The Ontario Securities Commission

OSC Bulletin

March 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)

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

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

SCHEDULED OSC HEARINGS

DATE: TBA **ATI Technologies Inc., Kwok Yuen Ho, Betty Ho, JoAnne Chang, David Stone, Mary de La Torre, Alan Rae and Sally Daub**

s. 127

M. Britton in attendance for Staff

Panel: TBA

DATE: TBA **Jack Banks A.K.A. Jacques Benquesus and Larry Weltman***

s. 127

K. Manarin in attendance for Staff

Panel: PMM/KDA/MTM

* Larry Weltman settled on January 8, 2003

DATE: TBA **First Federal Capital (Canada) Corporation and Monte Morris Friesner**

s. 127

A. Clark in attendance for Staff

Panel: TBA

DATE: TBA **Michael Tibollo**

s. 127

T. Pratt in attendance for Staff

Panel: TBA

DATE: TBA **Marlene Berry *et al***

s. 127

T. Pratt in attendance for Staff

Panel: TBA

March 31, 2003	**Brian Costello**
10:30 a.m.	s. 127
	H. Corbett in attendance for Staff
	Panel: PMM/KDA/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: HLM/RWD
	* Settled on March 13, 2003
April 29, 2003	**John Steven Hawkyard** Settlement Hearing
2:30 p.m.	s. 127
	K. Manarin in attendance for Staff
	Panel: RWD/KDA
May 6, 2003	**Gregory Hyrniw and Walter Hyrniw**
10:00 a.m.	s. 127
	Y. Chisholm in attendance for Staff
	Panel: TBA
May 20, 2003 to June 20, 2003	**M.C.J.C. Holdings Inc. and Michael Cowpland**
10:00 a.m.	s. 127
May 27, 2003	M. Britton in attendance for Staff
2:30 p.m.	Panel: TBA
June 3, 2003	**Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.**
2:00 p.m.	s. 127
	Y. Chisholm in attendance for Staff
	Panel: HLM/MTM
June 16, 2003 to July 4, 2003	**Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited, Pierrepont Trading Inc., BMO Nesbitt Burns Inc.*, John Steven Hawkyard+ and John Craig Dunn**
10:00 a.m.	
June 26, 2003	s. 127
2:30 p.m.	K. Manarin in attendance for Staff
	Panel: TBA
	* BMO settled Sept. 23/02
	+ April 29, 2003

ADJOURNED SINE DIE

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

Dual Capital Management Limited, Warren Lawrence Wall, Shirley Joan Wall, DJL Capital Corp., Dennis John Little and Benjamin Emile Poirier

Global Privacy Management Trust and Robert Cranston

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

Philip Services Corporation

Marlene Berry, Allan Eizenga, Richard Jules Fangeat, Michael Hersey, Luke John Mcgee, Normand Riopelle and Robert Louis Rizzuto

S. B. McLaughlin

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

1.1.2 CSA Staff Notice 23-301 - Joint Notice of the Staff of the Canadian Securities Administrators, Market Regulation Services Inc., Bourse de Montréal Inc., and the Investment Dealers Association - Electronic Audit Trails

CSA STAFF NOTICE 23-301

JOINT NOTICE OF THE STAFF OF THE CANADIAN SECURITIES ADMINISTRATORS, MARKET REGULATION SERVICES INC., BOURSE DE MONTRÉAL INC., AND THE INVESTMENT DEALERS ASSOCIATION

ELECTRONIC AUDIT TRAILS

Under Part 11 of National Instrument 23-101 *Trading Rules* (NI 23-101), dealers must maintain certain records relating to orders and trades. As of December 31, 2003, these records must be maintained in electronic form. NI 23-101 also requires that the dealer transmit to a regulation services provider (RSP) the information as required by the RSP.[1]

Market Regulation Services Inc. (RS) is the RSP for the Toronto Stock Exchange, TSX Venture Exchange, and a number of alternative trading systems. RS administers the Universal Market Integrity Rules (UMIR). Section 10.11 of UMIR requires dealers to maintain certain information relating to orders and trades.[2]

Bourse de Montréal Inc. (Bourse) is, through its Regulatory Division, the RSP for its own market. The Regulatory Division administers the application of Rule 6 of the Bourse which concerns trading in the derivatives instruments listed on the Bourse, such as equity options and futures contracts and options. Article 6377 of Rule 6 requires approved participants of the Bourse to maintain certain information relating to orders entered and trades executed in the trading system of the Bourse.

Canadian Securities Administrators; Staff (CSA Staff), RS, the Investment Dealers Association (IDA), and the Bourse are working together to determine the implementation plan for the electronic audit trail and the transmission requirements. To this end, we will take the following steps:

1. RS and the Bourse will determine
   - what data should be transmitted to each of them for market regulation purposes,
   - by whom, and
   - the frequency of the transmission
2. A consultation committee will be established in April to determine if there is a need to establish any joint technology standards to facilitate the implementation of the electronic audit trail requirements.
3. A survey will be sent to all relevant market participants to determine their readiness to implement an electronic audit trail and their ability to transmit this data electronically. A report will be made by June 2003.
4. After the evaluation of the survey results, the CSA Staff, RS, the Bourse, and the IDA will issue an implementation plan. The implementation plan will deal with both the electronic audit trail and the electronic transmission of data.

The Mutual Fund Dealers Association of Canada will be issuing a separate notice relating to the requirements in NI 23-101.

Questions

Please refer your questions to any of the following people:

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Alberta Securities Commission
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Ann Leduc
Chef du service de la réglementation
Commission des valeurs mobilières du Québec
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Noelle Wood
Senior Counsel
Market Surveillance
Market Regulation Services Inc.
Phone: (416) 646-7275
Fax: (416) 646-7265
E-mail: **Noelle.Wood@regulationservices.com**

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1 For the text of NI 23-101, please see Rules and Regulations section of OSC website: www.osc.gov.on.ca.

2 For the text, please see RS's website: www.regulationservices.com

Keith Rose
Vice-President, Regulatory Policy
Investment Dealers Association
Phone: (416) 943-6907
Fax: (416) 943-6760
E-mail: **krose@ida.ca**

Jacques Tanguay
Vice-President, Regulatory Division
Bourse de Montreal Inc.
Phone: (514) 871-3518
Fax: (514) 871-3567
E-mail: **jtanguay@m-x.ca**

1.1.3 Amendments to Toronto Stock Exchange Share Certificate Requirements

AMENDMENTS TO TORONTO STOCK EXCHANGE SHARE CERTIFICATE REQUIREMENTS

Toronto Stock Exchange (TSX) has filed with the Commission amendments to share certificate requirements to allow issuers to use generic share certificates as an alternative to customized share certificates. The amendments have been filed as "non-public interest" amendments pursuant to the *Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals* and are deemed to have been approved upon filing. The TSX Notice to Participating Organizations and the amendments are being published in Chapter 13 of this Bulletin.

1.3 News Releases

1.3.1 OSC Issues Reasons for Decision in Lydia Diamond, Jurgen von Anhalt and Emilia von Anhalt

FOR IMMEDIATE RELEASE
March 20, 2003

OSC ISSUES REASONS FOR DECISION IN LYDIA DIAMOND, JURGEN VON ANHALT AND EMILIA VON ANHALT

TORONTO – The Ontario Securities Commission, through its independent tribunal, today issued its Reasons in the matter of Lydia Diamond Exploration of Canada Ltd., Jurgen von Anhalt and Emilia von Anhalt. These are the Reasons for the Commission's Decision made on November 19, 2002 following a 12-day hearing which concluded on November 4, 2002. At that time, the Commission ordered that the von Anhalts, subject to certain specific exceptions, cease trading in securities for 12 years, resign all positions held as Directors or officers of any issuer, be prohibited from becoming or acting as an officer or Director of any issuer for 15 years and be reprimanded. The von Anhalts were also ordered to pay costs of $100,000 each.

The Commission ordered that Lydia cease trading in securities, except as specifically permitted, for three years and be reprimanded. Lydia was also ordered to pay costs of $25,000.

