after sending the information circular and before the meeting, a change occurs that, if disclosed, would reasonably be expected to affect the decision of a holder of affected securities to vote for or against the business combination or to retain or dispose of affected securities, the issuer shall promptly disseminate disclosure of the change

(a) in a manner that the issuer reasonably determines will inform beneficial owners of affected securities of the change; and

(b) sufficiently in advance of the meeting that the beneficial owners of affected securities will be able to assess the impact of the change.

(5) If subsection (4) applies, the issuer shall file a copy of the disseminated information contemporaneously with its dissemination.

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4.3 Formal Valuation

(1) Subject to section 4.4, an issuer carrying out a business combination shall obtain a formal valuation if

(a) an interested party would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors, or

(b) an interested party is a party to any connected transaction to the business combination, if the connected transaction is a related party transaction for which the issuer is required to obtain a formal valuation under section 5.4.[111]

(2) If a formal valuation is required under subsection (1), the issuer shall

(a) provide the disclosure required by section 6.2;

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107 See note 80.

108 The requirement to disclose the facts supporting reliance on an exemption has been moved here from subsection 4.5(1) of the current Rule. The exemption is usually identified in the information circular, but the current Rule is not clear as to whether this is a requirement.

109 New. This information is usually provided already in the information circular.

110 Section 4.3 of the current Rule has been incorporated in section 4.7 of the amended Rule, which contains all the OBCA exemptions.

111 The formal valuation requirement has been eliminated for business combinations of which the linkage with related parties does not meet a significance threshold. "Connected transactions" is a new defined term in the amended Rule.

(b) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the business combination, unless the formal valuation is included in its entirety in the disclosure document;

(c) state in the disclosure document for the business combination who will pay or has paid for the valuation; and

(d) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(3) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be; and

(b) supervise the preparation of the formal valuation.

4.4 Exemptions from Formal Valuation Requirement

(1) Section 4.3 does not apply to an issuer carrying out a business combination in any of the following circumstances:[112]

1. Discretionary Exemption - The issuer has been granted an exemption from section 4.3 under section 9.1.

2. Issuer Not Listed on Specified Markets - No securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ National Market, the NASDAQ SmallCap Market or a stock exchange outside of North America.[113]

3. Previous Arm's Length Negotiations - If

(a) the consideration per affected security under the business combination is at least equal in value to and is in the same form as the highest consideration agreed to with one or more selling security holders of the issuer in arm's length negotiations in connection with

(i) the business combination,

(ii) one or more other transactions agreed to within 12 months before the date of the first public announcement of the business combination, or

(iii) a combination of transactions referred to in clauses (i) and (ii),[114]

(b) at least one of the selling security holders party to an agreement referred to in clause (a)(i) or (ii) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell

(i) at least five per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), if the person or company that entered into the agreement with the selling security holder[115] beneficially owned 80 per cent or more of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), or

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112 The requirement to disclose the facts supporting reliance on an exemption in the disclosure document has been moved from this subsection to paragraph 4.2(3)(g) or subsection 4.6(1), as applicable, of the amended Rule, which also specifically require disclosure of the exemption.

113 New exemption.

114 Drafting changes to shorten subparagraph (a).

115 "Person or company that entered into the agreement with the selling security holder" replaces "person or company proposing the going private transaction" here and in clause (ii), and also replaces "an interested party" in subparagraph (c). The person or company that previously agreed to purchase might be neither the one proposing the business combination nor another interested party in the business combination.

(ii) at least 10 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), if the person or company that entered into the agreement with the selling security holder beneficially owned less than 80 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2),

(c) one or more of the selling security holders party to any of the transactions referred to in subparagraph (a) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell, in the aggregate, at least 20 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (3), beneficially owned or over which control or direction was exercised by entities other than the person or company, and joint actors with the person or company, that entered into the agreements with the selling security holders,

(d) the person or company proposing the business combination with the issuer[116] reasonably believes, after reasonable inquiry, that at the time of each of the agreements referred to in subparagraph (a)

(i) each selling security holder party to the agreement had full knowledge of and access to information concerning the issuer and its securities, and

(ii) any factors peculiar to a selling security holder party to the agreement, including non-financial factors, that were considered relevant by the selling security holder in assessing the consideration did not have the effect of reducing the price that would otherwise have been considered acceptable by that selling security holder,

(e) at the time of each of the agreements referred to in subparagraph (a), the person or company proposing the business combination with the issuer did not know[117] of any material information in respect of the issuer or the affected securities that

(i) had not been generally disclosed, and

(ii) if disclosed, could have reasonably been expected to increase the agreed consideration,

(f) any of the agreements referred to in subparagraph (a) was entered into with a selling security holder by an entity other than the person or company proposing the business combination with the issuer, the person or company proposing the business combination with the issuer reasonably believes, after reasonable inquiry, that at the time of that agreement, the entity did not know of any material information in respect of the issuer or the affected securities that

(i) had not been generally disclosed, and

(ii) if disclosed, could have reasonably been expected to increase the agreed consideration, and

(g) the person or company proposing the business combination with the issuer does not know, after reasonable inquiry, of any material information in respect of the issuer or the affected securities since the time of each of the agreements referred to in subparagraph (a) that has not been generally disclosed and could reasonably be expected to increase the value of the affected securities.

4. Auction - If

(a) the business combination is publicly announced while

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116 "With the issuer" has been added to clarify that the person or company referred to is the party transacting the business combination with the issuer.

117 The condition that the person or company proposing the business combination determine that the sellers did not know of material non-public information has been removed, as it is not relevant to the question of whether there was non-public information that, if generally disclosed, could have caused the agreed price in the previous arm's length negotiations to be higher.

(i) one or more transactions are outstanding that

(A) are business combinations in respect of the affected securities, or

(B) would be business combinations in respect of the affected securities, except that they come within the exception in paragraph (d) of the definition of business combination,

and ascribe a per security value to those securities, or

(ii) one or more formal bids for the affected securities have been made and are outstanding, and

(b) at the time the disclosure document for the business combination is sent to the holders of affected securities, the issuer has provided equal access to the issuer, and to information concerning the issuer and its securities, to the person or company proposing the business combination with the issuer, all persons or companies that have proposed the other transactions described in clause (a)(i), and all offerors in the formal bids.[118]

5. Second Step Business Combination - If

(a) the business combination is being effected by an offeror that made a formal bid, or an affiliated entity of that offeror, and is in respect of the securities of the same class for which the bid was made[119] and that were not acquired in the bid,

(b) the business combination is completed no later than 120 days after the date of expiry of the formal bid,

(c) the consideration per security that the security holders would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the formal bid,[120]

(d) the disclosure document for the formal bid

(i) disclosed that if the offeror acquired securities under the formal bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in subparagraphs (b) and (c),[121]

(ii) described the expected[122] tax consequences of both the formal bid and the business combination if, at the time the bid was made, the tax consequences arising from the business combination

(A) were reasonably foreseeable to the offeror, and

(B) were reasonably expected to be different from the tax consequences of tendering to the bid, and

(iii) disclosed that the tax consequences of the formal bid and the business combination may be different if, at the time the bid was made, the offeror could not

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118 Minor drafting changes to subparagraphs (a) and (b) to reduce repetition and for clarification.

119 Minor drafting change to clarify that the formal bid need not have been for all outstanding securities of the class.

120 Clauses (d)(i) and d(ii) in the current Rule have been condensed into subparagraph (c) in the amended Rule. Subparagraph (c) in the current Rule has been moved in a revised form to clause (d)(i) in the amended Rule.

121 Revised version of subparagraph (c) in the current Rule, to more specifically describe the disclosure requirement regarding the offeror's intent to acquire the securities not acquired in the bid.

122 "Expected" has been inserted, in recognition that the tax consequences cannot be stated with certainty. Similarly, the reference to known tax consequences has been removed from subclause (A) of this clause and from clause (iii) (clause (ii) in the current Rule).

reasonably foresee the tax consequences arising from the business combination.[123]

6. Non-redeemable Investment Fund - The issuer is a non-redeemable investment fund that

(a) at least once each quarter calculates and publicly disseminates the net asset value of its securities, and

(b) at the time of publicly announcing the business combination, publicly disseminates the net asset value of its securities as of the business day before the announcement.

(2) For the purposes of subparagraph 3(b) of subsection (1), the number of outstanding securities of the class of affected securities

(a) is calculated at the time of the agreement referred to in clause 3(a)(i) or (ii) of subsection (1), if the person or company proposing the business combination with the issuer knows the number of securities of the class outstanding at that time; or

(b) if subparagraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report or under section 2.1 of National Instrument 62-102 - *Disclosure of Outstanding Share Data*, immediately preceding the date of the agreement referred to in clause 3(a)(i) or (ii) of subsection (1).

(3) For the purposes of subparagraph 3(c) of subsection (1), the number of outstanding securities of the class of affected securities

(a) is calculated at the time[124] of the last of the agreements referred to in subparagraph 3(a) of subsection (1), if the person or company proposing the business combination with the issuer knows the number of securities of the class outstanding at that time; or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report or under section 2.1 of National Instrument 62-102, immediately preceding the date of the last of the agreements referred to in subparagraph 3(a) of subsection (1).

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4.5 Minority Approval - Subject to section 4.6, an issuer shall not carry out a business combination unless the issuer has obtained minority approval for the business combination under Part 8.

4.6 Exemptions from Minority Approval Requirement

(1) Section 4.5 does not apply to an issuer carrying out a business combination in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document for the business combination:[126]

1. Discretionary Exemption - The issuer has been granted an exemption from section 4.5 under section 9.1.

2. 90 Per Cent Exemption - Subject to subsection (2), one or more persons or companies that are interested parties within the meaning of subparagraph (c)(i) of the definition of interested party[127] beneficially own, in the aggregate,[128] 90 per cent or more of the outstanding securities of a class of affected securities at the time that the business combination is proposed, and either

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123 Minor drafting changes to paragraph 5 (paragraph 4 in the current Rule) to reduce repetition and for consistency with the drafting of similar provisions in section 8.2 of the Rule.

124 "Time" replaces "date".

125 Section 4.6 of the current Rule has been incorporated in section 4.7 of the amended Rule, which contains all the OBCA exemptions.

126 Changed to clarify that the exemptions must be disclosed in the disclosure document.

127 Changed so as not to include entities that are interested parties solely because, for example, they are given collateral benefits.

128 Clarification has been added that the reference is to aggregate holdings.

(a) an appraisal remedy is available to holders of the class of affected securities under the statute under which the issuer is organized or is governed as to corporate law matters, or

(b) if an appraisal remedy referred to in subparagraph (a) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in subsection 185(4) of the OBCA and that is described in the disclosure document for the business combination.

(2) If there are two or more classes of affected securities, paragraph 2 of subsection (1) applies only to a class of which the applicable interested parties beneficially own, in the aggregate, 90 per cent or more of the outstanding securities.[129]

4.7 Conditions for Relief from OBCA Requirements[130] **-** An issuer that is governed by the OBCA and proposes to carry out a "going private transaction", as defined in subsection 190(1) of the OBCA, is exempt from subsections (2), (3) and (4) of section 190 of the OBCA, and is not required to make an application for exemption from those subsections under subsection 190(6) of the OBCA, if

(a) the transaction is not a business combination;

(b) Part 4 does not apply to the transaction by reason of section 4.1; or

(c) the transaction is carried out in compliance with Part 4, and, for this purpose, compliance includes reliance on any applicable exemption from a requirement of Part 4, including a discretionary exemption granted by the Director under section 9.1.[131]

PART 5 RELATED PARTY TRANSACTIONS

5.1 Application[132] **-** This Part does not apply to an issuer carrying out a related party transaction[133] if

(a) the issuer is not a reporting issuer;

(b) the issuer is a mutual fund;

(c) (i) at the time the transaction is agreed to,[134]

(A) persons or companies whose last address as shown on the books of the issuer is in Ontario hold less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

(B) the issuer reasonably believes that persons or companies who are in Ontario beneficially own less than two per cent of the outstanding securities of each class of affected securities of the issuer,[135] and

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities whose last address as shown on the books of the issuer is in Ontario;[136]

(d) the parties to the transaction consist solely of

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129 Minor drafting changes primarily to shorten subsection (2).

130 This section incorporates the exemptions in sections 4.3, 4.6 and 4.9 of the current Rule.

131 Paragraph (c) incorporates section 2.6 of the current Companion Policy.

132 Subsection 5.1(1) of the current Rule has been removed, as it is not strictly necessary.

133 In the amended Rule, the specified exclusions apply to the issuer, rather than the transaction, in recognition of the fact that an exclusion may apply to some, but not all, of the issuers involved in a related party transaction.

134 The timing for making the determination has been added.

135 Clauses (A) and (B) have been revised to make the exception inapplicable if the issuer reasonably believes that beneficial ownership of the securities in Ontario is not less than two per cent, or if the tests for the exemption are not met for any class of affected securities.

136 It is anticipated that there will be an additional exemption for foreign issuers in proposed National Instrument 71-102 - *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, published in (2002), 25 0SCB 3833 at 3840.

(i) an entity and one or more of its wholly-owned subsidiary entities, or

(ii) wholly-owned subsidiary entities of the same entity;[137]

(e) the transaction is a business combination for the issuer;[138]

(f) the transaction would be a business combination for the issuer except that it comes within an exception in any of paragraphs (a) to (d) of the definition of business combination;

(g) the transaction is a downstream transaction for the issuer;[139]

[140]

(h) the issuer is obligated to and does carry out the transaction substantially under the terms

(i) that were agreed to, and generally disclosed, before May 1, 2000,

(ii) that were agreed to, and generally disclosed, before the issuer became a reporting issuer, or

(iii) of a previous transaction the terms of which were generally disclosed, including an issuance of a convertible security, if the previous transaction was carried out in compliance with this Rule, including in reliance on any applicable exemption or exclusion, or was not subject to this Rule;[141]

[142]

(i) the transaction is a distribution

(i) of securities of the issuer and is a related party transaction for the issuer solely because the interested party is an underwriter of the distribution, and

(ii) carried out in compliance with, including in reliance on any applicable exemption from, Multilateral Instrument 33-105 - *Underwriting Conflicts*;[143]

(j) the issuer is subject to the requirements of Part IX of the *Loan and Trust Corporations Act*, Part XI of the *Bank Act* (Canada), Part XI of the *Insurance Companies Act* (Canada), or Part XI of the *Trust and Loan Companies Act* (Canada), or any successor to that legislation, and the issuer complies with those requirements;[144] or

(k) the transaction is a rights offering, dividend, or any other transaction in which the general body of holders in Canada of affected securities of the same class are treated identically on a per security basis, if

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137 Broadens the exclusion so that it is not confined to statutory amalgamations. The revised exclusion also replaces the formal valuation exemption for transactions involving wholly-owned subsidiary entities in paragraph 9 of section 5.6 of the current Rule, so that this type of transaction would no longer be subject to the disclosure requirements that apply specifically to related party transactions.

138 Paragraph (e) has been shortened to remove conditions to the exclusion that are not considered strictly necessary.

139 New. "Downstream transaction" is a new defined term in the amended Rule, and its exclusion under paragraph 5.1(g) of the amended Rule replaces its exemption from the formal valuation and minority approval requirements under paragraph 10 of section 5.6 and paragraph 3 of section 5.8, respectively, of the current Rule.

140 Paragraph (g) in the current Rule has been removed, as it is not strictly necessary, because a party to the transaction must be a related party of the issuer at the time the transaction is agreed to in order for the transaction to fall within the definition of "related party transaction".

141 Paragraph (h) in the amended Rule replaces paragraphs (h), (i), (j) and (k) in the current Rule. The grandfathering provisions of paragraphs (h) and (i) in the current Rule have been combined so as not to distinguish between the periods before and after former Policy 9.1 came into effect. The provisions of paragraph (k) in the current Rule have been revised to cover any previous transaction entailing subsequent obligations of the issuer, not just the issuance of convertible securities for which there is a published market.

142 Paragraph (l) in the current Rule has been removed because the rule to which it refers has lapsed without a successor rule.

143 Updated version of paragraph (m) in the current Rule.

144 Minor rewording of subsection 5.1(3) of the current Rule.

(i) the transaction has no interested party within the meaning of paragraph (d) of the definition of interested party, or

(ii) the transaction is a rights offering, there is an interested party only because a related party of the issuer provides a stand-by commitment for the rights offering, and the stand-by commitment complies with Rule 45-101 - *Rights Offerings*.[145]

5.2 Material Change Report

(1) An issuer shall include in a material change report, if any,[146] required to be filed under the Act for a related party transaction

(a) a description of the transaction and its material terms;

(b) the purpose and business reasons for the transaction;

(c) the anticipated effect of the transaction on the issuer's business and affairs;

(d) a description of

(i) the interest in the transaction of every interested party and of the related parties and associated entities of the interested parties,[147]

(ii) the effect of the transaction on every person or company referred to in subparagraph (i), and

(iii) the nature of any benefit that will accrue as a consequence of the transaction to every person or company referred to in subparagraph (i);

(e) unless this information will be included in another disclosure document for the transaction,[148] a discussion of the review and approval process adopted by the board of directors and the special committee,[149] if any, of the issuer for the transaction, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee;

(f) subject to subsection (3), a summary, in accordance with section 6.5, of the formal valuation, if any, obtained for the transaction, unless the formal valuation is included in its entirety in the material change report or will be included in its entirety in another disclosure document for the transaction;

(g) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer that relates to the subject matter of or is otherwise relevant to the transaction

(i) that has been made in the 24 months before the date of the material change report, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer;

(h) the general nature and material terms of any agreement entered into by the issuer, or a related party of the issuer, with an interested party or a joint actor with an interested party, in connection with the transaction; and

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145 The formal valuation exemption for a pro rata transaction in paragraph 5 of section 5.6 of the current Rule has been moved to the Application section of Part 5, so that this type of transaction would no longer be subject to the disclosure requirements that apply specifically to related party transactions. The paragraph has been redrafted to shorten it and reflect the changes to the definition of "interested party" as it applies to related party transactions in the amended Rule.

146 "If any" has been added to clarify that this subsection does not create an obligation to file a material change report.

147 Subparagraph (i) has been redrafted to shorten it and to reflect the changes to the definition of "interested party" in the amended Rule.

148 The first words of paragraph (e) have been changed to provide for the possibility that security holder approval for the transaction will be sought despite the Rule not requiring minority approval.

149 See note 80.

(i) disclosure of the formal valuation and minority approval exemptions, if any, on which the issuer is relying under sections 5.5 and 5.7, respectively, and the facts supporting reliance on the exemptions.[150]

(2) If the issuer files a material change report less than 21 days before the expected date of the closing of the transaction, the issuer shall explain in the news release required to be issued under the Act and in the material change report why the shorter period is reasonable or necessary in the circumstances.

(3) Despite paragraphs (1)(f) and 5.4(2)(a),[151] if the issuer is required to include a summary of the formal valuation in the material change report and the formal valuation is not available at the time the issuer files the material change report, the issuer shall file a supplementary material change report containing the disclosure required by paragraph (1)(f) as soon as the formal valuation is available.

(4) The issuer shall send a copy of any material change report prepared by it in respect of the transaction to any security holder of the issuer upon request and without charge.

5.3 Meeting and Information Circular

(1) Without limiting the application of any other legal requirements that apply to meetings of security holders and information circulars, this section applies only to a related party transaction for which section 5.6 requires the issuer to obtain minority approval.[152]

(2) An issuer proposing to carry out a related party transaction to which this section applies shall call a meeting of holders of affected securities and send an information circular to those holders.

(3) The issuer shall include in the information circular

(a) the disclosure required by Form 33 of the Regulation, to the extent applicable and with necessary modifications;

(b) the disclosure required by Item 16, “Right of Appraisal and Acquisition”, of Form 32 of the Regulation, to the extent applicable, together with a description of rights that may be available to security holders opposed to the transaction;[153]

(c) a description of the background to the transaction;

(d) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer that relates to the subject matter of or is otherwise relevant to the transaction

(i) that has been made in the 24 months before the date of the information circular, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer;

(e) disclosure of any bona fide prior offer that relates to the subject matter of or is otherwise relevant to the transaction, which offer was received by the issuer during the 24 months before the transaction was publicly announced, and a description of the offer and the background to the offer;

(f) a discussion of the review and approval process adopted by the board of directors and the special committee,[154] if any, of the issuer for the transaction, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee;

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150 The requirement to disclose the facts supporting reliance on exemptions has been moved here from section 5.6 and subsection 5.8(1) of the current Rule, and the requirement to disclose the exemptions has been made explicit.

151 The reference to paragraph 5.4(2)(a) has been added to cover the circumstance where the material change report is the disclosure document for the transaction.

152 New. Added for clarification.

153 The requirement to disclose legal developments has been removed, as it is covered by paragraph (a) of this subsection in combination with Item 28 of Form 33.

154 See note 80.

(g) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 5.5 and the facts supporting that reliance;[155] and

(h) disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the related party transaction is obtained.[156]

(4) If, after sending the information circular and before the meeting, a change occurs that, if disclosed, would reasonably be expected to affect the decision of a holder of affected securities to vote for or against the related party transaction or to retain or dispose of affected securities, the issuer shall promptly disseminate disclosure of the change

(a) in a manner that the issuer reasonably determines will inform beneficial owners of affected securities of the change; and

(b) sufficiently in advance of the meeting that the beneficial owners of affected securities will be able to assess the impact of the change.

(5) If subsection (4) applies, the issuer shall file a copy of the disseminated information contemporaneously with its dissemination.

5.4 Formal Valuation

(1) Subject to section 5.5, an issuer shall obtain a formal valuation for a related party transaction described in any of paragraphs (a) to (g) of the definition of related party transaction.[157]

(2) If a formal valuation is required under subsection (1), the issuer shall

(a) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the related party transaction, unless the formal valuation is included in its entirety in the disclosure document;

(b) state in the disclosure document who will pay or has paid for the valuation; and

(c) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(3) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be; and

(b) supervise the preparation of the formal valuation.

5.5 Exemptions from Formal Valuation Requirement - Section 5.4 does not apply to an issuer carrying out a related party transaction in any of the following circumstances:[158]

1. Discretionary Exemption - The issuer has been granted an exemption from section 5.4 under section 9.1.

2. Fair Market Value Not More Than 25% of Market Capitalization[159] – At the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, insofar as it involves related parties,[160] exceeds 25 per cent of the issuer's market capitalization, and for this purpose

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155 Moved here from section 5.6 of the current Rule, and the requirement to disclose the exemption has been made explicit.

156 New. This information is usually provided already in the information circular.

157 The formal valuation requirement has been eliminated for certain types of related party transactions.

158 The requirement to disclose the facts supporting reliance on an exemption in the disclosure document has been moved from this section to paragraphs 5.2(1)(i) and 5.3(3)(g) and subsection 5.7(1), as applicable, of the amended Rule, which also specifically require disclosure of the exemption.

159 Paragraph 2 in the amended Rule incorporates revised versions of paragraphs 2 and 3 in the current Rule.

160 "Related parties" replaces "all interested parties" for clarification.

(a) if either of the fair market values is not readily determinable, any determination as to whether that fair market value exceeds 25 per cent of the issuer's market capitalization shall be made by the issuer's board of directors acting in good faith,

(b) if the transaction is one in which the issuer or a wholly-owned subsidiary entity of the issuer combines with a related party, through an amalgamation, arrangement or otherwise, the subject matter of the transaction shall be deemed to be the securities of the related party held, at the time the transaction is agreed to, by persons or companies other than the issuer or a wholly-owned subsidiary entity of the issuer, and the consideration for the transaction shall be deemed to be the consideration received by those persons or companies,[161]

(c) if the transaction is one of two or more connected transactions that are related party transactions for the issuer and that are subject to this Part, the fair market values for all of those transactions shall be aggregated in determining whether the fair market value tests for this exemption are met, except for those transactions for which an exemption in any of paragraphs 3 to 11 applies to the issuer,[162] and

(d) if the assets involved in the transaction (the "initial transaction") include warrants, options or other instruments providing for the possible future purchase of securities or other assets, the calculation of the applicable market values for the initial transaction shall include the fair market value of the underlying securities or other assets, as of the time the initial transaction is agreed to, and the maximum amount potentially payable if the future purchase takes place.[163]

3. Issuer Not Listed on Specified Markets - No securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ National Market, the NASDAQ SmallCap Market or a stock exchange outside of North America.[164]

4. Distribution of Securities for Cash[165] - The transaction is a distribution of securities of the issuer to a related party for cash consideration, if

(a) neither the issuer nor, to the knowledge of the issuer after reasonable inquiry, the related party has knowledge of any material information concerning the issuer or its securities that has not been generally disclosed, and the disclosure document for the transaction includes a statement to that effect, and

(b) the disclosure document for the transaction includes a description of the effect of the distribution on the direct or indirect voting interest of the related party.

5. Certain Transactions in the Ordinary Course of Business - The transaction is

(a) a purchase or sale, in the ordinary course of business of the issuer, of inventory consisting of personal property under an agreement that has been approved by the board of directors of the issuer and the existence of which has been generally disclosed, or

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161 Subparagraph (b) replaces paragraph 3 in the current Rule and makes the exemption available for an amalgamation or similar transaction even if the transaction is not a downstream transaction. It also excludes from the fair market value calculation only those securities held by the issuer or a wholly-owned subsidiary entity of the issuer, rather than all securities beneficially owned by the issuer or by persons acting jointly or in concert with the issuer. The broader scope of the exclusion in the current Rule could result in the exemption applying in unintended circumstances if, for example, the parent company of the issuer beneficially owns securities of the entity amalgamating with the issuer, other than securities beneficially owned by the parent company through its interest in the issuer.

162 New. This provision is intended to provide more clarity regarding this exemption as it applies to connected transactions than is provided in section 6.1 of the current Companion Policy. "Connected transactions" is a new defined term in the amended Rule.

163 New. Added for clarification. Under the current Rule, the issuance of warrants, for example, and their subsequent exercise could be regulated as two distinct related party transactions in certain circumstances, by virtue of paragraph 5.1(k) of the Rule. That paragraph is replaced by subparagraph 5.1(h)(iii) of the amended Rule, so that generally only the initial issuance of the warrants would be subject to the Rule.

164 New exemption that replaces the exemptions in paragraphs 13 (fair market value of transaction less than $500,000) and 17 (certain types of transactions carried out by Canadian (now TSX) Venture Exchange issuers) in the current Rule.

165 Paragraph 4 in the amended Rule is a revised version of paragraph 14 in the current Rule. A stock exchange listing and liquid market are not conditions to the availability of the exemption in the amended Rule.

(b) a lease of real or personal property under an agreement on reasonable commercial terms that, considered as a whole, are not less advantageous to the issuer than if the lease was with a person or company dealing at arm's length with the issuer and the existence of which has been generally disclosed.

[166]

6. Transaction Supported by Arm's Length Control Block Holder - The interested party beneficially owns, or exercises control or direction over, voting securities of the issuer that carry fewer voting rights than the voting securities beneficially owned, or over which control or direction is exercised, by another security holder of the issuer who is a control block holder of the issuer and who, in the circumstances of the transaction

(a) is not also an interested party,

(b) is at arm's length to the interested party, and

(c) supports the transaction.[167]

7. Bankruptcy, Insolvency, Court Order - If

(a) the transaction is subject to court approval, or a court orders that the transaction be effected, under

(i) bankruptcy or insolvency law,[168] or

(ii) section 191 of the *Canada Business Corporations Act*, any successor to that section, or equivalent legislation of a jurisdiction,

(b) the court is advised of the requirements of this Rule regarding formal valuations for related party transactions, and of the provisions of this paragraph 7, and

(c) the court does not require compliance with section 5.4.[169]

8. Financial Hardship - If

(a) the issuer is insolvent or in serious financial difficulty,

(b) the transaction is designed to improve the financial position of the issuer,

(c) paragraph 7 is not applicable,

(d) there is at least one independent director of the issuer in respect of the transaction,[170] and

(e) the issuer's board of directors, acting in good faith, determines, and at least two-thirds of the issuer's independent directors, acting in good faith, determine that

(i) subparagraphs (a) and (b) apply, and

(ii) the terms of the transaction are reasonable in the circumstances of the issuer.

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166 Paragraph 5 in the current Rule has been replaced by paragraph (k) of section 5.1 of the amended Rule.

167 The title of paragraph 6 has been changed to more directly label the exemption, and the paragraph has been shortened, primarily to reflect the changes to the definition of "interested party".

168 References to specific legislation have been removed.

169 Paragraph 7 in the current Rule, including its title, has been changed for clarification, to include an order under an equivalent provision to section 191 of the *Canada Business Corporations Act* in the legislation of a province or territory of Canada, and to provide for the possibility of someone other than the issuer advising the court of the applicable requirements of the Rule.

170 New. Added for clarification.

[171]

9. Amalgamation or Equivalent Transaction with No Adverse Effect on Issuer or Minority[172] - The transaction is a statutory amalgamation, or substantially equivalent transaction, resulting in the combination of the issuer or a wholly-owned subsidiary entity of the issuer with an interested party, that is undertaken in whole or in part for the benefit of another related party, if

   (a) the transaction does not and will not have any adverse tax or other consequences to the issuer, an entity resulting from the combination, or beneficial owners of affected securities generally,

   (b) no material actual or contingent liability of the interested party with which the issuer or a wholly-owned subsidiary entity of the issuer is combining will be assumed by the issuer, the wholly-owned subsidiary entity of the issuer or a successor to the issuer,

   (c) the related party benefiting from the transaction agrees to indemnify the issuer against any liabilities of the interested party with which the issuer, or a wholly-owned subsidiary entity of the issuer, is combining,

   (d) after the transaction, the nature and extent of the voting and financial participating interests of holders of affected securities in the combined entity will be the same as, and the value of their financial participating interests will not be less than, that of their interests in the issuer before the transaction,[173] and

   (e) the related party benefiting from the transaction pays for all of the costs and expenses resulting from the transaction.

[174]

10. Asset Resale - The subject matter of the related party transaction was acquired by the issuer or an interested party, as the case may be, in a prior arm's length transaction that was agreed to not more than 12 months before the date that the related party transaction is agreed to, and a qualified, independent valuator[175] provides a written opinion that, after making such adjustments, if any, as the valuator considers appropriate in the exercise of the valuator's professional judgment

   (a) the value of the consideration payable by the issuer for the subject matter of the related party transaction is not more than the value of the consideration paid by the interested party in the prior arm's length transaction, or

   (b) the value of the consideration to be received by the issuer for the subject matter of the related party transaction is not less than the value of the consideration paid by the issuer in the prior arm's length transaction,

   and the disclosure document for the related party transaction includes the same disclosure regarding the valuator as is required in the case of a formal valuation under section 6.2.[176]

11. Non-redeemable Investment Fund - The issuer is a non-redeemable investment fund that

   (a) at least once each quarter calculates and publicly disseminates the net asset value of its securities, and

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[171] Paragraphs 9, 10 and 11 in the current Rule have been removed. Paragraphs 9 and 10 are covered by paragraphs (d) and (g), respectively, of section 5.1 of the amended Rule. Paragraph 11 has been moved to paragraph 6 of section 5.7 of the amended Rule, which is the minority approval exemption section, because a valuation is not required for a loan in the amended Rule.

[172] The paragraph has been changed to include a transaction that is not technically an amalgamation but has essentially the same effect.

[173] Subparagraph (d) has been changed to include a reference to voting interests, which should not be affected by the transaction, and for drafting consistency with other parts of the amended Rule.

[174] The exemption for a transaction with a fair market value of under $500,000 has been replaced by the new exemption in paragraph 3 of this section in the amended Rule.

[175] Shortened to eliminate duplication with the Rule's definition of "independent valuator".

[176] This disclosure requirement has been moved here from section 6.2 of the current Rule.

(b) at the time of publicly announcing the related party transaction, publicly disseminates the net asset value of its securities as of the business day before the announcement.

[177]

5.6 Minority Approval - Subject to section 5.7, an issuer shall not carry out a related party transaction unless the issuer has obtained minority approval for the transaction under Part 8.

5.7 Exemptions from Minority Approval Requirement

(1) Section 5.6 does not apply to an issuer carrying out a related party transaction in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document, if any, for the transaction:[178]

1. Discretionary Exemption - The issuer has been granted an exemption from section 5.6 under section 9.1.

2. Fair Market Value Not More Than 25 Per Cent of Market Capitalization – Subject to subsection (2), the circumstances described in paragraph 2 of section 5.5.

3. Other Transactions Exempt from Formal Valuation - The circumstances described in paragraphs 5, 6 and 9 of section 5.5.[179]

4. Bankruptcy, Insolvency, Court Order - The circumstances described in subparagraph 7(a) of section 5.5, if the court is advised of the requirements of this Rule regarding minority approval for related party transactions, and of the provisions of this paragraph 4, and the court does not require compliance with section 5.6.[180]

5. Financial Hardship - The circumstances described in paragraph 8 of section 5.5, if there is no other requirement, corporate or otherwise, to hold a meeting to obtain any approval of the holders of any class of affected securities.

6. Loan to Issuer, No Equity or Voting Component[181] - The transaction is a loan, or the creation of a credit facility,[182] that is obtained by the issuer from a related party on reasonable commercial terms that are not less advantageous to the issuer than if the loan or credit facility were obtained from a person or company dealing at arm's length with the issuer, and the loan, or each advance under the credit facility, as the case may be, is not

   (a) convertible, directly or indirectly, into equity or voting securities of the issuer or a subsidiary entity of the issuer, or otherwise participating in nature, or

   (b) repayable as to principal or interest, directly or indirectly, in equity or voting securities of the issuer or a subsidiary entity of the issuer,

   and for this purpose, any amendment to the terms of a loan or credit facility shall be deemed to create a new loan or credit facility.[183]

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177 The exemption for certain types of transactions carried out by Canadian (now TSX) Venture Exchange issuers has been replaced by the new exemption in paragraph 3 of this section in the amended Rule.