In its Reasons, the Commission found that:

1. Lydia and the von Anhalts traded in securities of Lydia while unregistered and without an applicable exemption from the registration requirement of the *Ontario Securities Act*;

2. Lydia and the von Anhalts distributed securities of Lydia without a prospectus and without an applicable exemption from the prospectus requirement of the Act;

3. Lydia misled staff of the Commission;

4. Lydia paid undisclosed commissions for the sale of Lydia shares;

5. The von Anhalts used funds other than for proper corporate purposes; and,

6. The von Anhalts, as Directors of Lydia, authorized, permitted or acquiesced in the contraventions of the Act by Lydia.

The Commission was satisfied "on clear and cogent facts" that "based on the von Anhalts' conduct in the past, it was likely they would continue to behave in character in the future, with little regard for good business practices and the requirements of securities law."

The Commission found that Lydia was "tainted by the conduct of the von Anhalts" and crafted an order "designed to strike a balance between the interests of the Respondents and the interest of the public".

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Manager, Media Relations
416-595-8913

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

1.3.2 OSC Approves Settlement Between Staff and DJL Capital Corp. and Dennis John Little

FOR IMMEDIATE RELEASE
March 21, 2003

ONTARIO SECURITIES COMMISSION APPROVES SETTLEMENT BETWEEN STAFF AND DJL CAPITAL CORP. AND DENNIS JOHN LITTLE

TORONTO – On March 20, the Ontario Securities Commission convened a hearing to consider a settlement reached between Staff of the Commission and the respondents DJL Capital Corp. ("DJL Capital") and Dennis John Little ("Little"). The respondents faced Staff allegations relating to their involvement with the illegal distribution and sale of units of Dual Capital Limited Partnership and DJL Capital to investors in Ontario. By Temporary Order of the Commission made on January 11, 2000, the Commission ordered that DJL Capital and Little cease trading in securities.

The Commission panel approved the settlement. The Commission ordered that DJL Capital and Little cease trading securities permanently, with the sole exception that after five years Little be permitted to trade securities through a registered dealer for his RRSP account. As a term of the Order, Little provided to the Commission an undertaking never to apply for registration in any capacity under Ontario securities law. Little is prohibited permanently from becoming an officer or director of any issuer and from becoming or acting as an officer or director of any issuer which has an interest directly or indirectly in any registrant. Under the terms of the settlement, Little is permitted 180 days to wind up several companies in which he holds the position as sole officer or director, and must resign his position as officer or director of those companies effective 180 days from the date of the Commission's Order.

Little was registered as the trading officer and director of DJL Capital, a limited market dealer. Between August 1997 to September 1998 Little sold approximately Cdn. $950,000 worth of units in DJL Capital contrary to the prospectus and registration requirements of Ontario securities law. Funds accepted from investors for the purchase of DJL Capital Units were not used for purposes set out in the DJL Capital Offering Memorandum. Investor funds were used for payments to Little in the amount of at least Cdn. $58,000.00. In addition, investor funds of at least Cdn. $654,000 were deposited to an account held in the name of Heritage Arabian Farms Ltd., an Ontario company which carried on the business of providing board and care for horses. Little was the sole officer and director of Heritage. Little also admitted that he made false and misleading representations to investors of DJL Capital.

Between October 1994 to December 1996 Little traded units in the Dual Capital Limited Partnership contrary to the prospectus and registration requirements of Ontario securities law. DJL Capital was the promoter and received payments in the amount of U.S. $161,525.00 when Little knew that the source of payments were funds received from investors and not income earned from any investment made by the Dual Capital Limited Partnership. DJL Capital made payments to Dual Capital in the amount of US$97,964.00. In his capacity as the sole officer of DJL Capital, the promoter, Little prepared promotional material which contained false and misleading representations to the Dual investors.

Vice-Chair Moore, in his oral decision approving the settlement, commented that the "integrity of Ontario's capital markets requires that those who sell securities comply fully with Ontario securities law." Vice-Chair Moore further noted that "the respondents' conduct demonstrates a blatant disregard for Ontario securities law, undermines the integrity of the capital markets of Ontario, and erodes investor confidence". The Commission stated that the removal of Little from the capital markets on a permanent basis is necessary to protect investors in this province.

Copies of the Notices of Hearing, Statement of Allegations of Staff of the Commission, Settlement Agreement and Order approving the settlement are available on the Commission's website, **www.osc.gov.on.ca**.

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1.3.3 In the Matter of Universal Settlements International Inc.

FOR IMMEDIATE RELEASE
March 25, 2003

IN THE MATTER OF
UNIVERSAL SETTLEMENTS INTERNATIONAL INC.

TORONTO – On March 20, 2003, the Ontario Superior Court of Justice (Divisional Court) stayed an order of the Ontario Securities Commission, pending a judicial review application. On January 31, 2003, the Commission had dismissed in its entirety an application brought by USI to revoke an investigation order under section 11 of the Ontario *Securities Act* and to quash a summons issued pursuant to section 13 of the Act. The judicial review application will be heard by the Court on May 22, 2003.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Wells Fargo & Company et al. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer to amend base shelf prospectus to add parent company as credit supporter for issuer's medium term notes – parent company's financial statements prepared in accordance with U.S. GAAP and audited in accordance with U.S. GAAS – parent company's financial statements exempt from requirement to reconcile to Canadian GAAP – parent company exempt from requirement to provide statement by auditor (i) disclosing material differences in form an content of the U.S. auditor's report as compared to a Canadian auditor report and (ii) confirming that U.S. GAAS is substantially similar to Canadian GAAS – relief subject to conditions.

Ontario Statutes

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

National Instruments

National Instrument 44-101 Short Form Prospectus Distributions (2000) 23 OSCB (Supp) 867.
National Instrument 44-102 Shelf Distributions (2000) 23 OSCB (Supp) 985.

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

AND

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

AND

IN THE MATTER OF
WELLS FARGO & COMPANY,
WELLS FARGO FINANCIAL, INC. AND
WELLS FARGO FINANCIAL CANADA CORPORATION

MRRS DECISION DOCUMENT

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 and Saskatchewan (the "Jurisdictions") has received an application in respect of Wells Fargo & Company ("WFC"), WFC's wholly-owned indirect subsidiary, Wells Fargo Financial, Inc. ("WFFI") and WFFI's wholly-owned indirect subsidiary, Wells Fargo Financial Canada Corporation ("WFFCC" or the "Issuer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation:

(a) to reconcile financial statements that are included or incorporated by reference into a base short form shelf prospectus and prepared in accordance with generally accepted accounting principles ("GAAP") of a foreign jurisdiction to Canadian GAAP (the "GAAP Reconciliation Requirement"); and

(b) to provide, where financial statements that are included or incorporated by reference into a base short form shelf prospectus are audited in accordance with generally accepted auditing standards ("GAAS") of a foreign jurisdiction, a statement by the auditor disclosing any material differences in the form and content of the auditor's report as compared to a Canadian auditor's report and confirming that the auditing standards of the foreign jurisdiction are substantially equivalent to Canadian GAAS (the "GAAS Reconciliation Requirement and together with the GAAP Reconciliation Requirement, the "Reconciliation Requirements");

shall not apply to the WFC Financial Statements included or incorporated by reference in the Prospectus (each as defined below);

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

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

1. WFC is a diversified financial services company organized under the laws of the State of Delaware and registered as a bank holding company and financial holding company under the *Bank Holding Company Act of 1956*, as amended. The principal

executive offices of WFC are located in San Francisco, California. Based on assets at September 30, 2002, WFC was the fifth largest bank holding company in the United States.

2. WFC is not a reporting issuer or the equivalent thereof in any Jurisdiction and has no present intention of becoming a reporting issuer or the equivalent thereof in any Jurisdiction. All of the directors and senior officers of WFC reside outside Ontario.

3. WFC became a reporting company under the *Securities Exchange Act of 1934* of the United States (the "Exchange Act") many years ago. WFC has filed with the United States Securities and Exchange Commission (the "SEC") all periodic reports required to be filed with the SEC under sections 13(a) and 15(d) of the Exchange Act.

4. As at September 30, 2002, WFC had approximately $45.8 billion in long-term debt outstanding. All of WFC's outstanding long-term debt is rated A+ by Standard & Poor's, AA by Fitch, Inc. and Aa2 by Moody's Investors Service.

5. WFFI was incorporated under the laws of the State of Iowa and is a wholly-owned indirect subsidiary of WFC. The principal executive offices of WFFI are located in Des Moines, Iowa. WFFI is a U.S.$18 billion company providing instalment and home equity lending, automobile financing, consumer and private label credit cards, leasing and receivables financing to consumers and businesses.