178 Changed to clarify that the exemptions must be disclosed in the disclosure document, including in the event that security holder approval for the transaction is sought despite the Rule not requiring minority approval.

179 The referenced valuation exemptions have been changed to reflect revisions to section 5.6 of the current Rule (section 5.5 of the amended Rule).

180 Changed to reflect revisions to paragraph 7 of section 5.6 of the current Rule (section 5.5 of the amended Rule).

181 This exemption is in paragraph 3 of subsection 5.8(1) of the current Rule in the form of a cross-reference to the formal valuation exemption in paragraph 11 of section 5.6. In the amended Rule, this exemption applies only to minority approval, because a loan does not require a formal valuation.

182 The exemption has been reworded so as not to imply that each advance under the terms of a credit facility is necessarily regulated by the Rule as a related party transaction distinct from the creation of the credit facility. An advance would normally be covered by the exclusion in subparagraph 5.1(h)(iii) of the amended Rule.

183 The last provision of the paragraph has been added to clarify that, for example, an addition of a new equity component to the terms of a loan that previously had no equity component negates the exemption. The exemption in subparagraph 11(b) of section 5.6 of the

7. 90 Per Cent Exemption - Subject to subsection (3), one or more persons or companies that are interested parties within the meaning of subparagraph (d)(i) of the definition of interested party[184] beneficially own, in the aggregate,[185] 90 per cent or more of the outstanding securities of a class of affected securities at the time the transaction is agreed to, and either

   (a) an appraisal remedy is available to holders of the class of affected securities under the statute under which the issuer is organized or is governed as to corporate law matters, or

   (b) if an appraisal remedy referred to in subparagraph (a) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in subsection 185(4) of the OBCA and that is described in an information circular or other document sent to holders of that class of affected securities in connection with a meeting to approve the related party transaction, or, if there is no such meeting, in another document that is sent to those security holders not later than the time by which an information circular or other document would have been required to be sent to them if there had been a meeting.[186]

(2) If the transaction is a material amendment to the terms of a security, or of a loan or credit facility to which the exemption in paragraph 6 of subsection (1) does not apply, the fair market value tests for the exemption in paragraph 2 of subsection (1) shall be applied to the whole transaction as amended, insofar as it involves related parties, rather than just to the amendment, and, for this purpose, any addition of, or amendment to, a term involving a right to convert into or otherwise acquire equity or voting securities is deemed to be a material amendment.[187]

(3) If there are two or more classes of affected securities, paragraph 7 of subsection (1) applies only to a class of which the applicable interested parties beneficially own, in the aggregate, 90 per cent or more of the outstanding securities.[188]

PART 6 FORMAL VALUATIONS AND PRIOR VALUATIONS

6.1 Independence and Qualifications of Valuator[189]

(1) Every formal valuation required by this Rule for a transaction shall be prepared by a valuator that is independent of all interested parties in the transaction and that has appropriate qualifications.[190]

(2) Subject to subsections (3) and (4), it is a question of fact as to whether a valuator is independent of an interested party or has appropriate qualifications.[191]

(3) A valuator is not independent of an interested party in connection with a transaction if

   (a) the valuator is an associated or affiliated entity or issuer insider of the interested party;

   (b) except in the circumstances described in paragraph (e), the valuator acts as an adviser to the interested party in respect of the transaction, but for this purpose, a valuator that is retained by an issuer to prepare a formal valuation for an issuer bid is not, for that reason alone, considered to be an adviser to the interested party in respect of the transaction;[192]

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current Rule for a cash payment by the issuer under the loan or credit facility has been removed, as it would normally be covered by the exclusion in subparagraph 5.1(h)(iii) of the amended Rule.

184 Changed so as not to include entities that are interested parties solely because, for example, they are given collateral benefits.

185 Clarification has been added that the reference is to aggregate holdings.

186 Subparagraph (b) has been expanded to address the possibility of there being no meeting of holders of affected securities to approve the transaction.

187 New. This provision is intended to clarify the exemption as it applies to an amendment to a security or loan transaction.

188 Minor drafting changes primarily to shorten the subsection.

189 The title of the section has been changed to reflect the fact that the section refers to qualifications.

190 Minor wording change for consistency with subsections (2) and (3).

191 The reference to subsection (5) has been removed, as that subsection has been incorporated into paragraph 6.1(3)(b) of the amended Rule. The several references in section 6.1 to a person or company providing a liquidity opinion have been removed, as they are covered by a cross-reference to this section in subparagraph 1.2(1)(b)(ii) of the amended Rule.

192 Paragraph (b) in the amended Rule incorporates subsection 6.1(5) of the current Rule.

(c) the compensation of the valuator depends in whole or in part on an agreement, arrangement or understanding that gives the valuator a financial incentive in respect of the conclusion reached in the formal valuation or the outcome of the transaction;

(d) the valuator is

(i) a manager or co-manager of a soliciting dealer group for the transaction, or

(ii) a member of a soliciting dealer group for the transaction, if the valuator, in its capacity as a soliciting dealer, performs services beyond the customary soliciting dealer's function or receives more than the per security or per security holder fees payable to other members of the group;

(e) the valuator is the external auditor of the issuer or of an interested party, unless the valuator will not be the external auditor of the issuer or of an interested party upon completion of the transaction and that fact is publicly disclosed at the time of or prior to the public disclosure of the results of the valuation;[193] or

(f) the valuator has a material financial interest in the completion of the transaction,

and for the purposes of this subsection, references to the valuator include any affiliated entitiy of the valuator.[194]

(4) A valuator that is paid by one or more interested parties in a transaction, or paid jointly by the issuer and one or more interested parties in a transaction, to prepare a formal valuation for the transaction is not, by virtue of that fact alone, not independent.

6.2 Disclosure Re Valuator - An issuer or offeror required to obtain a formal valuation for a transaction[195] shall include in the disclosure document for the transaction

(a) a statement that the valuator has been determined to be qualified and independent;

(b) a description of any past, present or anticipated relationship between the valuator and the issuer or an interested party that may be relevant to a perception of lack of independence;

(c) a description of the compensation paid or to be paid to the valuator;

(d) a description of any other factors relevant to a perceived lack of independence of the valuator;

(e) the basis for determining that the valuator is qualified; and

(f) the basis for determining that the valuator is independent, despite any perceived lack of independence, having regard to the amount of the compensation and any factors referred to in paragraphs (b) and (d).[196]

6.3 Subject Matter of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation shall provide the valuation in respect of

(a) the offeree securities, in the case of an insider bid or issuer bid;

(b) the affected securities, in the case of a business combination;

(c) subject to subsection (2), any non-cash consideration being offered to, or to be received by, the holders of securities referred to in paragraphs (a) or (b); and

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193 The last part of the paragraph has been changed to clarify the timing of the required disclosure.

194 The added words at the end of the subsection enable reduced repetition in the subsection.

195 The references to a liquidity opinion and the person or company providing it, and the reference to the opinion required in connection with the asset resale exemption for related party transactions, have been replaced by cross-references to section 6.2 in subparagraph 1.2(1)(b)(iv) and in paragraph 10 of section 5.5, respectively, of the amended Rule.

196 Minor drafting changes have been made to paragraph (f) for clarification.

(d) subject to subsection (2), the non-cash assets involved in a related party transaction.[197]

(2) A formal valuation of non-cash consideration or assets referred to in paragraphs (1)(c) or (d) is not required if

(a) the non-cash consideration or assets are securities of a reporting issuer or securities of a class for which there is a published market;[198]

(b) the person or company that would otherwise be required to obtain the formal valuation of those securities states in the disclosure document for the transaction that the person or company has no knowledge of any material information concerning the issuer of the securities, or concerning the securities, that has not been generally disclosed;

(c) in the case of an insider bid, issuer bid or business combination[199]

(i) a liquid market in the class of securities exists,

(ii) the securities constitute 25 per cent or less of the number of securities of the class that are outstanding immediately before the transaction,[200]

(iii) the securities are freely tradeable at the time the transaction is completed, and

(iv) the valuator is of the opinion that a valuation of the securities is not required; and

(d) in the case of a related party transaction for the issuer of the securities, the conditions in subparagraphs 4(a) and (b) of section 5.5 are satisfied, regardless of the form of the consideration for the securities.[201]

6.4 Preparation of Formal Valuation

(1) A formal valuation shall contain the valuator's opinion as to a value or range of values representing the fair market value of the subject matter of the valuation.[202]

(2) A person or company preparing a formal valuation under this Rule shall

(a) prepare the formal valuation in a diligent and professional manner;

(b) prepare the formal valuation as of an effective date that is not more than 120 days before the earlier of

(i) the date that the disclosure document for the transaction is first sent to security holders, if applicable, and

(ii) the date that the disclosure document is filed;

(c) make appropriate adjustments in the formal valuation for material intervening events of which it is aware between the effective date of the valuation and the earlier of the dates referred to in subparagraphs (i) and (ii) of paragraph (b);

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197 Paragraphs (c) and (d) have been changed for clarification.

198 Replaces the condition that there be a liquid market in the securities in the case of a related party transaction. See the next note.

199 Related party transactions have been excluded from paragraph (c), which corresponds to paragraphs (b) and (c) in the current Rule, because the paragraph is intended to reinforce the concept of the securities as cash equivalents for the recipients of the securities, with the cash value being, as nearly as possible, the price at which the securities can be sold into the market upon their receipt. This is of less relevance to a related party transaction, where the issuer would not typically acquire securities for the purpose of immediate resale. Also, if the rest of subsection (2) applies to all the non-cash assets involved in a related party transaction, the expense of retaining a valuator just for the purpose of subparagraph (c)(iv) is not considered justified.

200 The 10 per cent threshold in the current Rule has been raised to 25 per cent, which is considered to be sufficiently low when combined with the valuator's opinion required by subparagraph (iv).

201 Subsection (2) has been revised for clarification and to provide consistency with a similar formal valuation exemption for related party transactions.

202 Moved here from the definition of "formal valuation" in the current Rule.

(d) in determining the fair market value of offeree securities or affected securities,[203] not include in the formal valuation a downward adjustment to reflect the liquidity of the securities, the effect of the transaction on the securities or the fact that the securities do not form part of a controlling interest; and

(e) provide sufficient disclosure in the formal valuation to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.[204]

(3) National Policy 48[205] - *Future-Oriented Financial Information*, does not apply to a formal valuation for which financial forecasts and projections are relied on and disclosed.

6.5 Summary of Formal Valuation

(1) An issuer or offeror required to provide a summary of a formal valuation shall ensure that the summary provides sufficient detail to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

(2) In addition to the disclosure referred to in subsection (1), if an issuer or offeror is required to provide a summary of a formal valuation, the issuer or offeror shall ensure that the summary

(a) discloses

(i) the effective date of the valuation, and

(ii) any distinctive material benefit that might accrue to an interested party as a consequence of the transaction, including the earlier use of available tax losses, lower income taxes, reduced costs or increased revenues;

(b) if the formal valuation differs materially from a prior valuation, explains the differences between the two valuations or, if it is not practicable to do so, the reasons why it is not practicable to do so;

(c) indicates an address where a copy of the formal valuation is available for inspection; and

(d) states that a copy of the formal valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.[206]

6.6 Filing of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation in respect of a transaction shall file a copy of the formal valuation

(a) concurrently with the sending of the disclosure document for the transaction to security holders; or

(b) concurrently with the filing of a material change report for a related party transaction for which no disclosure document is sent to security holders, or if the formal valuation is not available at the time of filing the material change report, as soon as the formal valuation is available.

(2) If the formal valuation is included in its entirety in the disclosure document, an issuer or offeror satisfies the requirement in subsection (1) by filing the disclosure document.

6.7 Valuator's Consent - An issuer or offeror required to obtain a formal valuation shall

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203 Paragraph (c) has been changed to only apply to offeree securities or affected securities. A valuation of securities that would be received by holders of offeree securities or affected securities, or by the issuer in the case of a related party transaction, should include adjustments affecting the value of the securities to the intended recipients.

204 Minor drafting changes have been made to subsection 6.4(1) of the current Rule (subsection 6.4(2) of the amended Rule) for clarification.

205 Replaces “National Instrument 52-101”, which was originally proposed as a replacement for National Policy 48, but did not come into force.

206 Paragraph (d) has been changed for purposes of consistency with Item 21 of Form 33 of the Regulation.

(a) obtain and file the valuator's consent to the filing of the formal valuation and to the inclusion of the formal valuation or its summary in the disclosure document for the transaction for which the formal valuation was obtained;[207] and

(b) include in the disclosure document a statement, signed by the valuator, substantially as follows:

We refer to the formal valuation dated •, which we prepared for (indicate name of the person or company) for (briefly describe the transaction for which the formal valuation was prepared). We consent to the filing of the formal valuation with the Ontario Securities Commission and the inclusion of [a summary of the formal valuation/the formal valuation] in this document.

6.8 Disclosure of Prior Valuation

(1) A person or company required to disclose a prior valuation shall, in the document in which the prior valuation is required to be disclosed

(a) disclose sufficient detail to allow the readers to understand the prior valuation and its relevance to the present transaction;

(b) indicate an address where a copy of the prior valuation is available for inspection; and

(c) state that a copy of the prior valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.[208]

(2) If there are no prior valuations, the existence of which is known after reasonable inquiry, the person or company that would be required to disclose prior valuations, if any existed, shall include a statement to that effect in the document.

(3) Despite anything to the contrary in this Rule, disclosure of the contents of a prior valuation is not required in a document if

(a) the contents are not known to the person or company required to disclose the prior valuation;

(b) the prior valuation is not reasonably obtainable by the person or company required to disclose it, irrespective of any obligations of confidentiality; and

(c) the document contains statements regarding the prior valuation substantially to the effect of paragraphs (a) and (b).[209]

6.9 Filing of Prior Valuation - A person or company required to disclose a prior valuation shall file a copy of the prior valuation concurrently with the filing of the first document in which that disclosure is required.[210]

6.10 Consent of Prior Valuator Not Required - Despite section 196 of the Regulation, a person or company required to disclose a prior valuation under this Rule is not required to obtain or file the valuator's consent to the filing or disclosure of the prior valuation.[211]

PART 7 INDEPENDENT DIRECTORS

7.1 Independent Directors

(1) Subject to subsections (2) and (3), it is a question of fact as to whether a director of an issuer is independent.

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207 Paragraph (a) has been changed to include the requirement to file the consent. This requirement already applies to bid circulars under section 196 of the Regulation.

208 Paragraph (c) has been changed for purposes of consistency with Item 21 of Form 33 of the Regulation.

209 A number of drafting changes have been made to subsections (2) and (3) for clarification, including clarification that the exception in subsection (3) is for disclosure of the contents of the valuation, not of the valuation's existence.

210 The section has been changed to clarify that duplicate filings of the valuation are not required if the valuation is disclosed in a material change report and an information circular.

211 New. The consent was expressly not required in former Policy 9.1, and obtaining the consent is often impractical or impossible.

(2) A director of an issuer is not independent in connection with a transaction if he or she

(a) is an interested party in the transaction;[212]

(b) is currently, or has been at any time during the 12 months before the date the transaction is agreed to,[213] an employee, associated entity or issuer insider of an interested party, or of an affiliated entity of an interested party, other than solely in his or her capacity as a director of the issuer;

(c) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an adviser to an interested party in connection with the transaction, or an employee, associated entity or issuer insider of an adviser to an interested party in connection with the transaction, or of an affiliated entity of such an adviser, other than solely in his or her capacity as a director of the issuer;

(d) has a material financial interest in an interested party or an affiliated entity of an interested party;[214] or

(e) would reasonably be expected to receive a benefit as a consequence of the transaction that is not also available on a pro rata basis to the general body of holders in Canada of offeree securities or affected securities, including, without limitation, the opportunity to obtain a financial interest in an interested party, an affiliated entity of an interested party, the issuer or a successor to the business of the issuer.[215]

(3) For the purpose of this section, in the case of an issuer bid, a director of the issuer is not, by that fact alone, not independent of the issuer.

PART 8 MINORITY APPROVAL

8.1 General

(1) If minority approval is required for a business combination or related party transaction, it shall be obtained from the holders of every class of affected securities of the issuer, in each case voting separately as a class.

[216]

(2) Subject to section 8.2,[217] in determining minority approval for a business combination or related party transaction, an issuer shall exclude the votes attached to affected securities that, to the knowledge of the issuer or any interested party or their respective directors or senior officers, after reasonable inquiry, are beneficially owned or over which control or direction is exercised by

(a) the issuer;

(b) an interested party;

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212 This criterion has been moved here from the definition of "independent director" in subsection 1.1(1) of the current Rule.

213 The date the transaction is agreed to has been substituted for the date of the transaction in this paragraph and in paragraph (c), because the date of the agreement is considered to be a more appropriate reference date in the determination of director independence.

214 The part of paragraph (c) in the current Rule that refers to an anticipated opportunity for the director in the event of a successful transaction has been moved to paragraph (e) in the amended Rule to cover the possibility that the opportunity is made available to the general body of security holders.

215 A reference to "offeree securities" in the context of equal treatment has been added, and a reference to the opportunity to obtain a financial interest in a successor to the business of the issuer has been added to the portion of the paragraph taken from paragraph (c) in the current Rule.

216 Subsection 8.1(2) of the current Rule has been removed, as it is not strictly necessary in light of the Rule's interpretation of "class", which includes a series. Also, each series should vote separately even if all series receive identical treatment in the transaction, since the different attributes of a series may warrant different treatment.

217 These words have been moved here from paragraph (b) of this subsection (which is subsection (3) in the current Rule), because the qualification applies to other paragraphs of the subsection as well.

(c) a related party of an interested party, unless the related party meets that description solely in its capacity as a director or senior officer of one or more entities that are neither interested parties nor issuer insiders of the issuer;[218] or

(d) a joint actor with a person or company referred to in paragraphs (b) or (c) in respect of the transaction.

8.2 Second Step Business Combination[219] - Despite subsection 8.1(2), the votes attached to securities acquired under[220] a formal bid may be included as votes in favour of a subsequent business combination in determining whether minority approval[221] has been obtained if

(a) the security holder that tendered the securities to the bid was not a joint actor with the offeror in respect of the bid,

(b) the security holder that tendered the securities to the bid was not, as a result of a transaction with, or negotiation directly or indirectly involving, the offeror or a joint actor with the offeror

(i) a direct or indirect party to any connected transaction to the formal bid, or

(ii) entitled to receive, directly or indirectly, in connection with the formal bid

(A) consideration per security that was not identical in amount and form to the entitlement of the general body of holders in Canada of offeree securities of the same class,

(B) a collateral benefit,

(C) consideration for securities of the issuer if those securities were neither equity securities nor employee stock options, or

(D) consideration for securities of a class of equity securities of the issuer if the issuer had more than one outstanding class of equity securities, unless that consideration was not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;[222]

(c) the business combination is being effected by the offeror that made the formal bid, or an affiliated entity of that offeror, and is in respect of the securities of the same class for which the bid was made[223] and that were not acquired in the bid;

(d) the business combination is completed no later than 120 days after the date of expiry of the formal bid;

(e) the consideration per security that the holders of affected securities would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the formal bid;[224] and

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218 Paragraphs (b) and (c) have been shortened to reflect the changes to the definition of "interested party" as it applies to related party transactions in the amended Rule. Paragraph (c) has been further changed to increase the categories of persons who are not disenfranchised in a minority vote, on the basis that the conflict of interest issue the Rule is intended to address is not applicable or is not of sufficient significance for those persons to warrant their disenfranchisement.

219 The title of the section has been changed from "Multi-Step Transactions" for purposes of consistency with the corresponding formal valuation exemption.

220 "Acquired under" replaces "tendered to".

221 "The requisite" preceding "minority approval" has been removed.

222 Paragraphs (a) and (b) in the amended Rule replace paragraph (a) in the current Rule. The exclusion for a joint actor has been added, and revisions have been made to harmonize with the changes to the definition of "interested party" as it applies to a business combination in the amended Rule. The application of clause (D) is discussed in subsection 2.1(2) of the amended Companion Policy.

223 Minor drafting change to clarify that the formal bid need not have been for all outstanding securities of the class.

224 Subparagraphs (d)(i) and (d)(ii) in the current Rule have been condensed into paragraph (e) in the amended Rule.

(f) the disclosure document for the formal bid

(i) disclosed that if the offeror acquired securities under the formal bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in paragraphs (d) and (e),[225]

(ii) contained a summary of a formal valuation of the securities in accordance with the applicable provisions of Part 6, or contained the valuation in its entirety, if the offeror in the formal bid was subject to and not exempt from the requirement to obtain a formal valuation,

(iii) stated that the business combination would be subject to minority approval,

(iv) identified the securities, if known to the offeror after reasonable inquiry, the votes attached to which would be required to be excluded in determining whether minority approval for the business combination had been obtained,

(v) identified each class of securities the holders of which would be entitled to vote separately as a class on the business combination,

(vi) described the expected[226] tax consequences of both the formal bid and the business combination if, at the time the bid was made, the tax consequences arising from the business combination

(A) were reasonably foreseeable to the offeror, and

(B) were reasonably expected to be different from the tax consequences of tendering to the bid, and

(vii) disclosed that the tax consequences of the formal bid and the business combination may be different if, at the time the bid was made, the offeror could not reasonably foresee the tax consequences arising from the business combination.

PART 9 EXEMPTION

9.1 Exemption - The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

225 Revised version of subparagraph (e)(i) in the current Rule, to more specifically describe the disclosure requirement regarding the offeror's intent to acquire the securities not acquired in the bid.

226 "Expected" has been inserted, in recognition that the tax consequences cannot be stated with certainty. Similarly, the reference to known tax consequences has been removed from clause (A) of this subparagraph and from subparagraph (vii).

ONTARIO SECURITIES COMMISSION
COMPANION POLICY 61-501CP
TO ONTARIO SECURITIES COMMISSION RULE 61-501
INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS
AND RELATED PARTY TRANSACTIONS

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ONTARIO SECURITIES COMMISSION
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INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS
AND RELATED PARTY TRANSACTIONS

PART 1 GENERAL

1.1 **General -** The Commission regards it as essential, in connection with the disclosure, valuation, review and approval processes followed for insider bids, issuer bids, business combinations and related party transactions, that all security holders be treated in a manner that is fair and that is perceived to be fair. In the view of the Commission, issuers and others who benefit from access to the capital markets assume an obligation to treat security holders fairly, and the fulfilment of this obligation is essential to the protection of the public interest in maintaining capital markets that operate efficiently, fairly and with integrity.

The Commission does not consider that the types of transactions covered by Rule 61-501 (the "Rule") are inherently unfair. The Commission recognizes, however, that these transactions are capable of being abusive or unfair, and has made the Rule to address this.

This Policy expresses the Commission's views on certain matters related to the Rule.

PART 2 INTERPRETATION

[227]

2.1 Equal Treatment of Security Holders

(1) **Security Holder Choice -** The definitions of business combination, collateral benefit and interested party, as well as other provisions in the Rule, include the concept of identical treatment of security holders in a transaction. For the purposes of the Rule, if security holders have an identical opportunity under a transaction, then they are considered to be treated identically. For example, if, under the terms of a business combination, each security holder has the choice of receiving, for each affected security, either $10 in cash or one common share of ABC Co., the Commission regards the security holders as having identical entitlements in amount and form, and as receiving identical treatment, even though they may not all make the same choice. This interpretation also applies where the Rule refers to consideration that is "at least equal in value" and "in the same form", such as in the provisions on second step business combinations.[228]

(2) **Multiple Classes of Equity Securities -** The definitions of business combination and interested party, and the provisions on second step business combinations in section 8.2 of the Rule, refer to circumstances where an issuer carrying out a business combination or related party transaction has more than one class of equity securities. The Rule's treatment of these transactions depends on whether the entitlements of the holders of one class under the transaction are greater than those of the holders of the other classes in relation to the voting and financial participating interests in the issuer represented by the respective securities.

For example: An issuer has outstanding Subordinate Voting Shares carrying one vote per share, and Multiple Voting Shares carrying ten votes per share, with the shares of the two classes otherwise carrying identical rights. Under the terms of a business combination, holders of the Subordinate Voting Shares will receive $10 per share. For the Multiple Voting shareholders to be regarded as not being entitled to greater consideration than the Subordinate Voting shareholders under the Rule, the Multiple Voting shareholders must receive no more than $10 per share. As a second example: An issuer has the same share structure as the issuer in the first example. Under the terms of a business combination, Subordinate Voting shareholders will receive, for each Subordinate Voting Share, $10 and one Subordinate Voting Share of a successor issuer, carrying one vote per share. For the Multiple Voting shareholders to be regarded as not being entitled to greater consideration than the Subordinate Voting shareholders under the Rule, the Multiple Voting shareholders must receive, for each Multiple Voting Share, no more than $10 and one Multiple Voting Share of the successor issuer, carrying no more than ten votes per share and otherwise carrying no greater rights than those of the Subordinate Voting Shares of the successor issuer.[229]

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[227] Sections 2.1 and 2.2 of the current Companion Policy have been removed. Section 2.1 is covered by the definition of "director" in section 1.1 of the amended Rule. Section 2.2 does not add materially to the definition of "freely tradeable" in the Rule.

[228] New. Reflects Commission staff's current interpretation.

[229] New. Reflects Commission staff's current interpretation.

(3) **Related Party Holding Securities of Other Party to Transaction -** The Rule sets out specific criteria for determining related party and interested party status. Without limiting the application of those criteria, a related party of an issuer is not considered to be treated differently from other security holders of the issuer in a transaction, or to receive a collateral benefit, solely by reason of being a security holder of another party to the transaction. For example, if ABC Co. proposes to amalgamate with XYZ Co., the fact that a director of ABC Co., who is not a control block holder of ABC Co., owns common shares of XYZ Co. (but less than 50 per cent) will not, in and of itself, cause the amalgamation to be considered a business combination for ABC Co. under the Rule.[230]

(4) **Consolidation of Securities -** One of the methods that may be used to effect a business combination is a consolidation of an issuer's securities at a ratio that eliminates the entire holdings of most holders of affected securities, through the elimination of post-consolidated fractional interests. Where this or a similar method is used, the security holders whose entire holdings are not eliminated are not considered to be treated identically to the general body of security holders under the Rule.[231]

(5) **Principle of Equal Treatment in Business Combinations -** The Rule contemplates that a related party of an issuer might not be treated identically to all other security holders in the context of a business combination in which a person or company other than that related party acquires the issuer. There are provisions in the Rule, including the minority approval requirement, that are intended to address this circumstance. Despite these provisions, the Commission is of the view that, as a general principle, security holders should be treated equally in the context of a business combination, and that differential treatment is only justified if its benefits to the general body of security holders outweigh the principle of equal treatment. While the Commission will generally rely on an issuer's review and approval process, in combination with the provisions of the Rule, to achieve fairness for security holders, the Commission may intervene if it appears that differential treatment is not reasonably justified. Giving a security holder preferential treatment in order to obtain that holder's support of the transaction will not normally be considered justifiable.[232]

2.2 Joint Actors in Take-over Bids - The definition of joint actor in the Rule incorporates the interpretation of the term "acting jointly or in concert" in section 91 of the Act, subject to certain qualifications. Among other things, the concept is relevant in determining whether a take-over bid is an insider bid under the Rule and whether securities acquired by an offeror in a take-over bid can be included in a minority approval vote regarding a second step business combination under section 8.2 of the Rule. Without limiting the application of the definition, the Commission is of the view that, for a take-over bid, an offeror and an insider may be viewed as joint actors if an agreement, commitment or understanding between the offeror and the insider provides that the insider shall not tender to the bid, or provides the insider with an opportunity not offered to all security holders to maintain or acquire a direct or indirect equity interest in the offeror, the issuer or a material asset of the issuer.[233]

234

2.3 Director for Purposes of Section 1.2 - **Liquid Market -** Subsection 1.2(3) of the Rule requires a letter to be sent to the Director for purposes of satisfying the liquid market test in certain circumstances. That letter should be sent to the Director, Take-over/Issuer Bids, Mergers & Acquisitions.

235

2.4 Direct or Indirect Parties to a Transaction

(1) The Rule makes references to direct and indirect parties to a transaction in the definition of connected transactions and in subparagraph 8.2(b)(i) regarding minority approval for a second step business combination. For the purposes of the Rule, a person or company is considered to be an indirect party if, for

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230 New. Added for clarification.

231 New. Added for clarification.

232 New. Added to provide guidance as to the circumstances in which the Commission might consider exercising its public interest jurisdiction in the context of a business combination.

233 Re-titled and revised version of subsection 2.3(1) of the current Companion Policy, to clarify that this interpretation applies to any take-over bid, not just to a bid that is first determined to be an insider bid on the basis of other criteria. Subsection 2.3(2) of the current Companion Policy has been removed, as it is covered in the definition of "joint actor" in the amended Rule.

234 Section 2.4 of the current Companion Policy has been removed, as it is covered by section 1.3 of the amended Rule.

235 Sections 2.6, 2.7 and 2.8 of the current Companion Policy have been removed. Section 2.6 is partially covered by paragraph 4.7 (c) of the amended Rule. The remainder of section 2.6 and all of sections 2.7 and 2.8 are not necessary because the parts of the current Rule to which they relate have been removed in the amended Rule.

example, a direct party to the transaction is a subsidiary entity, nominee or agent of the person or company. A person or company is not an indirect party merely because it negotiates or approves the transaction on behalf of a party, holds securities of a party or agrees to support the transaction in the capacity of a security holder of a party.

(2) For the purposes of the Rule, the Commission does not consider an entity to be a direct or indirect party to a business combination solely because the entity receives pro rata consideration in its capacity as a security holder of the issuer carrying out the business combination.[236]

2.5 Amalgamations – Under the Rule, an amalgamation may be a business combination, related party transaction or neither, depending on the circumstances. For example, an amalgamation is a business combination for an issuer if, as a consequence of the amalgamation, holders of equity securities of the issuer become security holders of the amalgamated entity, unless an exception in one of the lettered paragraphs in the definition of business combination applies. An amalgamation is a related party transaction for an issuer rather than a business combination if, for example, a wholly-owned subsidiary entity of the issuer amalgamates with a related party of the issuer, leaving the equity securities of the issuer unaffected.[237]

2.6 Transactions Involving More than One Reporting Issuer - The characterization of a transaction or the availability of a valuation or minority approval exemption under the Rule must be considered individually for each reporting issuer involved in the transaction. For example, an amalgamation may be a downstream transaction for one party and a business combination for the other, in which case the latter party is the only party to whom the requirements of the Rule may apply.[238]

2.7 Redeemable Preference Shares – The Commission is aware that often in business combinations, the consideration takes the form of redeemable preference shares, which are immediately redeemed for cash. The Commission is of the view that the preference shares in this circumstance are equivalent to cash for the purpose of determining whether the consideration is at least equal in value to and is in the same form as other consideration, and for the purpose of determining the required subject matter of a formal valuation under section 6.3 of the Rule.[239]

2.8 Previous Arm's Length Negotiations Exemption

(1) For the purposes of the formal valuation exemptions based on previous arm's length negotiations in paragraph 3 of subsection 2.4(1) and paragraph 3 of subsection 4.4(1) of the Rule for insider bids and business combinations, respectively, the arm's length relationship must be between the selling security holder and all persons or companies that negotiated with the selling security holder.[240]

(2) The Commission notes that the previous arm's length negotiations exemption is based on the view that those negotiations can be a substitute for a valuation. An important requirement for the exemption to be available is that the offeror or proponent of the business combination, as the case may be, engages in "reasonable inquiries" to determine whether various circumstances exist. In the Commission's view, if this requirement cannot be satisfied through receipt of representations of the parties directly involved or some other suitable method, the offeror or proponent of the transaction is not entitled to rely on this exemption.

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236 Section 2.4 is new and has been added for clarification.

237 Replaces section 2.9.of the current Companion Policy and reflects Commission staff's current interpretation. Subsection 2.9(1) has caused some confusion as to the Rule's treatment of amalgamations generally, particularly in the context of an amalgamation of arm's length parties where there is a collateral benefit. Subsection 2.9(2) may be confusing to readers, as the related party transaction requirements of the Rule do not apply to amalgamations that are business combinations. Subsection 2.9(3) is covered by section 2.6 of the amended Companion Policy and the amended Rule's treatment of downstream transactions. Subsection 2.9(4) is not necessary, as the amended Rule does not make reference to reorganizations.

238 New. Added for clarification and partially adapted from subsection 2.9(3) of the current Companion Policy.

239 Revised version of section 2.10 of the current Companion Policy. The changes, which reflect current practice, broaden the scope of the interpretation beyond second step business combinations.

240 The first two sentences of section 2.11 of the current Companion Policy have been removed, as they are covered by the definition of "arm's length" in the amended Rule.