6. WFFI is not a reporting issuer or the equivalent thereof in any Jurisdiction and has no present intention of becoming a reporting issuer or the equivalent thereof in any Jurisdiction. All of the directors and senior officers of WFFI reside outside Ontario.

7. WFFI became a reporting company under the Exchange Act many years ago. WFFI has filed with the SEC all periodic reports (the "WFFI Filings") required to be filed with the SEC under sections 13(a) and 15(d) of the Exchange Act. However, for the reasons described below, WFFI has no present intention of making any further WFFI Filings with the SEC in the future.

8. As at September 30, 2002, WFFI had approximately US$10.3 billion in long term debt outstanding. All of WFFI's outstanding long-term debt, which is guaranteed by WFC is rated A+ by Standard Poor's, AA by Fitch, Inc., and Aa2 by Moody's Investors Service.

9. WFFC is an unlimited liability company amalgamated under the laws of the Province of Nova Scotia and is a wholly-owned indirect subsidiary of WFFI and WFC. The principal executive offices of WFFC are located in Toronto, Ontario. The main business of WFFC is to raise capital for its Canadian affiliates for use in their consumer finance and related businesses.

10. WFFC is a reporting issuer or the equivalent thereof in each Jurisdiction and is not in default of any of its requirements under the Legislation.

11. WFFC has issued $550,000,000 principal amount of medium term notes (the "Notes") under a short form base shelf prospectus (the "Prospectus") dated October 3, 2001. WFFC may issue up to $1,500,000,000 principal amount of Notes (or the equivalent thereof in U.S. dollars) under the Prospectus from time to time over a twenty-five month period beginning October 3, 2001.

12. WFFI has unconditionally guaranteed the payment of principal, premium (if any) and interest due under the Notes, and as such WFFI is a credit supporter (as defined under National Instrument 44-101 ("NI 44-101")) in respect of the Notes. Accordingly, WFFI has historically filed the WFFI Filings with Canadian provincial securities regulatory authorities.

13. In order to consolidate all debt securities issuance to the capital markets at the level of the parent of WFFI, on October 22, 2002 WFC issued a full and unconditional guarantee of all outstanding term debt securities of WFFI. In addition, WFC will guarantee the outstanding Notes (the "WFC Guarantee") on the same basis as the existing guarantee of the Notes by WFFI.

14. WFFI will continue to guarantee the Notes but will no longer make the WFFI Filings under the Exchange Act (and with the Canadian provincial securities regulatory authorities) and will no longer be a separately rated company.

15. WFFC intends to file an amendment to the Prospectus relating to the WFC Guarantee and incorporating by reference WFC's 2001 Annual Report on Form 10-K and its Quarterly Reports on Form 10-Q for the quarters ended March 31, 2002, June 30, 2002 and September 30, 2002. The Prospectus will also incorporate by reference all documents required by Item 13.2 of Form 44-101F3 and will include a certificate of WFC.

16. The consolidated financial statements of WFC (the "WFC Financial Statements") and its subsidiaries that will be included in/or incorporated by reference into the Prospectus will be prepared in accordance with U.S. GAAP.

17. Holders of all outstanding Notes have, by extraordinary resolution, approved (i) the WFC Guarantee and (ii) WFFI ceasing to, among other things, prepare annual audited financial

statements and file such financial statements with the trustee under the indenture governing the Notes. An extraordinary resolution requires the approval of holders of Notes representing at least 66-2/3 of the principal amount of all Notes outstanding under the indenture governing the Notes.

18. Following the announcement on October 22, 2002 of the intention to (i) implement the WFC Guarantee and (ii) have WFFI cease to make the WFFI Filings, Dominion Bond Rating Service confirmed the existing senior unsecured debt rating of AA(low) for WFFC.

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 Reconciliation Requirements shall not apply to the WFC Financial Statements included or incorporated by reference in the Prospectus provided that:

(a) the WFC Financial Statements that are included or incorporated by reference in the Prospectus are prepared in accordance with U.S. GAAP and otherwise comply with the requirements of United States law, and in the case of the WFC audited annual financial statements, such financial statements are audited in accordance with U.S. GAAS;

(b) the Notes maintain an approved rating, as that term is defined in NI 44-101;

(c) WFC maintains direct or indirect beneficial ownership of all the voting shares of WFFC;

(d) WFC continues to satisfy the eligibility criteria set forth in paragraph 3.1 of NI 71-101 – *The Multijurisdictional Disclosure System* (or any applicable successor provision) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure; and

(e) WFC continues to fully and unconditionally guarantee payment of the principal and interest on the Notes.

March 18, 2003.

"Heidi Franken"

2.1.2 Home Equity Income Trust and Canadian Home Income Plan Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from valuation requirement in connection with a related party transaction – arrangement among income trust, affiliate of income trust and company that provides managerial services to the income trust. Affiliate to acquire all shares of company providing managerial services in exchange for income trust units and cash.

Applicable Ontario Rule

OSC Rule 61-501 – Insider Bids, Issuer Bids, Going Private Transaction and Related Party Transactions, ss. 5.5, 5.6, and 9.1.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUEBEC AND ONTARIO

AND

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

AND

IN THE MATTER OF
HOME EQUITY INCOME TRUST (the "Trust") AND
CANADIAN HOME INCOME PLAN CORPORATION
("CHIP")

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "**Decision Maker**") in each of the provinces of Quebec and Ontario (the "**Jurisdictions**") has received an application (the "**Application**") from the Trust for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the requirement contained in the Legislation to provide a formal valuation in connection with a related party transaction (the "**Formal Valuation Requirements**") shall not apply to a related party transaction involving an arrangement between a wholly-owned subsidiary of the Trust and CHIP;

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

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

1. The Trust is an unincorporated open-end investment trust established under the laws of Ontario with its head office in Ontario and is a reporting issuer (or the equivalent) in all of the provinces of Canada.

2. The Trust is engaged in the business of investing in reverse mortgage portfolios. It was established at the initiative of CHIP for the purpose of conducting an initial public offering (IPO). The net proceeds of the Trust's IPO were used to indirectly invest in a portfolio of reverse mortgages owned by certain limited partnerships of which CHIP is the general partner.

3. The authorized capital of the Trust consists of an unlimited number of units of the Trust ("**Units**"). As at the date hereof, 9,634,900 Units are issued and outstanding. The Units are listed on the Toronto Stock Exchange.

4. CHIP is a corporation incorporated under the laws of Canada with its head office in Ontario. CHIP is not a reporting issuer in any province or territory of Canada.

5. CHIP is a financial services company that offers reverse mortgages to eligible Canadian homeowners.

6. According to the representations and warranties of CHIP contained in the Arrangement Agreement (as defined below), the issued and outstanding share capital of CHIP consists of 9,402,137 voting common shares. The Trust understands that there are currently 47 shareholders of CHIP, excluding employees of CHIP.

7. The Trust and its wholly-owned subsidiary, 4142411 Canada Inc. ("**Acquireco**"), entered into an arrangement agreement with CHIP on February 11, 2003 (the "**Arrangement Agreement**") pursuant to which Acquireco has agreed to acquire all of the issued and outstanding shares of CHIP (the "**CHIP Shares**") pursuant to a plan of arrangement at a price of $4.11 per CHIP Share payable partly in cash and partly in Units subject to a maximum cash consideration of $24,000,005 and the issuance of a maximum of 1,522,962 Units (the "**Proposed Transaction**").

8. The Proposed Transaction is conditional upon, among other things, receipt of the necessary approvals of the holders of Units and of CHIP Shares at special meetings of such holders to be called for the purpose of obtaining such approvals, and court approval of the plan of arrangement.

9. The Trust has entered into support agreements with holders of CHIP Shares holding, in the aggregate, approximately 58% of the outstanding CHIP Shares who have agreed to vote their CHIP Shares in favour of the Proposed Transaction.