241

2.9 Connected Transactions

(1) "Connected transactions" is a defined term in the Rule, and reference is made to connected transactions in a number of parts of the Rule. For example, subparagraph 2(c) of section 5.5 of the Rule requires connected transactions to be aggregated, in certain circumstances, for the purpose of determining the availability of the formal valuation exemption for a related party transaction that is not larger than 25 per cent of the issuer's market capitalization. In other circumstances, it is possible for an issuer to rely on an exemption for each of two or more connected transactions. However, the Commission may intervene if it believes that a transaction is being carried out in stages or otherwise divided up for the purpose of avoiding the application of a provision of the Rule.[242]

(2) One method of acquiring all the securities of an issuer is through a plan of arrangement or similar process comprised of a series of two or more interrelated steps. The series of steps is the "transaction" for the purposes of the definition of business combination.[243]

(3) An agreement, commitment or understanding that a security holder will tender to a formal bid or vote in favour of a transaction is not, in and of itself, a connected transaction to the bid or to the transaction for purposes of the Rule.[244]

PART 3 MINORITY APPROVAL

3.1 Meeting Requirement - The definition of minority approval and subsections 4.2(2) and 5.3(2) of the Rule provide that minority approval, if required, must be obtained at a meeting of holders of affected securities. The issuer may be able to demonstrate that holders of a majority of the securities that would be eligible to be voted at a meeting would vote in favour of the transaction under consideration. In this circumstance, the Director will consider granting an exemption under section 9.1 of the Rule from the requirement to hold a meeting, conditional on security holders being provided with disclosure similar to that which would be available to them if a meeting were held.[245]

3.2 Special Circumstances - As the purpose of the Rule is to ensure fair treatment of minority security holders, abusive minority tactics in a situation involving a minimal minority position may cause the Director to grant an exemption from the requirement to obtain minority approval.[246]

PART 4 FORM 33 DISCLOSURE[247]

4.1 Insider Bids - Form 33 Disclosure - Form 32 of the Regulation (the form for a take-over bid circular) requires for an insider bid, and subsection 2.2(2) of the Rule requires for a stock exchange insider bid, the disclosure required by Form 33 of the Regulation, appropriately modified. In the view of the Commission, Form 33 disclosure would generally include, in addition to Form 32 disclosure, disclosure for the following items, with necessary modifications, in the context of an insider bid:

1. Item 10 - Reasons for Bid
2. Item 14 - Acceptance of Bid
3. Item 15 - Benefits from Bid

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241 Section 2.13 of the current Companion Policy has been removed, as the term "collateral benefit" has been given a more descriptive meaning as a defined term in the amended Rule. Additionally, the factors that Commission staff may take into account in reviewing an application for an exemption from a provision of the Rule regarding collateral benefits may not necessarily be the same, or be given the same weight, as in the case of a similar application for an exemption from subsection 97(2) of the Act. The policy considerations that come into play as between the two types of application are not identical, in light of their differences in the consequences that flow from the granting or non-granting of the requested relief.

242 Revised version of section 6.1 of the current Companion Policy, including the title, to reflect changes in the amended Rule.

243 New. Added for clarification.

244 New. Added for clarification.

245 New. Reflects current practice.

246 Shortened version of section 3.1 of the current Companion Policy.

247 The title of Part 4 has been changed in light of the removal of sections 4.2 and 4.3 of the current Companion Policy, as discussed in the next note.

4. Item 17 - Other Benefits to Insiders, Affiliates and Associates
5. Item 18 - Arrangements Between Issuer and Security Holder
6. Item 19 - Previous Purchases and Sales
7. Item 21 - Valuation
8. Item 24 - Previous Distribution
9. Item 25 - Dividend Policy
10. Item 26 - Tax Consequences
11. Item 27 - Expenses of Bid

4.2 Business Combinations and Related Party Transactions - Form 33 Disclosure - Paragraphs 4.2(3)(a) and 5.3(3)(a) of the Rule require in the information circulars for a business combination and a related party transaction, respectively, the disclosure required by Form 33 of the Regulation, to the extent applicable and with necessary modifications. In the view of the Commission, Form 33 disclosure would generally include disclosure for the following items, with necessary modifications, in the context of those transactions:

1. Item 5 - Consideration Offered
2. Item 10 - Reasons for Bid
3. Item 11 - Trading in Securities to be Acquired
4. Item 12 - Ownership of Securities of Issuer
5. Item 13 - Commitments to Acquire Securities of Issuer
6. Item 14 - Acceptance of Bid
7. Item 15 - Benefits from Bid
8. Item 16 - Material Changes in the Affairs of Issuer
9. Item 17 - Other Benefits to Insiders, Affiliates and Associates
10. Item 18 - Arrangements Between Issuer and Security Holder
11. Item 19 - Previous Purchases and Sales
12. Item 20 - Financial Statements
13. Item 21 - Valuation
14. Item 22 - Securities of Issuer to be Exchanged for Others
15. Item 23 - Approval of Bid
16. Item 24 - Previous Distribution
17. Item 25 - Dividend Policy
18. Item 26 - Tax Consequences
19. Item 27 - Expenses of Bid
20. Item 28 - Judicial Developments
21. Item 29 - Other Material Facts

22. Item 30 - Solicitations

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PART 5 FORMAL VALUATIONS

5.1 General

(1) The Rule requires formal valuations in a number of circumstances. The Commission is of the view that a conclusory statement of opinion as to the value or range of values of the subject matter of a valuation does not by itself fulfil this requirement.[249]

(2) The disclosure standards for formal valuations in By-laws 29.14 to 29.23 of the Investment Dealers Association of Canada and Appendix A to Standard No. 110 of the Canadian Institute of Chartered Business Valuators each generally represent a reasonable approach to meeting the applicable legal requirements. Specific disclosure standards, however, cannot be construed as a substitute for the professional judgment and responsibility of the valuator and, on occasion, additional disclosure may be necessary.

(3) An issuer that is required to obtain a formal valuation, or the offeree issuer in the case of an insider bid, should work in cooperation with the valuator to ensure that the requirements of the Rule are satisfied. At the valuator's request, the issuer should promptly furnish the valuator with access to the issuer's management and advisers, and to all material information in the issuer's possession relevant to the formal valuation.[250] The valuator is expected to use that access to perform a comprehensive review and analysis of information on which the formal valuation is based. The valuator should form its own independent views of the reasonableness of this information, including any forecasts, projections or other measurements of the expected future performance of the enterprise, and of any of the assumptions on which it is based, and adjust the information accordingly.

(4) The disclosure in the valuation of the scope of review should include a description of any limitation on the scope of the review and the implications of the limitation on the valuator's conclusion. Scope limitations should not be imposed by the issuer, an interested party or the valuator, but should be limited to those beyond their control that arise solely as a result of unusual circumstances. In addition, it is inappropriate for any interested party to exercise or attempt to exercise any influence over a valuator.

251

(5) Subsection 2.3(2) of the Rule provides that in the context of an insider bid, an independent committee of the offeree issuer shall, and the offeror shall enable the independent committee to, determine who the valuator will be and supervise the preparation of the formal valuation. Although the subsection also requires the independent committee to use its best efforts to ensure that the valuation is completed and provided to the offeror in a timely manner, the Commission is aware that an independent committee could attempt to use the subsection to delay or impede an insider bid viewed by the committee as unfriendly. In a situation where an offeror is of the view that an independent committee is not acting in a timely manner in having the formal valuation prepared, the offeror may seek relief under section 9.1 of the Rule from the requirement that the offeror[252] obtain a valuation.

(6) Similarly, in circumstances where an independent committee is of the view that a bid that has been announced will not actually be made or that the bid is not being made in good faith, the independent committee may apply for relief from the requirements of subsection 2.3(2) of the Rule. [253]

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248 Sections 4.2 and 4.3 of the current Companion Policy have been removed. Although these sections do not use mandatory language, they could be construed, for practical purposes, as prescriptive, which is not the role of policy statements. The subject matter of these sections is addressed in other securities law instruments and accounting rules.

249 Minor drafting change to the second sentence of the subsection to clarify the interpretation's direct bearing on compliance with the Rule.

250 The first part of subsection (3) has been changed to incorporate subsection (5) of the current Companion policy and to clarify the subsection's application to insider bids.

251 Subsection (5) in the current Companion Policy is incorporated in subsection (3) in the amended Companion Policy.

252 "Offeror" replaces "issuer".

253 Subsections (6) and (7) in the current Companion Policy (subsections (5) and (6) in the amended Company Policy) have been changed slightly to reflect the addition of subparagraph 2.3(2)(c) to the amended Rule, regarding the independent committee's obligation to act in a timely manner.

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5.2 Independent Valuators - While, except in certain prescribed situations, the Rule provides that it is a question of fact as to whether a valuator (which for the purposes of this section includes a person or company providing a liquidity opinion) is independent, situations have been identified in the past that raise serious concerns for the Commission. These situations, which are set out below, must be assessed for materiality by the board or committee responsible for choosing the valuator, and disclosed in the disclosure document for the transaction. In determining the independence of the valuator from an interested party, relevant factors may include whether

(a) the valuator or an affiliated entity of the valuator has a material financial interest in future business under an agreement, commitment or understanding involving the issuer, the interested party or an associated or affiliated entity of the issuer or interested party;

(b) during the 24 months before the valuator was first contacted for the purpose of the formal valuation or opinion, the valuator or an affiliated entity of the valuator

(i) had a material involvement in an evaluation, appraisal or review of the financial condition of the interested party, or an associated or affiliated entity of the interested party, other than the issuer,

(ii) had a material involvement in an evaluation, appraisal or review of the financial condition of the issuer, or an associated or an affiliated entity of the issuer, if the evaluation, appraisal or review was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iii) acted as a lead or co-lead underwriter of a distribution of securities by the interested party, or acted as a lead or co-lead underwriter of a distribution of securities by the issuer if the retention of the underwriter was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iv) had a material financial interest in a transaction involving the interested party, other than the issuer in the case of an issuer bid, or

(v) had a material financial interest in a transaction involving the issuer other than by virtue of performing the services referred to in subparagraphs (b)(ii) or (b)(iii); or

(c) the valuator or an affiliated entity of the valuator is

(i) a lead or co-lead lender or manager of a lending syndicate in respect of the transaction in question, or

(ii) a lender of a material amount of indebtedness in a situation where the interested party or the issuer is in financial difficulty, and the transaction would reasonably be expected to have the effect of materially enhancing the lender's position.[255]

PART 6 ROLE OF DIRECTORS

6.1 Role of Directors

(1) Paragraphs 2.2(3)(d), 3.2(1)(e), 4.2(3)(e), 5.2(1)(e) and 5.3(3)(f) of the Rule require that the disclosure for the applicable transaction include a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

(2) An issuer involved in any of the types of transactions regulated by the Rule should provide sufficient information to security holders to enable them to make an informed decision. Accordingly, the directors should disclose their reasonable beliefs as to the desirability or fairness of the proposed transaction and make useful recommendations regarding the transaction. A statement that the directors are unable to make or are not making a recommendation regarding the transaction, without detailed reasons, generally would be viewed as insufficient disclosure.

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254 Subsection 5.1(8) of the current Companion Policy has been removed. National Instrument 52-101 did not come into force.

255 Some drafting changes have been made to section 5.2, particularly in the introductory words, to increase clarity and reduce repetition.

(3) In reaching a conclusion as to the fairness of a transaction, the directors should disclose in reasonable detail the material factors on which their beliefs regarding the transaction are based. Their disclosure should discuss fully the background of deliberations by the directors and any special committee, and any analysis of expert opinions obtained.

(4) The factors that are important in determining the fairness of a transaction to security holders and the weight to be given to those factors in a particular context will vary with the circumstances. Normally, the factors considered should include whether the transaction is subject to minority approval, whether the transaction has been reviewed and approved by a special committee and, if there has been a formal valuation, whether the consideration offered is fair in relation to the valuation conclusion arrived at through the application of the valuation methods considered relevant for the subject matter of the formal valuation. A statement that the directors have no reasonable belief as to the desirability or fairness of the transaction or that the transaction is fair in relation to values arrived at through the application of valuation methods considered relevant, without more, generally would be viewed as insufficient disclosure.

(5) The directors of an issuer involved in a transaction regulated by the Rule are generally in the best position to assess the formal valuation to be provided to security holders. Accordingly, the Commission is of the view that, in discharging their duty to security holders, the directors should consider the formal valuation and all prior valuations disclosed and discuss them fully in the applicable disclosure document.

(6) To safeguard against the potential for an unfair advantage for an interested party as a result of that party's conflict of interest or informational or other advantage in connection with the proposed transaction, it is good practice for negotiations for a transaction involving an interested party to be carried out by or reviewed and reported upon by a special committee of disinterested directors. Following this practice normally would assist in addressing the Commission's interest in maintaining capital markets that operate efficiently, fairly and with integrity. While the Rule only mandates an independent committee in limited circumstances, the Commission is of the view that it generally would be appropriate for[256] issuers involved in a material transaction to which the Rule applies to constitute an independent committee of the board of directors for the transaction. Where a formal valuation is involved, the Commission also would encourage an independent committee to select the valuator, supervise the preparation of the valuation and review the disclosure regarding the valuation.

(7) A special committee should, in the Commission's view, include only directors who are independent from the interested party. While a special committee may invite non-independent board members and other persons possessing specialized knowledge to meet with, provide information to, and carry out instructions from, the committee, in the Commission's view non-independent persons should not be present at or participate in the decision-making deliberations of the special committee.

[256] The reference to corporate law has been removed.

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

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

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

Exempt Financings

The Ontario Securities Commission reminds issuers 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 27 of the *Securities Act* and OSC Rule 45-501 ("Exempt Distributions").

REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

Transaction Date	Purchaser	Security	Total Purchase Price ($)	Number of Securities
31-Jan-2003	Synergetic Holdings Ltd. Michael Russill	AADCO Automotive Inc. - Common Shares	0.00	1,436,000.00
03-Jan-2003 1/31/03	13 Purchasers	AADCO Automotive Inc. - Convertible Debentures	925,000.00	925,000.00
01-Feb-2003	Ruth McArthur	ABC American -Value Fund - Units	150,000.00	22,924.00
01-Feb-2003	7 Purchasers	ABC Fundamental - Value Fund - Units	1,371,987.69	93,931.00
06-Feb-2002	Saverio Pittiglio;Denis Mederios	Active Control Technology Inc. - Common Shares	21,044.00	231,484.00
30-Jan-2003	Mari Peterson	Acuity Funds Ltd. - Trust Units	149,249.85	12,519.00
04-Feb-2003	June Simpson	Acuity Funds Ltd. - Trust Units	200,000.00	15,512.00
10-Feb-2003	Hanna Fox	Acuity Pooled Fixed Income Fund - Trust Units	52,521.06	1.00
27-Jan-2003	Floorcovering Institute of Canada	Acuity Pooled Fixed Income Fund - Trust Units	264,030.90	20,389.00
13-Feb-2003	Starsoft Info-Tech Solutions	Acuity Pooled High Income Fund - Trust Units	112,577.21	7,881.00
13-Feb-2003	Suzanne Heaton	Acuity Pooled High Income Fund - Trust Units	150,000.00	10,501.00
12-Feb-2003	Jean Wettlauer	Acuity Pooled High Income Fund - Trust Units	300,000.00	21,022.00
10-Feb-2003	Martin Jamieson	Acuity Pooled High Income Fund - Trust Units	150,000.00	10,558.00
27-Jan-2003	Marilew West	Acuity Pooled High Income Fund - Trust Units	150,000.00	10,449.00
22-Jan-2003	Hans Petzoldt	Acuity Pooled High Income Fund - Trust Units	260,010.00	17,919.00

23-Jan-2003	3 Purchasers	Acuity Pooled High Income Fund - Trust Units	850,645.05	55,171.00
11-Feb-2003	David Stonehouse	Acuity Pooled Short Term Fund - Trust Units	67,500.00	8,280.00
11-Jan-2002 6/12/02	9 Purchasers	Addenda Bond Pooled Fund - Units	106,158,068.37	8,170,718.00
16-Jan-2003	Dresdner Rosenberg Capital	Amylin Pharmaceuticals, Inc. - Common Shares	41,500.00	2,500.00
10-Feb-2003	9 Purchasers	Aspen Group Resources Corporation - Units	1,071,000.00	7,650,000.00
14-Jan-2003	Toronto Dominion Bank	Avery Dennison Corporation - Notes	4,628,738.60	3,000,000.00
31-Jan-2003	Bank Of Montreal;Credit Risk Advisors	Avnet, Inc. - Notes	6,086,400.00	20.00
13-Feb-2003	3 Purchasers	Betacom Corporation Inc. - Convertible Debentures	750,000.00	1,000,000.00
06-Feb-2003	Greebriar Holdings Limited	Bistro Corporation - Common Shares	510,000.00	170,000.00
06-Feb-2003	5 Purchasers	Bistro Corporation - Common Shares	162.90	1,629,052.00
06-Feb-2003	Greenbriar Holdings Limited	Bistro Corporation - Common Shares	510,000.00	170,000.00
01-Jan-2003	TD Capital Private Equity Investors Partnership	Blackstone Communications Partners I L.P. - Limited Partnership Units	629,075.38	399,489.00
24-Jan-2003	Kevin Kimsa	BPI Global Opportunites III Fund - Units	84,000.00	1,008.00
31-Jan-2003	Louis and Barbara Hollander;Casaport Investments Limited	BPI Global Opportunites III Fund - Units	234,715.17	2,812.00
19-Feb-2003	T.A.L. Investment Counsel;Ltd;Credit Risk Advisors	Burns Philp Capital Pty Limited - Notes	2,255,052.25	20.00
10-Feb-2002	17 Purchasers	cars4U Ltd - Convertible Debentures	3,500,000.00	3,500,000.00
03-Feb-2003	10 Purchasers	Canico Resource Corp. - Common Shares	7,944,000.00	2,400,000.00
11-Sep-2002	3 Purchasers	Canso Catalina Pooled Fund - Trust Units	257,000.00	51,400.00
22-Feb-2002	Gail Mudie	Canso Corporate Securities Pooled Fund - Trust Units	20,000.00	3,909.00
22-Feb-2002	Gail Mudie	Canso Fund - Trust Units	5,000.00	966.00

22-Feb-2002	Gail Mudie	Canso Global Portfolio Pooled Fund - Trust Units	15,000.00	2,873.00
01-Nov-2002	3 Purchasers	Canso Reconnaissance Fund - Trust Units	281,860.19	555,572.00
30-Jan-2003	4 Purchasers	Central Fund of Canada Limited - Shares	7,548,750.00	1,125,000.00
10-Feb-2003	John Brady	Champion Bear Resources Ltd. - Common Shares	55,000.00	50,000.00
31-Jan-2003	5 Purchasers	Contemporary Investment Corp. - Common Shares	204,000.00	204,000.00
10-Feb-2003	Jakmin Investments Limited	Cornerstone Capital Resources Inc. - Units	50,000.00	200,000.00
01-Jan-2003 1/31/03	13 Purchasers	Cranston, Gaskin, O'Reilly & Vernon - Trust Units	423,532.00	35,879.00
01-Jan-2003 1/31/03	20 Purchasers	Cranston, Gaskin, O'Reilly & Vernon - Trust Units	2,140,020.30	180,048.00
01-Jan-2003 1/31/03	10 Purchasers	Cranston, Gaskin, O'Reilly & Vernon - Units	346,034.06	31,345.00
07-Feb-2003	Gerad Wood	Craton Gold Ltd. - Common Shares	0.00	200,000.00
13-Feb-2003	Graham Cunningham; Sheldon Inwentash	Doublestar Resources Ltd. - Units	88,749.90	197,222.00
31-Jan-2003	Exall Resources Limited	Drilcorp Energy Ltd. - Preferred Shares	1,500,000.00	60,000.00
30-Jan-2003	9 Purchasers	Drilcorp Energy Ltd. - Units	603,000.00	1,507,500.00
27-Jan-2003	ITF Lynn Factor RRSP;Thomas Courteau	Dumont Nickel Inc. - Units	108,000.00	666,000.00
14-Feb-2003	56 Purchasers	Dynamic Fuel Systems Inc. - Common Shares	597,264.00	796,352.00
07-Feb-2003	5 Purchasers	E-Scotia Limited Partnership - Units	5,670.00	56,700.00
03-Feb-2003	Ontario Teachers Pension Plan Board	Efficient Capital Corporation - Common Shares	977,516.72	4,714,636.00
03-Feb-2003	Ontario Teachers Pension Plan Board	Efficient Capital Corporation - Common Shares	1,396,452.45	6,735,194.00
03-Feb-2003	Ontario Teachers Pension Plan Board	Efficient Capital Corporation - Preferred Shares	30.83	3,083.00
01-Feb-2002 11/1/02	23 Purchasers	Epic Limited Partnership - Units	2,474,525.85	1,720.00
05-Feb-2003	11 Purchasers	Everton Resources Inc. - Units	78,000.00	7,800,000.00
14-Feb-2003	North American Development Group I	First Capital Realty Inc. - Common Shares	2,491,180.50	202,535.00

11-Jan-2002 12/31/02	8 Purchasers	Frank Russell Canada Ltd. - Units	9,115,701.21	85,409.00
11-Jan-2002 12/31/02	8 Purchasers	Frank Russell Canada Ltd. - Units	11,928,724.05	127,328.00
11-Jan-2002 12/31/02	10 Purchasers	Frank Russell Canada Ltd. - Units	83,240,694.58	784,126.00
11-Jan-2002 12/31/02	9 Purchasers	Frank Russell Canada Ltd. - Units	118,089,018.44	1,186,073.00
21-Jan-2002 12/31/02	10 Purchasers	Frank Russell Canada Ltd. - Units	70,064,923.45	693,868.00
11-Oct-2002	5 Purchasers	Frank Russell Canada Ltd. - Units	1,366,605.85	18,466.00
01-Jan-2003	TD Capital Private Equity Investors Partnership	Genstar Capital Corporation - Limited Partnership Units	845,091.31	536,668.00
13-Feb-2003	Waterra Pumps Ltd.	Geologix Explorations Inc. - Units	5,000.00	10,000.00
14-Feb-2003	5 Purchasers	Geomaque Explorations Ltd. - Units	775,000.00	9,687,500.00
23-Jan-2003	4 Purchasers	Georgia-Pacific Corporation - Notes	2,000,000.00	9.00
04-Feb-2003	Toronto Dominion Bank	GlobalSantaFe Corporation - Notes	4,987,100.00	5,000,000.00
17-Feb-2003	7 Purchasers	Heritage Explorations Ltd. - Units	431,000.90	783,638.00
31-Jan-2003	40 Purchasers	High River Gold Mines Ltd. - Units	12,656,025.00	5,624,900.00
07-Feb-2003	8 Purchasers	Icefloe Technologies Inc. - Units	268,197.00	89,399.00
13-Feb-2003	6 Purchasers	Icefloe Technologies Inc. - Units	300,000.00	100,000.00
02-Jan-2002 10/1/02	ELectrical Safety Authority Pension Fund;Camco Inc.	International Equity Section, GE Asset Management Canada - Units	5,244,350.20	592,140.00
07-Feb-2003	8 Purchasers	InterOil Corporation - Common Shares	7,734,375.00	862,500.00
06-Feb-2002	RBC Technology Ventures Inc.	INEA Corporation - Preferred Shares	2,735,950.00	2,700,617.00
01-Jan-2002 12/31/02	N/A	Jarislowsky International Pooled Fund - Units	211,518,578.59	8,406,115.00
01-Jan-2002 12/31/02	N/A	Jarislowsky Special Equity Fund - Units	111,335,365.11	5,958,848.00
01-Jan-2002 12/31/02	N/A	Jarislowsky, Fraser Balanced Fund - Units	413,668,455.18	30,640,814.00

01-Jan-2002 12/31/02	N/A	Jarislowsky, Fraser Bond Fund - Units	11,656,077.16	1,098,971.00
01-Jan-2002 12/31/02	N/A	Jarislowsky, Fraser Canadian Equity Fund - Units	293,604,402.46	15,030,989.00
01-Jan-2002 12/31/02	N/A	Jarislowsky, Fraser Global Balanced Fund - Units	50,402,467.46	4,976,117.00
01-Jan-2002 12/31/02	N/A	Jarislowsky, Fraser U.S. Equity Fund - Units	24,375,738.20	2,669,852.00
12-Dec-2002	John Carro	KBSH Private - Global Leading Company - Units	334,704.75	42,562.00
06-Feb-2003	arden Haynes	KBSH Private - International Fund - Units	88,641.58	12,044.00
05-Feb-2003	Diana Cottingham 2002 Family Trust	KBSH Private - International Fund - Units	152,975.45	20,581.00
31-Jan-2003	David Cottingham 2002 Family Trust	KBSH Private - International Fund - Units	203,946.69	27,247.00
28-Jan-2003	David Cottigham 2002 Family Trust	KBSH Private - Money Market - Units	203,863.05	20,386.00
28-Jan-2003	Diana Cottingham 2002 Family Trust	KBSH Private - Money Market - Units	152,859.89	15,286.00
10-Feb-2003	Heather and David McFarland	KBSH Private - Money Market - Units	178,453.44	17,845.00
07-Jan-2003	Heather McFarland - Spousal RRSP	KBSH Private - Money Market - Units	211,238.34	21,124.00
07-Jan-2003 Units	David McFarland - RRSP	KBSH Private - Money Market -	205,934.60	20,593.00
06-Feb-2003	Arden Haynes	KBSH Private - U.S. Equity - Units	88,641.58	7,679.00
03-Feb-2003	Gerald Geoffrey	KBSH Private - U.S. Equity - Units	100,000.00	8,427.00
14-Jan-2003	4 Purchasers	Klondike Gold Corp. - Units	75,000.00	500,000.00
01-Feb-2003	Lancaster Balanced Fund II	Lancaster Global Ex-Canada Fund - Trust Units	1,438,128.88	169,996.00
17-Jan-2002	Pescara Fund of Funds; David and Joan Cole	Landmark Global Opportunities Fund - Units	230,000.00	2,204.00
24-Jan-2003	John Tak	Landmark Global Opportunities Fund - Units	25,000.00	239.00
05-Feb-2003	S.N Beharry Lall	Legal Services Plan Inc. - Common Shares	4,000.00	4,000.00
04-Feb-2003	Jehad Chedrawy	Legal Services Plan Inc. - Common Shares	20,000.00	20,000.00

31-Jan-2003	Dave Martin	Legal Services Plan Inc. - Common Shares	5,250.00	5,250.00
29-Jan-2003	Tracey Marie Flanagan	Legal Services Plan Inc. - Common Shares	10,500.00	10,500.00
05-Feb-2002	Raventures Inc. BMO Nesbitt Burns	Liberty Mineral Exploration Inc. - Convertible Debentures	35,000.00	35,000.00
15-Jan-2003	Nita Shastri	LifeLine Imaging, LLC - Units	22,485.00	3.00
01-Jan-2003	TD Capital Private Equity Investors Partnership	Lightspeed Venture Partners VI, L.P. - Limited Partnership Units	610,194.33	387,500.00
01-Jan-2003	TD Capital Private Equity Investors Partnership	Madison Dearborn Capital Partners IV, L.P. - Limited Partnership Units	486,422.37	308,898.00
07-Feb-2003	N/A	Makah Energy Corporation - Option	0.00	25,000.00
07-Feb-2002	Roy Cap Inc.	Medix Resource, Inc. - Units	250,000.00	625,000.00
01-Jan-2003	TD Capital Private Equity Investors Partnership	Menlo Ventures IX, L.P. - Limited Partnership Units	865,914.59	549,892.00
31-Jan-2003	The Canada Life Assurance Company	Metacapital Fixed Income Relative Value Offshore Fund - Common Shares	3,039,000.00	2,000,000.00
04-Feb-2003	17 Purchasers	Mitec Telecom Inc. - Units	2,037,480.00	6,397,125.00
01-Feb-2003	4 Purchasers	MMCAP Limited Partnership Fund - Limited Partnership Units	242,000.00	203.00
01-Dec-2002	Arrow Global Multi-Strategy Fund	MMCAP Limited Partnership Fund - Limited Partnership Units	115,000.00	97.00
28-Jan-2003 12/31/03	Creststreet 2001 Limited Partnership	Mount Copper Wind Power Energy Inc. - Common Shares	34,507.50	33,472.00
29-Apr-2002	Philip S. Martin	National Gold Corporation - Units	15,000.00	100,000.00
13-Feb-2003	4 Purchasers	New Solutions Financial (IV) Corporation - Debentures	300,000.00	4.00
14-Feb-2003	3 Purchasers	Nexus Group International Inc. - Units	2,150,000.00	71,666,666.00
01-Jan-2003	TD Capital Private Equity Investors Partnership	Oak Investment Partners X, Limited Partnership - Limited Partnership Units	482,393.24	306,340.00
06-Dec-2002	6 Purchasers	OceanLake Commerce Inc. - Units	220,000.00	1,000,000.00
06-Feb-2003	11 Purchasers	Oxbow Equities Corp. - Common Shares	966,000.00	2,415,000.00
14-Feb-2003	The SMG Family Trust	Ozz Corporation - Common Shares	150,000.00	214,286.00

30-Jan-2003	4 Purchasers	Peace Arch Entertainment Group Inc. - Shares	1,500,000.00	5,000,000.00
05-Feb-2003	Transamerica Life Canada	Pioneer Trust - Notes	15,500,000.00	3.00
07-Feb-2003	1167882 Ontario Limited	PLM Group Ltd. - Common Shares	556,200.14	761,918.00
29-Jan-2003	3 Purchasers	Probe Mines Limited - Units	99,900.00	1,198,667.00
01-Jan-2003	TD Capital Private Equity Investors Partnership	Providence Equity Partners IV L.P. - Limited Partnership Units	812,454.75	515,943.00
15-Jan-2003	3 Purchasers	Quincy Resources Inc. - Units	99,666.59	433,333.00
30-Jan-2003	6 Purchasers	Rev D Networks Inc. - Preferred Shares	1,375,471.38	18,000,000.00
30-Jan-2003	3 Purchasers	Rev D Networks (US) Inc. - Shares	1.38	900,000.00
06-Feb-2003	64 Purchasers	Rio Narcea Gold Mines, Ltd., - Special Warrants	20,328,750.00	8,995,000.00
06-Feb-2003	Janet Field-Moase;Gordon H. Weir	Rockwater Capital Corporation - Special Warrants	500,500.00	650,000.00
31-Jan-2003	EdgeStone Venture Capital Fund Nominee;Inc.	RSS Solutions Inc. - Preferred Shares	1,600,000.00	5,250,000.00
11-Jan-2002 12/31/02	12 Purchasers	Russell Canadian Equity Fund - Units	19,855,995.00	124,825.00
11-Jan-2002 12/31/02	9 Purchasers	Russell Canadian Fixed Income Fund - Units	17,112,401.00	142,255.00
07-Jan-2003	3 Purchasers	Savanna Energy Services Corp. - Convertible Debentures	800,000.00	3,000.00
14-Feb-2003 Company	The Canada Life Assurance	Seaspan International Ltd. - Notes	5,000,000.00	7.00
14-Feb-2003 Shares	William Inwood	SeaState Capital Inc. - Common	75,000.00	75,000.00
12-Feb-2003	5 Purchasers	Seprotech Systems Incorporated - Convertible Debentures	350,000.00	5.00
10-Feb-2003	Goodman & Co.	Sinotrans Limited - Shares	163,311.84	380,000.00
01-Jan-2003	TD Capital Private Equity Investors Partnership	Spectrum Equity Investors IV, L.P. - Limited Partnership Units	929,512.78	590,279.00
01-Jan-2003	TD Capital Private Equity Investors Partnership	Sprout Capital IX, L.P. - Limited Partnership Units	1,577,953.72	1,002,066.00
07-Feb-2003	5 Purchasers	Sun Media Corporation - Notes	4,111,327.97	2,750.00
10-Feb-2003	24 Purchasers	Temex Resource Corp. - Units	1,000,000.00	2,000,000.00
10-Feb-2003	David Alan Barstead;rodger G. Stewart	Tengtu International Corp. - Units	382,789.78	300,000.00

03-Feb-2003	Henry Fiorillo;Sprout Capital Corporation	The Alpha Fund - Limited Partnership Units	400,000.00	4.00
01-Jan-2002 12/1/02	30 Purchasers	The K2 Arbitrage Fund L.P. - Limited Partnership Units	7,037,470.00	4,659.00
12-Feb-2003	4 Purchasers	The Strand Boulders Investment Trust - Trust Units	100,000.00	8.00
06-Feb-2003	7 Purchasers	Tiger Energy Limited - Common Shares	2,180,000.00	2,180,000.00
24-Jan-2003	John Tak;Kevin Kimsa	Trident Global Opportunities Fund - Units	109,000.00	1,055.00
01-Oct-2002 12/31/02	30 Purchasers	UBS (Canada) American Equity Fund Series B - Units	1,111,528.00	139,198.00
01-Oct-2002 12/31/02	20 Purchasers	UBS (Canada) Canadian Equity Fund Series B - Units	430,511.00	51,588.00
01-Nov-2002 12/31/02	14 Purchasers	UBS (Canada) International Equity Fund Series B - Units	260,845.00	30,862.00
30-Jan-2003	Kinross Gold Corp.	United Bolero Development Corp. - Units	35,000.00	350,000.00
29-Jan-2003	Dredner Rosenberg Capital	VCA Antech, Inc. - Common Shares	24,400.00	1,600.00
10-Feb-2003	13 Purchasers	Viva Source Corp. - Special Warrants	135,000.00	367,500.00
10-Feb-2003	N/A	Viventia Biotech inc. - Units	2,000,000.00	11,111,111.00
01-Jan-2003	TD Capital private Equity Investors Partnership	Willis Stein & Partners III, L.P. - Limited Partnership Units	777,151.61	493,524.00
04-Feb-2003	J.T. Risty Enterprises Ltd.	ZTEST Electronics Inc. - Convertible Debentures	100,000.00	2,100,000.00

NOTICE OF INTENTION TO DISTRIBUTE SECURITIES AND ACCOMPANYING DECLARATION UNDER SECTION 2.8 OF MULTILATERAL INSTRUMENT 45-102 RESALE OF SECURITIES - FORM 45-102F3

Seller	Security	Number of Securities
Matthews-Cartier Holdings Limited	Canfor Corporation - Common Shares	926,990.00
Discovery Capital Corporation	CardioComm Solutions Inc. - Common Shares	2,000,000.00
CMG Reservoir Simulation Foundation	Computer Modelling Group Ltd. - Common Shares	100,000.00
Perdana Technology Venture Sdn. Bhd.	EleTel Inc. - Common Shares	5,500,000.00
Glen R. Estill	EMJ Data Systems Ltd. - Common Shares	9,334.00
Hector Davila Santos	First Silver Reserve Inc. - Common Shares	135,000.00
Conrad M. Black	Hollinger Inc. - Preferred Shares	1,611,039.00
Stephen Sham	MedMira Inc. - Common Shares	282,000.00
ONCAN Canadian Holdings Ltd.	Onex Corporation - Shares	999,900.00