10. The Proposed Transaction is a related party transaction as CHIP is a "related party" of the Trust within the meaning of the Legislation by virtue of the managerial services performed for the Trust by CHIP and Canadian Home Mortgage Corporation ("**CHMC**"), an affiliate of CHIP, pursuant to the following agreements:

    (a) an amended and restated management agreement dated August 2, 2002 (the **"Management Agreement"**) pursuant to which the Trust retained CHMC to administer the day-to-day operations of the Trust and to provide the services of CHMC's Chief Executive Officer, Steven Ranson, to serve as Chief Executive Officer of the Trust. The Management Agreement provides that the management of the Trust is subject to the overriding control and direction of the trustees of the Trust (the "**Trustees**");

    (b) a mortgage servicing agreement dated August 8, 2002 pursuant to which CHMC was retained by CHIP Mortgage Trust to administer the mortgages held directly by CHIP Mortgage Trust; and

    (c) an origination agreement dated August 8, 2002 pursuant to which CHIP has agreed to originate eligible reverse mortgages exclusively for investment by the Trust.

11. Pursuant to the provisions of the Management Agreement, CHMC may not, without the prior written approval of the Independent Trustees, undertake the following actions: (a) adopt, amend or materially deviate from the annual budget and investment plan of the Trust; and (b) enter into any material transaction on behalf of the Trust with CHMC or an affiliate of CHMC other than as provided for in the annual budget and investment plan of the Trust. CHIP is not able to appoint or remove any of the Trustees, with the exception of William J. Turner who is not an Independent Trustee and who was not involved in the decision as to whether the Trust should proceed with the Proposed Transaction or in the negotiation of the terms of the Arrangement Agreement on behalf of the Trust.

12. Each of the Independent Trustees is a Trustee who is not an associate, director, officer or employee of CHIP or CHMC and who is not related (as defined in The Toronto Stock Exchange Guidelines on Corporate Governance) to CHIP or CHMC, and for this purpose, a Trustee who is a nominee of CHIP is deemed not to be an Independent Trustee. The Independent Trustees are appointed at each annual meeting of Unit holders, and may be appointed at a special meeting of Unit holders, in each case to hold office for a term expiring at the close of the next annual meeting of Unit holders following such appointment. Any such appointment may be made either by a resolution approved by a majority of the votes cast at a meeting of Unit holders or by a resolution in writing executed by Unit holders holding more than 66-2/3% of the outstanding Units at the time. An Independent Trustee may be removed from office, with or without cause, only by a resolution approved by a two-thirds majority of the votes cast at a meeting of Unit holders called for that purpose, or by a resolution in writing executed by Unit holders holding more than 66-2/3% of the outstanding Units at the time or, with cause, by a two-thirds majority of the remaining Independent Trustees.

13. Steven K. Ranson, the CEO of the Trust and of CHMC, was not involved in the decision as to whether the Trust should proceed with the Proposed Transaction or in the negotiation of the Proposed Transaction on behalf of the Trust.

14. Neither CHIP nor CHMC has had any involvement in the decision as to whether the Trust should proceed with the Proposed Transaction or in the negotiation of the terms of the Arrangement Agreement on behalf of the Trust.

15. CHIP does not own any Units.

16. In the absence of the requested relief, a formal valuation would be required with respect to the CHIP Shares (being the subject matter of the transaction) as well as the Units to be issued as consideration therefor, as the Units to be issued under the Proposed Transaction constitute more than 10% of the outstanding Units.

17. An independent formal valuation of the CHIP Shares dated October 31, 2002 was prepared by Deloitte & Touche Corporate Finance Inc. on behalf of CHIP in connection with an issuer bid made by CHIP by way of an issuer bid circular dated November 4, 2002 (the **"CHIP Valuation")**. A copy of the CHIP Valuation was contained in the issuer bid circular sent to each of CHIP's shareholders and is filed on SEDAR. The valuator determined that the fair market value of the common shares of CHIP, on a fully diluted basis, was in the range of $3.60 to $4.00 per share as at October 15, 2002.

18. The information circular to be sent to Unit holders in connection with the Proposed Transaction will: (i) indicate an address where a copy of the CHIP Valuation is available for inspection and (ii) state that a copy of the CHIP Valuation will be sent to any Unit holder upon request and without charge.

19. In connection with the Proposed Transaction, the Independent Trustees (the "**Independent Committee**") in consultation with their independent financial advisor, negotiated the

Proposed Transaction and recommended to the Trustees that the Trust enter into the Arrangement Agreement. The financial advisor has delivered a "fairness opinion" to the Independent Trustees in respect of the Proposed Transaction which indicates that, in its opinion, the consideration to be paid by the Trust for the CHIP Shares is fair, from a financial point of view, to the Trust. The fairness opinion refers to the CHIP Valuation and discloses a number of different assumptions used by the financial advisor to the Independent Trustees in completing its fairness analysis compared to the assumptions used in the CHIP Valuation.

20. The Trust will hold a special meeting of its Unit holders for the purpose of, among other things, approving the Proposed Transaction. The materials to be sent to the Unit holders in connection with that meeting will include full details of the Proposed Transaction, including full disclosure of CHIP's relationship with the Trust, and a copy of the fairness opinion delivered by the financial advisor to the Independent Trustees.

21. For the purposes of the Proposed Transaction, the market capitalization of the Trust, as defined in the Legislation relating to exemptions from valuations for related party transactions, is $109,881,217.

22. Approximately 34% of the CHIP Shares are collectively owned by related parties of the Trust and such parties will receive aggregate consideration under the Proposed Transaction of approximately $13 million in cash and Units as described in paragraph 7. The aggregate fair market value of any other non-cash consideration such as long term incentive plans or employment agreements to be received by such parties is less than $14 million. Accordingly, the fair market value of the consideration, including non-cash consideration such as long term incentive plans or employment agreements, to be received by such parties in connection with the Proposed Transaction, is less than 25% of the market capitalization of the Trust referred to in paragraph 21.

23. The Proposed Transaction will be subject to the minority approval requirements of the Legislation. As a result, any Units held by the related parties of the Trust referred to in paragraph 22. will be excluded in determining the minority approval requirements. Similarly, persons who own CHIP Shares carrying more than 10% of the voting rights attached to all CHIP Shares, will be excluded from voting on the Proposed Transaction.

24. To the knowledge of the Trustees, no person or company beneficially owns, directly or indirectly, or exercises control or direction over, more than 10% of the outstanding Units.

25. The Trust is seeking relief solely from the Formal Valuation Requirements of the Legislation. In all other respects, the Trust will comply with the provisions of the Legislation applicable to the Proposed Transaction.

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

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

THE DECISION of the Decision Makers under the Legislation is that the Proposed Transaction will not be subject to the Formal Valuation Requirements contained in the Legislation, provided that the Trust complies with the other applicable requirements of the Legislation.

March 17, 2003.

"Ralph Shay"

2.1.3 Wells Fargo & Company - MRRS Decision

Headnote

MRRS - registration relief for trades by Participants, Former Participants and Permitted Transferees of securities acquired under employee incentive plans - issuer bid relief for foreign issuer in connection with acquisition of shares under employee incentive plans.

Applicable Ontario Statutory Provisions

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

Applicable Ontario Rule

OSC Rule 45-503 - Trades to Employees, Executives and Consultants.

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

AND

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

AND

IN THE MATTER OF
WELLS FARGO & COMPANY

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (collectively the "Decision Makers") in each province of Canada (collectively, the “Jurisdictions”) has received an application from Wells Fargo & Company (“Wells Fargo” or the “Company”) for a decision of the Decision Makers pursuant to the securities legislation (the "Legislation") of the Jurisdictions that (i) the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirements") and the requirements to file and obtain a receipt for a preliminary prospectus and prospectus (the “Prospectus Requirements” and together with the Registration Requirements, the "Registration and Prospectus Requirements") shall not apply to certain trades in securities of Wells Fargo made in connection with the Wells Fargo & Company Partnershares Stock Option Plan of the Company, as amended and restated effective October 1, 2000 (the "Plan") (ii) the Registration Requirements shall not apply to first trades of shares of common stock of Wells Fargo (“Shares”) acquired under the Plan, including trades made through an Agent (defined below) provided such first trade is executed through a stock exchange or market outside of Canada; and (iii) the requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, financing, identical consideration, collateral benefits, and form filing (the “Issuer Bid Requirements”) shall not apply to certain acquisitions by Wells Fargo of Shares pursuant to the Plan in each of the Jurisdictions;

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

AND WHEREAS it has been represented to the Decision Makers as follows:

1. Wells Fargo is a corporation incorporated under the laws of the State of Delaware. The principal executive offices of Wells Fargo are located in San Francisco, California.