Lee Heitman	Partner Jet Corp. - Common Shares	1,000,000.00
Cambrelco Inc.	Polyair Inter Pack Inc. - Common Shares	100,000.00
Tom Drivas and Romios Estates Ltd	Romios Gold Resources Inc. - Common Shares	929,062.00
Velan Holding Co. Ltd.	Velan Inc. - Shares	275,000.00
Great Pacific Capital Corp.	Westshore Terminals Income Fund - Trust Units	1,000,000.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
AGF International Value Class
AGF Global Total Return Bond Fund
AGF U.S. Value Class
AGF RSP MultiManager Fund
AGF Global Resources Class
AGF Global Technology Class
AGF MultiManager Class
AGF Global Health Sciences Class
AGF Global Financial Services Class
AGF Aggressive Japan Class
AGF RSP International Value Fund
AGF RSP World Companies Fund
AGF RSP World Balanced Fund
AGF RSP European Equity Fund
AGF RSP American Tactical Asset Allocation Fund
AGF RSP American Growth Fund
AGF RSP Japan Fund
AGF Canadian Stock Fund
AGF Global Real Estate Equity Class
AGF World Opportunities Fund
AGF International Stock Class
AGF Canada Class
AGF Canadian Aggressive All-Cap Fund
AGF Latin America Fund
AGF India Fund
AGF Emerging Markets Value Fund
AGF Aggressive Growth Fund
AGF Aggressive Global Stock Fund
AGF World Equity Fund
AGF World Companies Fund
AGF Precious Metals Fund
AGF RSP World Equity Fund
AGF Canadian Small Cap Fund
AGF Canadian Value Fund
AGF Canadian Total Return Bond Fund
AGF RSP International Equity Allocation Fund
AGF International Value Fund
AGF Canadian Dividend Fund
AGF World Balanced Fund
AGF U.S. Dollar Money Market Account
AGF RSP Global Bond Fund
AGF Canadian Money Market Fund
AGF Canadian Conservative Income Fund
AGF Canadian Tactical Asset Allocation Fund
AGF American Tactical Asset Allocation Fund
AGF Canadian Balanced Fund
AGF Global Government Bond Fund
AGF Canadian Bond Fund
AGF Canadian Resources Fund Limited
AGF Global Equity Class
AGF Short-Term Income Class
AGF Germany Class
AGF European Equity Class
AGF China Focus Class
AGF Asian Growth Class
AGF Japan Class
AGF Special U.S. Class
AGF American Growth Class
AGF Canadian Growth Equity Fund Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated February 19th, 2003
Mutual Reliance Review System Receipt dated February 20th, 2003
Offering Price and Description:
Series D Securities
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
-
Project #515043

Issuer Name:
Canadian Oil Sands Limited
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Shelf Prospectus dated February 24th, 2003
Mutual Reliance Review System Receipt dated February 24th, 2003
Offering Price and Description:
$750,000,000 - Medium Term Notes (Unsecured)
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Merrill Lynch Canada Inc.
Promoter(s):
-
Project #516014

Issuer Name:
McWatters Mining Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Long Form Prospectus dated February 21st, 2003
Mutual Reliance Review System Receipt dated February 24th, 2003
Offering Price and Description:
$ * - * Common Shares @ $ * per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Sprott Securities Ltd.
First Associates Investments Inc.
Jennings Capital Inc.
Research Capital Corp.
Promoter(s):
-
Project #515829

Issuer Name:
Royal LePage Residential Royalties Income Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated February 18th, 2003
Mutual Reliance Review System Receipt dated February 20th, 2003
Offering Price and Description:
$ * - * Units @ $10.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Trilon Securities Corporation
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
Royal LePage Limited
Project #506643

Issuer Name:
Canadian Superior Energy Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated February 19th, 2003
Mutual Reliance Review System Receipt dated February 20th, 2003
Offering Price and Description:
$20,000,000.00 - 12,500,000 Common Shares @$1.60 per Common Share
Underwriter(s) or Distributor(s):
Octagon Capital Corporation
Maison Placements Canada Inc.
Jennings Capital Inc.
Wolverton Securities Ltd.
Promoter(s):
-
Project #512785

Issuer Name:
Gaz Metropolitain, inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Shelf Prospectus dated February 18th, 2003
Mutual Reliance Review System Receipt dated February 19th, 2003
Offering Price and Description:
$125,000,000.00 - SERIES I FIRST MORTGAGE BONDS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #509993

Issuer Name:
Hathaway Focus + Canadian Fund
Hathaway Focus + American Fund
Hathaway Focus + World Fund
Hathaway Focus + Wealth Management Fund
Hathaway Focus + Balanced Canadian Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectus dated February 14th, 2003 to Final Simplified Prospectus dated December 5th, 2002 and for an Amendment #1 dated February 14th, 2003 to the Annual Information Forms dated December 5th, 2002
Mutual Reliance Review System Receipt dated February 20th, 2003
Offering Price and Description:
Offering of Series A Units
Underwriter(s) or Distributor(s):
Dynamic Mutual Funds Ltd.
Dynamic Mutuals Funds Ltd.
Dynamic Mutual Funds Ltd.
Promoter(s):
Dynamic Mutual Funds Ltd.
Project #513965

Issuer Name:
Dynamic Dollar-Cost Averaging Fund
Hathaway Focus + American Fund
Hathaway Focus + World Fund
Hathaway Focus + Wealth Management Fund
Hathaway Focus + Canadian Fund
Hathaway Focus + Balanced Canadian Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectus dated February 14th, 2003 Amending and Restating Simplified Prospectus dated December 5th, 2002 and for an Amendment #1 dated February 14th, 2003 to the Annual Information Forms dated December 5th, 2002
Mutual Reliance Review System Receipt dated February 20th, 2003
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
Dynamic Mutuals Funds Ltd.
Promoter(s):
Dynamic Mutual Fund Ltd.
Project #500779

Issuer Name:
Hydro One Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Shelf Prospectus dated February 21st, 2003
Mutual Reliance Review System Receipt dated February 24th, 2003
Offering Price and Description:
$2,091,643,000.00 - Medium Term Notes (unsecured)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #513937

Issuer Name:
Norrep II Fund Inc.
Norrep Fund
Type and Date:
Final Simplified Prospectuses and Annual Information Forms dated February 24th, 2003
Mutual Reliance Review System Receipt dated on February 25th, 2003
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Norrep Inc.
Project #507247

Issuer Name:
Northland Power Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 24th, 2003
Mutual Reliance Review System Receipt dated February 24th, 2003
Offering Price and Description:
$65,037,500.00 - 6,050,000 Trust Units @$10.75 per Trust Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
FirstEnergy Capital Corp.
Promoter(s):
-
Project #513493

Issuer Name:
Mulvihill Canadian Equity Fund
Mulvihill Canadian Money Market Fund
Mulvihill Canadian Bond Fund
Mulvihill Global Equity Fund
Mulvihill U.S. Equity Fund
Premium Canadian Income Fund
Premium Global Income Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses and Annual Information Forms dated February 20th, 2003
Mutual Reliance Review System Receipt dated February 21st, 2003
Offering Price and Description:
Units @ Net Asset Value per Unit
Underwriter(s) or Distributor(s):
Mulvihill Fund Services Inc.
Mulvihill Capital Management Inc.
Promoter(s):
Mulvihill Capital Management Inc.
Project #508287

Issuer Name:
Sobeys Inc.
Principal Regulator - Nova Scotia
Type and Date:
Amended Short Form Shelf dated February 17th, 2003
Mutual Reliance Review System Receipt dated February 19th, 2003
Offering Price and Description:
$500,000,000.00 - Medium Term Notes (unsecured)
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #489848

Issuer Name:
Viscount Canadian Equity Pool
Viscount U.S. Equity Pool
Viscount RSP U.S. Equity Pool
Viscount International Equity Pool
Viscount RSP International Equity Pool
Viscount Canadian Bond Pool
Viscount High Yield U.S. Bond Pool
Viscount RSP High Yield U.S. Bond Pool
Viscount RSP U.S. Index Pool
Viscount RSP International Index Pool
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses and Annual Information Forms dated February 19th, 2003
Mutual Reliance Review System Receipt dated February 24th, 2003
Offering Price and Description:
Units @ Net Asset Asset Value per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #508273

Issuer Name:
@rgentum Discovery Portfolio
@rgentum U.S. Master Portfolio
@rgentum Short Term Asset Portfolio
@rgentum International Master Portfolio
@rgentum Income Porfolio
@rgentum Canadian Performance Portfolio
@rgentum Canadian Equity Portfolio
Principal Regulator - Quebec
Type and Date:
Final Simplified Prospectus and Annual Information Form dated February 18th, 2003
Mutual Reliance Review System Receipt dated February 19th, 2003
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
@rgentum Management and Research Corporation
Project #490747

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Kinetic Risk Management Ltd. Attention: Barbara Zee, Law Clerk McMillan Binch LLP Suite 3500, South Tower Royal Bank Plaza Toronto ON M5J 2J7	Limited Market Dealer	Feb 20/03
New Registration	Redwood Asset Management Inc. Attention: Jonathan Paul Clapham 444 Adelaide Street West Suite 201 Toronto ON M5V 1S7	Limited Market Dealer	Feb 25/03
Change in Category (Categories)	Sterling Mutuals Inc. Attention: Rocky Lorenzo Ieraci 880 Ouellette Avenue Suite 102 Windsor ON N9A 1C7	From: Mutual Fund Dealer To: Mutual Fund Dealer Limited Market Dealer	Feb 21/03
Change in Category (Categories)	Norshield Asset Management (Canada) Ltd. c/o Katherine Simoes, Director, Corporate Affairs Norshield Financial Group 630 Rene-Levesque Blvd. West Suite 3050 Montreal QC H3B 5C7	From: Extra-Provincial Adviser/Investment Counsel & Portfolio Manager To: Adviser / Investment Counsel & Portfolio Manager	Feb 20/03
Change in Category (Categories)	Merrill, Lynch, Pierce, Fenner & Smith Incorporated c/o Merrill Lynch Canada, Inc. Attention: Mark Overton Dickerson BCE Place, 181 Bay Street Suite 400 Toronto ON M5J 2V8	From: International Dealer To: International Dealer International Adviser Investment Counsel & Portfolio Manager	Feb 20/03
Change in Name	BMO Capital Corporation Attention: Daniel Grant Sinclair 302 Bay Street 7th Floor Toronto ON M5X 1A1	From: Bank of Montreal Capital Corporation To: BMO Capital Corporation	Oct 31/02

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 RS Request for Comments - Proposal to Exempt Trades Pursuant to Market Maker Obligations from Payment of Regulation Fees

REQUEST FOR COMMENTS

PROPOSAL TO EXEMPT TRADES PURSUANT TO MARKET MAKER OBLIGATIONS FROM PAYMENT OF REGULATION FEES

Summary

On December 4, 2002, Market Regulation Services Inc. ("RS") circulated RS Notice 2002-001 with respect to a proposal made by The Toronto Stock Exchange ("TSX") to exempt trades made on a marketplace pursuant to Market Maker Obligations from the payment of the Regulation Fee charged by RS (the "Proposal"). In response to the Notice, RS received 17 comment letters of which 13 supported the proposal (with two commentators attaching conditions to their support) and 4 opposed the proposal (with two commentators attaching qualifications to their opposition). The comments received have been summarized in Appendix "A".

Taking into account the comments received in response to RS Notice 2002-001, the Board of Directors of RS approved on February 12, 2003 an amendment to the Regulation Fee to:

- exempt trades made pursuant to Market Maker Obligations from the payment of the Regulation Fee;
- recover the cost of providing the exemption by increasing the Regulation Fee to other Participants; and
- make the exemption effective as soon as practicable following regulatory approval.

In approving the Proposal, the Board of Directors stated that the appropriateness of the exemption should be reviewed by the Board of Directors:

- annually as part of the review of the Regulation Fee Model; and
- upon RS being retained as the regulation services provider by any marketplace that will not have a market making system.

The review of the appropriateness of the exemption would encompass the contribution that Market Makers are making to the market.

If the Proposal is implemented, all trades made in stocks of assigned responsibility on the TSX by Registered Traders ("RTs") and Specialists and on the TSX Venture Exchange ("TSX VE") by Odd Lot Dealers in accordance with their Market Maker Obligations would be exempt from the payment of the Regulation Fee. It is estimated that the exemption would increase by approximately 4.2% the Regulation Fee of a Participant that is not a Specialist or Odd Lot Dealer and has no RTs. (For more details, see "Impact of the Proposed Change to the Regulation Fee Model" on pages 6 and 7.)

Process for Approval of Changes to the Regulation Fee Model

RS is recognized as a self-regulatory organization by the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and the Commission des valeurs mobilières du Québec (the "Recognizing Regulators"). The Recognition Orders require RS to have a fair, transparent and appropriate process for setting fees. These fees must be allocated on an equitable basis among marketplaces and marketplace participants and must balance the need of RS to satisfy its responsibilities without creating barriers to access.

In the opinion of the Recognizing Regulators, the proposed change to the Regulation Fee Model to provide an exemption for trades made pursuant to Market Maker Obligations is a significant change to the Regulation Fee Model that requires the approval of the Recognizing Regulators. Comments on the proposed change to Regulation Fee Model should be in writing and delivered within 30 days of the date of publication of this notice by the Recognizing Regulators to:

James E. Twiss,
Senior Counsel,
Operations and General Counsel,
Market Regulation Services Inc.,
Suite 900,
P.O. Box 939,
145 King Street West,
Toronto, Ontario. M5H 1J8

Fax: 416.646.7265
e-mail: james.twiss@regulationservices.com

A copy should also be provided to Recognizing Regulators by forwarding a copy to:

Cindy Petlock
Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 800, Box 55,
20 Queen Street West
Toronto, Ontario. M5H 3S8

Fax: (416) 593-8240
e-mail: cpetlock@osc.gov.on.ca

Current Regulation Fee Model

Presently, RS assesses a Regulation Fee on all trades executed on the TSX and TSX VE. The Regulation Fee is assessed against each Participant based on their percentage of overall adjusted volume of trading on marketplaces regulated by RS. If a trade involves more than 30,000 units of a security, the excess volume is not included in either the Participant's volume or the overall volume of RS-regulated marketplaces. Each month each Participant will be assessed a percentage of the RS monthly budget that is equal to their percentage of the adjusted trade volume. Presently, trades pursuant to Market Maker Obligations are included in volume for the purposes of calculating the Regulation Fee. Both the buy and the sell side of a transaction are included in the calculation of overall adjusted volume.

If RS provides services to a marketplace other than the monitoring of orders and trades for compliance with UMIR, RS charges the marketplace a separate fee based on the estimate of time and cost in providing such services. Periodically, RS will review these additional charges to ensure that they are fair and reasonable and cover the actual cost of providing the services.

Market Making Obligations Under UMIR

The Universal Market Integrity Rules ("UMIR") define "Market Maker Obligations" as obligations imposed by the rules of a recognized exchange (an "Exchange") or a recognized quotation and trade reporting system (a "QTRS") on a member or user or a person employed by a member or user to guarantee:

- a two-sided market for a particular security on a continuous or reasonably continuous basis; and
- the execution of orders for the purchase or sale of a particular security which are less than a minimum number of units of the security as designated by the marketplace.

In order to provide market makers with the ability to fulfil their obligations, UMIR exempts trades made by a market maker in fulfilment of their Market Maker Obligations from the restrictions on making a short sale below the last sale price. UMIR also exempts market maker trades that are automatically generated by the trading system of a marketplace from the rules on client priority.

In accordance with National Instrument 21-101 (the "Marketplace Operation Instrument"), an Exchange or QTRS may have rules regarding Market Maker Obligations. Each Exchange and QTRS may define those obligations, subject to regulatory approval, to best suit the pattern of trading on that marketplace. However, the Marketplace Operation Instrument precludes an alternative trading system ("ATS") from having a market making structure. Nonetheless, the Marketplace Operation Instrument requires an ATS to be connected to each Exchange or QTRS that is the principal market for a security traded on the ATS.

Based on the current rules of the TSX and the TSX VE, trades made in stocks of assigned responsibility on the TSX by RTs and Specialists and on the TSX VE by Odd Lot Dealers would be made pursuant to Market Maker Obligations and would be exempt

from the payment of the Regulation Fee if the proposal is adopted. Trades made by RTs, Specialists and Odd Lot Dealers in securities other than those for which they have been assigned responsibility by the marketplace would not qualify as trades made pursuant to Market Maker Obligations and would therefore remain subject to the payment of the Regulation Fee.

Background to the Proposed Change to the Regulation Fee Model

In August of 2002, the TSX issued the third in a series of Discussion Papers on Market-Making Reform in which the TSX stated: "TSX exempts market maker trades from trading fees and believes that RS should consider exempting market maker trades from regulation fees as well. TSX …will request RS to consider the exemption of market maker trades from regulation fees."