2. Wells Fargo is not a reporting issuer or the equivalent thereof in any Jurisdiction and has no present intention of becoming a reporting issuer or the equivalent thereof in any Jurisdiction. The majority of the directors and senior officers of Wells Fargo reside outside of Canada.

3. The authorized capital of Wells Fargo consists of 4 billion Shares, 20 million shares of preferred stock and 4 million shares of preference stock. As at September 30, 2002 there were approximately 1,691,889,476 Shares, 5,641,979 shares of preferred stock and no shares of preference stock issued and outstanding.

4. The Company is subject to the requirements of the *Securities Exchange Act of 1934* of the United States (the "Exchange Act") including the reporting requirements of the Exchange Act.

5. Shares issued in connection with the Plan are registered with the Securities and Exchange Commission under the *Securities Act* of 1933.

6. The Shares are listed on the New York Stock Exchange (the "NYSE").

7. The purpose of the Plan is to enhance the profitability and value of the Company by providing performance based incentives and additional equity ownership opportunities to eligible employees of Wells Fargo and its affiliates (“Wells Fargo Companies”).

8. Awards which may be granted to employees of the Wells Fargo Companies under the Plan include (i) options (“Options”) to purchase Shares (ii) Shares and (iii) cash measured by the value of Shares (all of the foregoing are collectively referred to herein as “Awards”).

9. There are an aggregate of approximately 1943 employees of Wells Fargo Companies resident in Canada eligible to receive Awards including 175 in British Columbia, 119 in Alberta, 47 in Saskatchewan, 45 in Manitoba, 969 in Ontario, 240 in Quebec, 89 in New Brunswick, 144 in Nova Scotia, 14 in Prince Edward Island, and 101 in Newfoundland.

10. Participation in the Plan is voluntary and employees of Wells Fargo Companies are not induced to participate in the Plan by expectation of employment or continued employment with the Wells Fargo Companies.

11. Wells Fargo may use the services of one or more agents/brokers (each an "Agent") under the Plan. The current Agent for the Plan is Wells Fargo Investments, LLC. The current Agent is, and if replaced, or if additional Agents are appointed, will be registered under applicable U.S. securities or banking legislation and have been or will be authorized by Wells Fargo to provide services under the Plan. The current Agents are not registered to conduct retail trades in any of the Jurisdictions and, if replaced, or if additional Agents are appointed, are not expected to be so registered in any of the Jurisdictions.

12. The Agents' role in the Plan may include (i) assisting with the administration of the Plan, including record-keeping functions; (ii) facilitating the exercise of Awards granted under the Plan (including Cashless Exercises (as defined below)); (iii) holding Shares issued under the Plan on behalf of employees of the Wells Fargo Companies who participate in the Plan ("Participants"), Former Participants (as defined below) and Permitted Transferees (as defined below); (iv) facilitating the cancellation and surrender of Awards as permitted by the Plan; (v) facilitating Share Withholding Exercises (as defined below); and (vi) facilitating the resale of Shares issued in connection with the Plan.

13. The Plan is administered by a committee or committees (the "Committee") consisting of one or more directors of the Company who are appointed by the directors of the Company.

14. The Committee has discretionary authority to determine which employees will be granted Awards, the type and amount of each Award to be granted, the date of issue and duration of each Award and the exercise price of each Award. The Committee may adopt such rules or guidelines as it deems appropriate to determine which employees will be granted Awards, the terms of Awards and what other conditions or restrictions should apply to Awards made under the Plan.

15. Each Award granted under the Plan will be evidenced by a notice of the grant therefore containing (i) the terms, conditions and restrictions of the Award (ii) if an Award is an Option, the exercise price and acceptable methods of payment of the exercise price (iii) the duration of the Award (iv) the effect on the Award upon the death, disability, retirement or other termination of employment of the Participant and (v) the restrictions upon transfer, if any, on the Award or the Shares subject to the Award.

16. Following the termination of a Participant's relationship with the Wells Fargo Companies for reasons of death, disability or retirement, a former Participant ("Former Participant") and on the death of a Participant, where the Award(s) has been transferred to a beneficiary or beneficiaries in accordance with the Plan ("Permitted Transferees"), the Former Participants and Permitted Transferees may exercise such Award(s) for such period or periods as the Committee may determine. Except as otherwise determined by the Committee, following the termination of a Participant's relationship with the Wells Fargo Companies for reasons other than death, disability, or retirement, all of the Participant's Awards will terminate without notice. On the date that: (i) substantially all of the assets of the Company are acquired by another corporation; (ii) there is a reorganization of the Company involving an acquisition of the Company by another entity; or (iii) a majority of the board of directors (the "Board") of the Company shall be persons other than persons (i) for whose election proxies shall have been solicited by the Board or (ii) who are then serving as directors appointed by the Board to fill vacancies on the Board caused by death or resignation (but not by removal) or to fill newly-created directorships, then (A) all Options and other Awards that require exercise by Participants and/or payment by Participants to the Company will become immediately exercisable in full and (B) with respect to all other Awards, all conditions or restrictions to the receipt thereof will immediately terminate.

17. Except as otherwise determined by the Committee, Awards may not be assigned or otherwise transferred by the Participant except to a Permitted Transferee in accordance with the Plan.

18. The Company may withhold, at the time of any distribution of an Award or at the time an Option is exercised, all amounts necessary to pay any portion of the exercise price of an Award ("Cashless Exercises") or to satisfy any income tax withholding requirements ("Share Withholding Exercises"). Any such required payments may be satisfied by cash or the withholding of Common Shares issuable to a Participant in connection with an Award.

19. An aggregate of 67,000,000 Shares are available for Awards and as a basis for calculating Awards under the Plan, subject to adjustment in certain circumstances. If Awards for any reason terminate or expire unexercised, the Shares subject to those Awards will thereafter be available for other Awards under the Plan. Shares that are used to pay any portion of the exercise price of an Award or any portion of a Participant's income tax withholding resulting from an Award, and Shares that are used as a basis for calculating cash amounts that are used to pay any portion of the purchase price of an Award or any portion of a Participant's income tax withholding resulting from an Award, will also thereafter be available for Awards or as a basis for calculating Awards under the Plan.

20. As at September 30, 2002, Canadian shareholders did not hold, directly or indirectly, more than 10% of the issued and outstanding Shares of the Company and did not constitute more than 10% of the shareholders of the Company.

21. There is presently no market in any of the Jurisdictions for the Shares and no such market is expected to develop. It is therefore expected that the resale of Shares by Participants, Former Participants and Permitted Transferees will be effected through the facilities of the NYSE. Participants, Former Participants or Permitted Transferees may sell Shares acquired under the Plan through Agents.

22. The Legislation of certain of the Jurisdictions does not contain exemptions from the Registration and Prospectus Requirements for Award exercises by Participants, Former Participants or Permitted Transferees through an Agent where such Agent is not a registrant.

23. Where the Agent sells Shares on behalf of Canadian Participants, Former Participants or Permitted Transferees, the Canadian Participants, Former Participants and Permitted Transferees may not be able to rely on the exemption from the Registration Requirements contained in the Legislation of certain Jurisdictions to effect such sales.

24. The exemptions in the Legislation from the Issuer Bid Requirements may not be available for certain acquisitions of Shares from Participants, Former Participants or Permitted Transferees in accordance with the terms of the Plan, since acquisitions relating to Cashless Exercises and Share Withholding Exercises may occur at a price that is not calculated in accordance with the "market price", as that term is defined in the Legislation, and may be made from Permitted Transferees.

25. A prospectus prepared in accordance with applicable U.S. securities laws, describing the terms and conditions of the Plan will be provided to each Participant resident in Canada who receives an award under the Plan. Annual reports, management information circulars and other materials the Company is required to file with the United States Securities and Exchange Commission will be provided or made available to Participants resident in Canada who receives an award under the Plan at the same time as such documents are provided to and in the same manner as the documents are provided or made available to Participants resident in the U.S.

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

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

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

(a) The Registration and Prospectus Requirements shall not apply to any trade or distribution of Awards or Shares made in connection with the Plan, including trades and distributions involving an Agent, Participants, Former Participants, and Permitted Transferees, provided that the first trade in Shares acquired through the Plan pursuant to the Decision in a Jurisdiction other than Quebec shall be deemed a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless the conditions in section 2.14(1) of MI 45-102, Resale of Securities are satisfied and in the case of the first trade of such Shares in Quebec, the first trade is either made (i) between Canadian Participants, Former Canadian Participants or Permitted Transferees or (ii) outside of Quebec;

(b) The first trade by Participants, Former Participants or Permitted Transferees in Shares acquired pursuant to the Plan, including first trades effected through an Agent, shall not be subject to the Registration Requirements, provided such first trade is executed through a stock exchange or market outside of Canada; and

(c) The Issuer Bid Requirements of the Legislation shall not apply to the acquisition by the Company of Shares from Participants, Former Participants or

Permitted Transferees provided such acquisitions are made in accordance with the terms of the Plan.

January 31, 2003.

"Howard I. Wetston" "Robert L. Shirriff"

2.1.4 Allbanc Split Corp. and Scotia Capital Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - subdivided offering. The issuer's portfolio consists of common shares of five Canadian chartered banks. The prohibitions contained in the Legislation prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds shall not apply to the promoter/agent with respect to certain principal purchases of Portfolio Shares by the promoter/ agent.

Market making trades by promoter/agent shall not be subject to requirements to file and obtain a receipt for a preliminary and final prospectus provided that the promoter/agent and its affiliates do not beneficially own or have the power to exercise control of a sufficient number of voting securities of an issuer of the securities comprising the issuer's portfolio to permit the promoter/agent to affect materially the control of such issuer.

Applicable Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 1(1), 53(1), 74(1), 119, 121(2)(a)(ii).

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

AND

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

AND

IN THE MATTER OF
ALLBANC SPLIT CORP.

AND

IN THE MATTER OF
SCOTIA CAPITAL INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan, Nova Scotia, Newfoundland and Labrador, New Brunswick and Prince Edward Island (the "Jurisdictions") has received an application from Allbanc Split Corp. (the "Issuer") and Scotia Capital Inc. ("Scotia Capital") for decisions under the securities legislation (the "Legislation") of the Jurisdictions that:

(a) the requirements contained therein for the filing and obtaining of a receipt for a preliminary prospectus and final prospectus (the "Prospectus Requirements") shall not apply to Market Making Trades (as hereinafter defined) by Scotia Capital in the Class A Capital Shares and Class A Preferred Shares of the Issuer; and

(b) the restrictions contained therein prohibiting trading in portfolio shares by persons or companies having information regarding the trading program of mutual funds (the "Principal Trading Prohibitions") shall not apply to Scotia Capital in connection with the Principal Purchases (defined below).

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 Quebec Commission Notice 14-101;

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

1. Scotia Capital is a direct, wholly-owned subsidiary of The Bank of Nova Scotia ("BNS") and is registered under the Legislation as a dealer in the categories of "broker" and "investment dealer" and is a member of the Investment Dealers Association of Canada and The Toronto Stock Exchange.

2. The Issuer was incorporated on December 17, 1997 under the laws of the Province of Ontario.

3. The authorized capital of the Issuer consists of an unlimited number of Capital Shares, an unlimited number of Preferred Shares, an unlimited number of Class A Capital Shares, an unlimited number of Class A Preferred Shares and an unlimited number of Class A Shares, having the attributes set forth under the headings "Description of Share Capital" and "Details of the Offerings" commencing on page 19 of the Preliminary Prospectus.

4. The Issuer became a reporting issuer under the Act by filing a final prospectus dated February 17, 1997 relating to an initial public offering of Capital Shares and Preferred Shares (the "Initial Public Offering").

5. On January 14, 2003, the holders of the Capital Shares approved a share capital reorganization (the "Reorganization") which permitted holders of Capital Shares, at their option, to retain their investment in the Company after the scheduled redemption date of March 10, 2003, by converting their Capital Shares into Class A Capital Shares.

6. On January 17, 2003, the holders of 897,444 Capital Shares converted such Capital Shares on a one-for-one basis into 897,444 Class A Capital Shares. All of the issued and outstanding Capital Shares and Preferred Shares will be redeemed by the Company on March 10, 2003.

7. The Class A Preferred Shares are being offered in order to maintain the leveraged "split share" structure of the Company and will be issued on the scheduled redemption date of the Capital Shares and the Preferred Shares such that there will be an equal number of Class A Capital Shares and Class A Preferred Shares outstanding.

8. The Issuer has filed with the securities regulatory authorities of each Province of Canada a preliminary prospectus dated January 24, 2003 (the "Preliminary Prospectus") in respect of the offering of Class A Preferred Shares (the "Offering").

9. The Class A Shares are the only voting shares in the capital of the Issuer. There are currently, and will be at the time of the filing of the final prospectus (the "Final Prospectus") relating to the Offering, 100 Class A Shares issued and outstanding. Allbanc Split Holdings Corp. and Scotia Capital each own 50% of the issued and outstanding Class A Shares of the Issuer.

10. The Class A Capital Shares and Class A Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.

11. The Class A Capital Shares are listed on the Toronto Stock Exchange (the "TSX") and the TSX has granted conditional approval to list the Class A Preferred Shares.

12. The Issuer has a board of directors which currently consists of five directors. Three of the directors are employees of Scotia Capital. In addition, the President and Chief Executive Officer and the Chief Financial Officer and Secretary of the Issuer are also employees of Scotia Capital.

13. Pursuant to an agreement (the "Agency Agreement") to be made between the Issuer and Scotia Capital, BMO Nesbitt Burns Inc., CIBC World Markets Inc. and RBC Dominion Securities Inc. (collectively, the "Agents" and individually, an "Agent"), the Issuer will appoint the Agents, as its agents, to offer the Class A Preferred Shares of the Issuer on a best efforts basis and the Final Prospectus qualifying the Offering will contain a

certificate signed by each of the Agents in accordance with the Legislation.

14. The Issuer is considered to be a mutual fund but does not operate as a conventional mutual fund and in connection with its Initial Public Offering applied for and obtained a waiver under National Policy No. 39 from certain of its requirements.

15. The Issuer is a passive investment company whose principal undertaking is to invest in a portfolio (the "Portfolio") of publicly listed common shares (the "Portfolio Shares") of the five largest Canadian banks in order to generate dividend income for the holders of the Class A Preferred Shares and to enable the holders of the Class A Capital Shares to participate in capital appreciation in the Portfolio Shares after payment of operating expenses.

16. The fixed distributions on the Class A Preferred Shares will be funded from the dividends received on the Portfolio Shares. If necessary, any shortfall in the distributions on the Class A Preferred Shares will be funded by proceeds from the sale of, or if determined appropriate by the issuer's board of directors, premiums from writing covered call options on, Portfolio Shares. Based on the current dividends paid on the Portfolio Shares, it is not expected that the Issuer would have to sell any Portfolio Shares or write any call options to fund the Class A Preferred Share distributions. The Issuer intends to establish a revolving credit facility, likely with Scotia Capital, which may be used by the Issuer to fund the payment of a portion of the fixed distribution on the Class A Preferred Shares on a temporary basis, if necessary.

17. The Portfolio Shares are currently listed and traded on the TSX.

18. The Issuer is not, and will not upon the completion of the Offering, be an insider of the issuers of the Portfolio Shares within the meaning of the Legislation.

19. Scotia Capital's economic interest in the Issuer and in the material transactions involving the Issuer are disclosed in the Preliminary Prospectus and will be disclosed in the Final Prospectus under the heading "Interest of Management and Others in Material Transactions". Scotia Capital is the promoter of the Issuer.

20. The net proceeds from the sale of the Class A Preferred Shares under the Final Prospectus, after payment of commissions to the Agents and expenses of issue will be used by the Issuer to fund the redemption of all of the issued and outstanding Capital Shares and Preferred Shares on March 10, 2003.

21. All Class A Capital Shares and Class A Preferred Shares outstanding on March 10, 2008 will be redeemed by the Issuer on such date and the Class A Preferred Shares will be redeemable at the option of the Issuer on any Annual Retraction Payment Date (as described in the Preliminary Prospectus).