Presently, under the Rules of the TSX, each listed security is assigned to either an RT, being an individual who is employed by a Participating Organization, or to a Specialist (a Participating Organization that has the same rights and obligation with respect to index participation units, exchange traded funds or other listed securities for which the TSX considers the appointment of a specialist to be appropriate). In accordance with the Rules of the TSX, Specialists and RTs have an obligation to contribute to market liquidity, depth and the moderation of price volatility by:

- maintaining a continuous two-sided market with a certain spread goal;
- guaranteeing fills of odd lot and mixed lot orders at the current board lot quotation; and
- guaranteeing an automatic and immediate "one-price" execution of all tradable client orders for an agreed upon number of units of a security or less (the "Minimum Guaranteed Fill" or "MGF").

The TSX monitors the performance of each Specialist and RT in meetings these obligations.

For their stocks of responsibility, an RT or Specialist is expected to notify the TSX and RS of:

- any unusual situation, rumour, activity, price change or transaction; and
- any "anomalous" orders.

Given the knowledge of the RT or Specialist with respect to trading patterns in their stocks of responsibilities, the RT or Specialist is performing a "quasi-regulatory" function by bringing these matters to the attention of the marketplace and its regulation services provider. In order to compensate for the responsibilities imposed on RTs and Specialists, the TSX exempts them from trading fees on trades in their stocks of responsibilities. RTs and Specialists also have the option of participating in trades. If a RT or Specialist has indicated an intention to participate on the buy, sell or both sides of the market, the TSX trading system will allocate 40% of the volume of any trade to the RT or Specialist (subject to being rounded down to a board lot and not exceeding the amount of the MGF). Whether an RT or Specialist has their participation "on" will be indicated in the display of the TSX market for a security. The ability to participate in trades is a mechanism that permits the RT or Specialist to unwind any position that may have been acquired as a result of their fulfilling their odd lot, MGF and spread goal commitments. However, the participation of the RT or Specialist in order flow is not limited to simply unwinding positions acquired in these circumstances.

In order to provide market makers with the ability to fulfil their obligations, the UMIR exempts trades made by a market maker in fulfilment of their Market Maker Obligations from the restrictions on making a short sale below the last sale price. UMIR also exempts market maker trades that are automatically generated by the trading system of a marketplace (e.g. odd lot and MGF trades in the case of the TSX and odd lot trades in the case of the TSX VE) from the rules on client priority.

The following table indicates the level of RT and Specialist activity in trading on the TSX in their "stocks of responsibility" during the period January 1, 2002 to May 31, 2002.

Description	Volume	% Total Volume	Value	% Total Value	Trades	% Total Trades
Total	37,844,381,304	100.00%	$575,841,369,782	100.00%	23,288,314	100.00%
RT/Specialist Total	1,513,657,128	4.00%	$23,340,554,498	4.05%	3,875,754	16.64%

Based on data gathered by the TSX as background material for the Discussion Papers on Market-Marking Reform for the period October 1, 2001 to June 17, 2002, the bulk of the trades by RTs in their stocks of responsibility arise out of the fulfillment of odd lot responsibilities (approximately 11.4% of total trades on the TSX) and MGF obligations (approximately 1.4% of total trades on the TSX).

TSX VE does not have RTs or Specialists but that exchange does have "Odd Lot Dealers" with odd lot responsibilities similar to those of RTs except that odd lots are filled at a premium (in the case of a purchase) or a discount (in the case of a sale) to the market price. In accordance with the rules of the TSX VE, the maximum permitted discount or premium varies with trading price of the security from $0.02 for securities selling under $0.50 to $0.10 for securities at $5.00 or more. The following table indicates the level of Odd Lot Dealer activity in trading of odd lots on the TSX VE for the period June through August of 2002.

Description	Volume	% Total Volume	Value	% Total Value	Trades	% Total Trades
Total	3,578,821,474	100.00%	$1,331,414,920	100.00%	544,642	100.00%
Odd Lot Dealer	4,962,858	0.14%	$1,629,642	0.12%	22,169	4.07%

On January 17, 2003, the TSX issued Notice to Participating Organizations No. 2003-011 that outlines changes to the rules of the TSX to implement the changes in the market making system. While the implementation of these reforms will transfer the market-making obligations from individual traders to firms, in the near term the obligations of the market maker for odd lots and the MGF will remain largely unchanged (though the actual level of the MGF commitment may be increased in conjunction with the introduction of the new tier structure which is based on average daily trade value rather than the number of trades).

Only an Exchange or a QTRS may provide for Market Maker Obligations. Each Exchange or QTRS may define those obligations in accordance with their trading rules to fit the trading patterns and structure of their marketplace. For example, the TSX requires that market makers provide a two-sided market with set spread goals on a continuous basis while providing "guaranteed fills" at the market for odd lots and tradeable client orders that are less than an agreed upon size. On the other hand, TSX VE only requires the execution of odd lot orders at a specified discount or premium to market. In both cases, the market makers contribute to a fair and orderly market, which is the cornerstone of market integrity. In the case of the TSX, while market makers are participating in approximately 16.64% of trades, those trades account for only 4.00% of volume traded and 4.05% of value traded.

To the extent that market makers contribute to market liquidity or depth or both, the benefit extends beyond the marketplace on which the market maker has the obligation. For example, while an ATS will not be able to have a market making regime, the Marketplace Operation Instrument requires that each ATS maintain a connection to the principal market of any security traded on that ATS and that the ATS be given access to the orders equivalent to the access that the market provides to its own participants. In this way, orders entered on an ATS in a particular security can directly or indirectly benefit from the performance of the market maker obligations on the principal market. The ability of orders entered on an ATS to benefit from market making activities on an Exchange or QTRS will be enhanced if full market integration is introduced by January 1, 2004 with the provision of a market integrator in accordance with the Marketplace Operation Instrument.

Historically, the Exchanges did not charge a separate fee for regulation. At both the TSX and the TSX VE the cost of regulation was recovered as part of the trading fee. With the demutualization of the TSX in early 2000, a separate regulation fee was introduced to recover the cost of providing regulation through TSE Regulation Services that operated as a separate division of the TSX. Market markers were not exempted from the fee charged by TSE Regulation Services.

Market makers on both Exchanges were exempt from the payment of trading fees in connection with transactions in their stocks of responsibility. As such, prior to the introduction of the fee charged by TSE Regulation Services in 2000, other market participants bore the cost of providing regulation in respect of transaction involving market makers in the stocks of responsibility. In part, this outcome recognized the general benefit to the market as a whole provided by market makers.

Impact of the Proposed Change to the Regulation Fee Model

All trades made in stocks of assigned responsibility on the TSX by RTs and Specialists and on the TSX VE by Odd Lot Dealers in accordance with their Market Maker Obligations would be exempt from the payment of the Regulation Fee under the Proposal. In the case of the TSX, the exemption would include all trades automatically generated by the trading system to fulfil odd lot and MGF obligations and to satisfy RT participation. It would also include trades resulting from RT orders in the book (and marked "R" in accordance with the requirements of TSX order designations) pursuant to their obligation to maintain a two-sided market.

Based on recent trading volumes for market makers as provided by the TSX and TSX VE, it is estimated that market makers pay Regulation Fees of approximately $850,000 to $925,000 annually in respect of trades in their stocks of responsibility. If the exemption requested in the Proposal is granted and the amount of the exemption is recovered from other Participants, the Regulation Fee would increase approximately 4.2% for a Participant that is not a Specialist or Odd Lot Dealer and has no RTs.

Exchanges and QTRSs may implement market-making structures. The Canadian Quotation and Trade Reporting System ("CNQ") has applied to securities regulators to be recognized as a QTRS. Under the trading rules proposed by CNQ, one or more market makers may be appointed to make a market in a quoted security. Not all securities that are quoted may have a market maker appointed. A market maker for a particular security will have an obligation to quote a continuous two-sided

market within agreed upon spread goals. Trades undertaken on CNQ as principal by a market maker pursuant to their market maker obligations would qualify for the exemption from the Regulation Fee if the proposal is adopted. Trades handled on CNQ by a market maker as agent for another dealer or a client would not qualify for the exemption.

Questions

Questions concerning this notice may be directed to:

James E. Twiss,
Senior Counsel,
Operations and General Counsel,
Market Regulation Services Inc.,
Suite 900,
P.O. Box 939,
145 King Street West,
Toronto, Ontario. M5H 1J8

Telephone: 416.646.7277
Fax: 416.646.7265
e-mail: james.twiss@regulationservices.com

ALEXANDER DASCHKO
VICE PRESIDENT, OPERATIONS,
GENERAL COUNSEL AND SECRETARY

Appendix "A"

COMMENTS IN RESPONSE TO RS NOTICE 2002-001 - PROPOSAL TO EXEMPT TRADES PURSUANT TO MARKET MAKER OBLIGATIONS FROM THE PAYMENT OF REGULATION FEES

Commentator	Support/ Oppose	Specific Comments	Response to Comment
BMO Nesbitt Burns Inc. *	Oppose	Market makers provide a benefit that translates into revenues for the TSX that is recognized by the TSX through their market maker trading fee exemption and RS should not "reward the market makers for their contribution to TSX". Quasi-regulatory functions of RTs are equally applicable to all participants. RTs are already benefiting from a fee model based solely on volume as RTs would have borne a higher cost under the initial "fee model" proposed by RS that was a function of the number of transactions and volume. Not every ATS will benefit from market making activities conducted on the TSX (e.g. an ATS devoted to "block" trading). All participants (including market makers) should be subject to the same Regulation Fee structure. As the TSX moves the market making function to firms from RTs, the regulatory costs should form part of the cost structure just as they do for any other principal trading activity.	While all registrants have reporting obligations, the obligations of RTs are specifically addressed in TSX Rules and are substantially in excess of any general requirements. Any fee model must balance "fairness" with administrative efficiency for RS, marketplaces and Participants. The addition of "transactions" as a component of the model would shift burden to market makers because of the odd lot and MGF responsibilities. However, the addition of "value" would have the opposite effect. The stated preference has been for a fee model which is comparatively easy to both understand and to calculate. Unless the ATS is trading only foreign exchange-traded securities, equity securities must be listed on an exchange or QTRS in order to be able to trade on an ATS. Given the contribution of market makers to the price discovery mechanism (continuous two-sided market with set spread goals) that will help to establish price parameters that would govern block trades on an ATS that was devoted simply to trading blocks of listed or quoted securities.
Canaccord Capital Corporation * Desjardins Securities * Raymond James Ltd. * W.D. Latimer Co. Limited * Yorkton Securities Inc. *	Support	All market participants benefit from market making activity, and therefore, should share the cost of the reallocation of the Regulation Fee in proportion to their trading volume. Impact of the proposed change is relatively small. Market makers provide liquidity and limit volatility and all market participants benefit from this activity. Penny increments has eroded profitability for market makers and if fewer firms are willing to provide such services there will be negative consequences for price discovery, liquidity, volatility control and competition. If market making activities decline, small investors that rely on the continuous market will become more disadvantaged relative to institutional investors who rely on the upstairs market.	Profitability of market making activities should not, in and of itself, be a determining factor in whether an exemption should be provided from the Regulation Fee. However, the hallmark of market integrity is the existence of a "fair and orderly market". Market makers contribute to existence of an orderly market.

Commentator	Support/ Oppose	Specific Comments	Response to Comment
CIBC World Markets	Oppose	Would only support an exemption from the payment of the Regulation Fee if block and arbitrage trades were also granted an exemption.	Under the current Regulation Fee model block trades receive an exemption on both the buy and sell sides to the extent that the volume exceeds 30,000 shares. The proposed market maker exemption would provide relief on only one side of a trade. A market maker as a general rule is not taking a "position" in a security but merely facilitating trading activity by "shifting the timing of trades". For example, the MGF and odd lot responsibilities ensure complete fills to retail investors at market prices because no other orders existed in the market at that time to trade against the retail order.
Dundee Securities Corporation *	Support	All market participants benefit from market making activity, and therefore, should share the cost of the reallocation of the Regulation Fee in proportion to their trading volume.	(See response to Canaccord Capital above.)
Global Securities Inc.	Oppose	No justification to extend the exemption to non-market-making trades that are made by market makers in an assigned security. Any cost that needs to be recovered if an exemption is granted to a market maker in a security should be borne by market participants directly in proportion to the percentage of their trading in that security.	In addition to their odd lot and MGF responsibilities, RTs on the TSX have the obligation to ensure that there is a two-sided market within agreed upon spread goals. Positions acquired in trades pursuant to these responsibilities must be unwound into the market as market makers generally do not carry a position in any particular security. Therefore, it is difficult to identify trades that are not being made "pursuant to their market making obligations". In any event, the exemption would only apply to principal trades and does not apply to trades undertaken as agent for client and non-client orders.
Hampton Securities Limited *	Support	A few independent firms are being burdened with a disproportionate share of the costs of regulation, due solely to their responsibilities to provide liquidity. In an increasingly competitive environment, it is now cheaper to trade Canadian stocks in the U.S. (Concurs in the views of Canaccord et. al. as above.)	(See response to Canaccord Capital above.)
Independent Trading Group *	Support	Historically, RTs were exempt from trading fees on the TSX (and trading fees included the cost of regulation). The Regulation Fee acts as a surtax on trading activity as the fee is volume-based. The fee acts as a disincentive to trading activity and consequently reduces liquidity. The imposition of the fee is particularly unfair in respect of odd lots and MGFs.	Prior to the demutualization of the TSX, the cost of regulation was included in the trading fee paid by dealers and RTs were exempt from the payment of trading fees in respect of their stocks of responsibility. Odd lot and MGF trades are automatically generated by the trading systems of the marketplaces and the RT has no discretion as to the timing or price at which such trades are made.

Commentator	Support/ Oppose	Specific Comments	Response to Comment
Jones, Gable & Company Limited *	Support	Any fee levied on market making trades has an impact on profitability and therefore has a negative impact on the quality of service that the market maker can provide. Proposes eliminating the fee cap on block trades and basing the regulation fee on value rather than volume (otherwise a subsidy of institutional participants and wealthy individuals.)	(See response to Canaccord Capital above.) A fee model which is based on "value" rather than "volume" would have the effect of shifting the burden of regulation from the junior markets to the senior markets. (For example, while the "value" traded on the TSX Venture Exchange is generally 1% of the value traded on the TSX, the cost of regulating trading on TSX is not 99 times the cost of regulating the TSX Venture Exchange.) As such, volume has been determined to be a better indicator of the cost of regulation. The cap on block trades recognizes the fact that the transaction is a single trade that does not require appreciably more time to monitor (and the absence of the cap was particularly problematic for trading of blocks of "penny stocks".)
National Bank Financial *	Support	Historically, Registered Traders were exempt from trading fees (which included the cost of regulation). Charging RTs became a de facto fee reduction for other participants. Originally covered as one of three reforms presented as a package including caps on block trades and a monthly cost recovery mechanism. The other two reforms were of benefit to larger dealers and the RT exemption of benefit to smaller dealers. Overall, the combination of three proposals was "considered fair to all".	(See response to Independent Trading Group above.)
Norstar Securities	Oppose	RTs are already subsidized by the TSX and cost increases (such as under the proposal) will make it cheaper to trade a Canadian security in the U.S. than in Canada. Majority of the trading rules are because of the existing market maker regime and RTs should pay for the services provided.	Market making is designed to enhance the quality of the market in Canada and to contribute to "fair and orderly" marketplaces. The impact of the proposal is expected to be relatively modest in that the Regulation Fee for a dealer that does not have market-making responsibilities would increase approximately 4.2%. (In any event, in December of 2002, RS announced a general Regulation Fee reduction of approximately 10.5%.)
RBC Capital Markets *	Support	The suggestion to recover the "lost" revenue from other market participants is sound in principle but should not be a subsidy of large RT brokers that do not have the equivalent flow to support the exemption.	The rationale for the exemption for market makers is tied to their market activity in their stock of responsibility (and the impact such activity has on markets generally) and not the extent of other trading activity in other securities.

Commentator	Support/ Oppose	Specific Comments	Response to Comment
Registered Traders' Group	Support	Market makers provide a "public good" to the marketplace and that the only equitable way to support this is for all marketplace participants to contribute directly thereby avoiding possible "regulatory cost arbitrage".	The preference of RS is maintain a regulatory fee that does not vary based on the marketplace on which the trading occurs. The Regulation Fee should not be a factor in determining the marketplace on which an order is entered or a trade is made.
TD Securities Inc.	Support	While in general agreement with the proposal, takes issue with the non-performing RTs who fail to address performance related issues. Would not provide an exemption from the Regulation Fee when performance standards have not been met.	Each marketplace will impose performance standards on its market makers. Similarly, each marketplace will determine the ramifications for failure to adhere to those performance standards including possible revocation of market maker status.

Summary: Support – 13 comment letters Oppose – 4 comment letters

* Indicates a Commentator who employed Registered Traders with market making assignments as of September 30, 2002.

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