22. It will be the policy of the Issuer to hold the Portfolio Shares and to not engage in any trading of the Portfolio Shares, except:

    (a) to fund the redemption of all Capital Shares and Preferred Shares on March 10, 2003;

    (b) to fund retractions or redemptions of the Class A Capital Shares and the Class A Preferred Shares;

    (c) following receipt of stock dividends on Portfolio Shares; or

    (d) in certain other limited circumstances described in the Preliminary Prospectus.

23. Pursuant to an administration agreement (the "Administration Agreement") to be entered into, Scotia Capital will continue to administer the ongoing operations of the Issuer and the Issuer will pay Scotia Capital a fee equal to:

    (a) a monthly fee of 1/12 of 0.15% of the market value of the Portfolio Shares;

    (b) any interest income earned by the Issuer from time to time, excluding interest earned on any investment of excess dividends received on the Portfolio Shares (which are for the benefit of the Class A Capital Shares).

24. In connection with the services to be provided by Scotia Capital to the Issuer pursuant to the Administration Agreement, Scotia Capital may sell Portfolio Shares to fund retractions of Class A Capital Shares and Class A Preferred Shares prior to March 10, 2008 (the "Redemption Date") and upon liquidation of the Portfolio Shares prior to the Redemption Date. These sales will be made by Scotia Capital as agent on behalf of the Issuer, but in certain circumstances, such as where a small number of Class A Capital Shares and Class A Preferred Shares have been surrendered for retraction, Scotia Capital may purchase Portfolio Shares as principal (the "Principal Purchases") subject to receipt of all regulatory approvals.

25. In connection with any Principal Purchases, Scotia Capital will comply with the rules, procedures and policies of the applicable stock exchange of which it is a member and in accordance with orders obtained from all applicable securities regulatory

authorities. The Final Prospectus will disclose that Scotia Capital may realize a gain or loss on the resale of such securities.

26. The Preliminary Prospectus discloses and the Final Prospectus will disclose that any Principal Purchases will be made in accordance with the rules of the applicable stock exchange and the price payable by Scotia Capital (inclusive of all transaction costs, if any) will not be less than the price which would have been payable (inclusive of all transaction costs, if any) if the sale had been made through the facilities of the principal stock exchange on which the Portfolio Shares are listed and posted for trading at the time of the sale to Scotia Capital.

27. The Administration Agreement will provide that Scotia Capital must take reasonable steps, such as soliciting bids from other market participants or such other steps as Scotia Capital, in its discretion, considers appropriate after taking into account prevailing market conditions and other relevant factors, to enable the Issuer to obtain the best price reasonably available for the Portfolio Shares so long as the price obtained (net of all transaction costs, if any) by the Issuer to Scotia Capital is more or at least as advantageous to the issuer as the price which is available (net of all transaction costs, if any) through the facilities of the applicable stock exchange at the time of the trade.

28. Scotia Capital will not receive any commissions from the Issuer in connection with the Principal Purchases and, in carrying out the Principal Purchases, Scotia Capital shall deal fairly, honestly and in good faith with the Issuer.

29. Scotia Capital will be a significant maker of markets for the Class A Capital Shares and Class A Preferred Shares. As a result, as discussed above Scotia Capital will, from time to time, purchase and sell Class A Capital Shares and Class A Preferred Shares and trade in such securities as agent on behalf of its clients, the primary purpose of such trades (the "Market Making Trades") being to provide liquidity to the holders of Class A Capital Shares and Class A Preferred Shares. All trades made by Scotia Capital as principal will be recorded daily by the TSX.

30. As Scotia Capital owns 50% of the Class A Shares of the Issuer, Scotia Capital will be deemed to be in a position to affect materially the control of the Issuer and consequently, each Market Making Trade will be a "distribution" or "distribution to the public" within the meaning 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 pursuant to the Legislation is that:

(a) The Prospectus Requirements shall not apply to the Market Making Trades by Scotia Capital in the Class A Capital Shares and Class A Preferred Shares provided that at the time of each Market Making Trade, Scotia Capital and its affiliates do not beneficially own or have the power to exercise control or direction over a sufficient number of voting securities of the issuers of the Portfolio Shares, securities convertible into voting securities of the issuers of the Portfolio Shares, options to acquire voting securities of the issuers of the Portfolio Shares, or any other securities which provide the holder with the right to exercise control or direction over voting securities of the issuers of the Portfolio Shares which in the aggregate, permit Scotia Capital to affect materially the control of the issuers of the Portfolio Shares and without limiting the generality of the foregoing, the beneficial ownership of or the power to exercise control or direction over securities representing in the aggregate 20 percent or more of the votes attaching to all the then issued and outstanding voting securities of the issuers of the Portfolio Shares shall, in the absence of evidence to the contrary, be deemed to affect materially the control of the issuers of the Portfolio Shares; and

(b) The Principal Trading Prohibitions shall not apply to Scotia Capital in connection with the Principal Purchases.

March 6, 2003.

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

2.1.5 Ethical Funds Inc. - MRRS Decision

Headnote

Exemption from the requirement to deliver comparative annual financial statements for the year-ending December 31, 2002 to registered securityholders of certain 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 LEGISLATION OF
ALBERTA, ONTARIO, QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF
CREDENTIAL® SELECT BALANCED PORTFOLIO, CREDENTIAL SELECT GROWTH PORTFOLIO, CREDENTIAL SELECT HIGH GROWTH PORTFOLIO, CREDENTIAL BALANCED PORTFOLIO, CREDENTIAL GROWTH PORTFOLIO, CREDENTIAL EQUITY PORTFOLIO, ETHICAL® CANADIAN DIVIDEND FUND, ETHICAL US SPECIAL EQUITY FUND, ETHICAL GLOBAL GROWTH FUND, ETHICAL INTERNATIONAL EQUITY FUND, ETHICAL RSP INTERNATIONAL EQUITY FUND, ETHICAL EUROPEAN EQUITY FUND, ETHICAL RSP EUROPEAN EQUITY FUND, ETHICAL MONEY MARKET FUND, ETHICAL INCOME FUND, ETHICAL GLOBAL BOND FUND, ETHICAL BALANCED FUND, ETHICAL CANADIAN EQUITY FUND, ETHICAL GROWTH FUND, ETHICAL SPECIAL EQUITY FUND, ETHICAL NORTH AMERICAN EQUITY FUND, ETHICAL RSP NORTH AMERICAN EQUITY FUND, ETHICAL GLOBAL EQUITY FUND, ETHICAL RSP GLOBAL EQUITY FUND AND ETHICAL PACIFIC RIM FUND

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of Alberta, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application (the "Application") from Ethical Funds Inc. (the "Manager"), Credential® Select Balanced Portfolio, Credential Select Growth Portfolio, Credential Select High Growth Portfolio, Credential Balanced Portfolio, Credential Growth Portfolio, Credential Equity Portfolio (collectively, the "Credential Funds"), Ethical® Canadian Dividend Fund, Ethical US Special Equity Fund, Ethical Global Growth Fund, Ethical International Equity Fund, Ethical RSP International Equity Fund, Ethical European Equity Fund, Ethical RSP European Equity Fund (collectively, the "Ethical New Funds"), Ethical Money Market Fund, Ethical Income Fund, Ethical Global Bond Fund, Ethical Balanced Fund, Ethical Canadian Equity Fund, Ethical Growth Fund, Ethical Special Equity Fund, Ethical North American Equity Fund, Ethical RSP North American Equity Fund, Ethical Global Equity Fund, Ethical RSP Global Equity Fund and Ethical Pacific Rim Fund (collectively, the "Ethical Funds") and any mutual funds created subsequent to the date hereof that are managed by the Manager (the "Future Funds") (the Credential Funds, the Ethical New Funds and the Ethical Funds collectively, the "Funds" and individually, a "Fund") for a decision pursuant to the securities legislation of certain of the Jurisdictions (the "Legislation") for relief from the requirement to deliver an annual report, where applicable and comparative annual financial statements of the Funds to certain securityholders of the Funds unless they have requested to receive them;

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

AND WHEREAS, 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 it has been represented by the Manager to the Decision Makers that:

(a) The Credential Funds and the Ethical New Funds are open-ended mutual fund trusts established under the laws of British Columbia. The Ethical Funds are open-ended mutual fund trusts established under the laws of Alberta, British Columbia, Saskatchewan and Ontario.

(b) The Manager is a corporation established under the laws of Canada with its head office located in Vancouver, British Columbia. The Manager is the trustee and manager of the Funds. The Manager is registered as a portfolio manager in British Columbia.

(c) The Ethical Funds are reporting issuers in each of the Jurisdictions. The Credential Funds and Ethical New Funds are reporting issuers in each of the Jurisdictions, except Quebec. The Funds are not in default of any requirements of the Legislation.

(d) Units of the Ethical Funds are currently offered for sale in each province of Canada and units of the Credential Funds and of the Ethical New Funds are offered for sale in each province of

Canada, except Quebec, pursuant to a simplified prospectus. The current simplified prospectus is dated: (i) June 27, 2002 for units of the Credential Funds; (ii) September 20, 2002 for units of the Ethical New Funds and (iii) June 24, 2002 for units of the Ethical Funds

(e) Each of the Funds is required to deliver annually, within 140 days of its financial year-end, to each registered securityholder, an annual report, where applicable and comparative financial statements in the prescribed form pursuant to the Legislation.

(f) The Manager proposes to send to securityholders who hold securities registered in client name ("Direct Securityholders"), either together with the relevant account statements or otherwise, a notice advising them that they will not receive the annual report, where applicable and annual financial statements of the Funds for the year then ended 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 report, where applicable and the annual financial statements. The notice will advise the Direct Securityholders that the annual reports, where applicable and annual financial statements of the Funds may be found on the websites referred to in clause (h) and downloaded. The Manager would send such financial statements or an annual report containing such financial statements to any Direct Securityholder who requests them in response to such notice or who subsequently requests them by request on a toll-free number.

(g) Securityholders who hold their securities in the Funds through a nominee will be dealt with pursuant to National Instrument 54-101. Securityholders who hold their securities in the Funds in client name with an entity other than the Manager will be sent the annual report, where applicable and annual financial statements of the Funds in accordance with the Legislation.

(h) Securityholders will be able to access the annual report, where applicable and annual financial statements of the Funds either on the SEDAR website or on the relevant Fund Family's website: www.credential.com (in the case of the Credential Funds) and www.ethicalfunds.com (in the case of the Ethical Funds and the Ethical New Funds). The top five or ten holdings, as the case may be, will also be accessible via a toll-free phone line or the relevant Fund Family's website, which are updated monthly, and which information, in the case of the Ethical Funds, is disclosed in the simplified prospectus.

(i) There would be substantial cost savings if the Funds are not required to print and mail annual report, where applicable and annual financial statements to those Direct Securityholders who do not want them.

(j) The Canadian Securities Administrators have published for comment proposed National Instrument 81-106 which, among other things, would permit mutual funds not to deliver annual 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.

(k) Proposed National Instrument 81-106 would also require a mutual 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 of the mutual fund.

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

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

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

(i) the Funds; and

(ii) the Future Funds,

shall not be required to deliver their annual report, where applicable and comparative annual financial statements for the year ending 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 annual financial statements category, confirmation of mailing of the request

forms that have been sent to applicable Direct Securityholders as described in paragraph (f) above within 90 days of mailing the request forms;

(b) the Manager shall file on SEDAR, under the annual financial statements category, information regarding the number and percentage of requests for the annual report, where applicable and annual financial statements 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 time of mailing the request forms and ending 12 months from the time of mailing;

(c) the Manager shall record the number and a summary of complaints received from Direct Securityholders about not receiving the annual report, where applicable and annual financial statements and shall file on SEDAR, under the annual financial statements category, this information within 30 days after the end of each quarterly period beginning from the time of mailing the request forms and ending 12 months from the time of mailing;

(d) the Manager shall, if possible, measure the number of "hits" on the annual report and annual financial statements of the relevant Funds on each of the www.credential.com and www.ethicalfunds.com websites and shall file on SEDAR, under the annual financial statements category, this information within 30 days after the end of each quarterly period beginning from the time of mailing the request forms and ending 12 months from the time of mailing; and

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

March 17, 2003.

"Robert L. Shirriff" "Mary Theresa McLeod"

2.1.6 Gothic Resources Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Issuer has one security holder, issuer deemed to have ceased to be a reporting issuer.

Applicable Ontario Statutory Provisions

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

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

AND

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

AND

IN THE MATTER OF
GOTHIC RESOURCES INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Alberta, Saskatchewan, Ontario, Quebec and Newfoundland and Labrador (the "Jurisdictions") has received an application from Gothic Resources Inc. ("Gothic") for a decision under the securities legislation of each of the Jurisdictions (the "Legislation") that Gothic be deemed to have ceased to be a reporting issuer in each of the Jurisdictions;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Saskatchewan Financial Services 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 Quebec Commission Notice 14-101;

AND WHEREAS Gothic has represented to the Decision Makers that:

1. Gothic was formed by the amalgamation of Durham Resources Ltd. and Edge Resources Ltd. on July 9, 1991 under the *Company Act* (British Columbia). The amalgamated company was continued under *The Canada Business Corporations Act* (Canada) (the "CBCA") on August 1, 1991. Later in 1991 following the continuation, Gothic, Gothic's Quebec wholly-owned subsidiary, 2626-4838 Quebec Inc. ("Quebecsubco") and Golden Day Mining

Exploration Inc. ("Golden Day") completed a triangular amalgamation whereby Golden Day and Quebecsubco amalgamated to form an amalgamated company ("QuebecAmalco") under the *Quebec Companies Act* (Quebec). All of the Golden Day shareholders received shares of Gothic instead of shares of QuebecAmalco and QuebecAmalco became a wholly-owned subsidiary of Gothic. QuebecAmalco was subsequently wound-up into Gothic;

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

3. On December 18, 2002 Gothic entered into an arrangement (the "Arrangement") under section 192 of the CBCA with its then wholly-owned subsidiary, American Natural Energy Corporation ("ANEC"), an Oklahoma corporation, whereby all of the shareholders of Gothic exchanged their common shares Gothic (the "Gothic Shares") for common shares of ANEC (the "ANEC Shares"). Gothic became a wholly-owned subsidiary of ANEC and the former shareholders of Gothic became shareholders of ANEC. The Arrangement became effective on February 11, 2002;

4. On February 12, 2002 the ANEC Shares began trading on the Canadian Venture Exchange (the "CDNX") in substitution for the Gothic Shares and the Gothic Shares were delisted from the CDNX;

5. No securities of Gothic are listed or quoted on any stock exchange or market;

6. The authorized capital of Gothic consists of an unlimited number of Gothic Shares without par value of which 25,162,346 are issued and outstanding and owned by ANEC;

7. Other than the Gothic Shares owned by ANEC, Gothic has no other securities, including debt securities, issued and outstanding; and

8. Gothic has no intention of seeking public financing by way of an offering of its securities in Canada;

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

February 4, 2003.

"Barbara Shourounis"

2.1.7 McLean Budden Limited - MRRS Decision

Headnote

Investment by mutual funds in securities of other mutual funds under common management for a specified purpose exempted from the reporting requirements and self-dealing prohibitions of clause 111(2)(b), subsection 111(3) and clauses 117(1)(a) and (d), subject to certain conditions imposing a "passive" fund-on-fund structure.

Statutes Cited

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

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

AND

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

AND

IN THE MATTER OF
MCLEAN BUDDEN LIMITED

AND

MCLEAN BUDDEN BALANCED VALUE FUND

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from McLean Budden Limited ("MB") on behalf of the McLean Budden Balanced Value Fund (the "Balanced Value Fund"), and other mutual funds managed by MB after the date of this Decision (as defined herein) that have as their investment objective the investment in another mutual fund or mutual funds managed by MB (individually, a "Top Fund" and together, the "Top Funds") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the following provisions of the Legislation (the "Applicable Requirements") shall not apply to the Top Funds or MB, as the case may be, in respect of certain investments to be made by a Top Fund in an Underlying Fund (as defined herein) from time to time:

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

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

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

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

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

1. MB is a corporation established under the laws of Canada and is or will be the manager, and promoter of each of the Top Funds and each of the Underlying Funds (collectively, the "MB Funds"). The head office of MB is located in Ontario.

2. Each of the MB Funds is or will be an open-ended mutual fund established under the laws of Ontario by a Declaration of Trust.

3. Each of the MB Funds is or will be a reporting issuer in each of the provinces of Canada and is not or will not be in default of any of the requirements of the Legislation.

4. Units of each of the MB Funds will be qualified for distribution by means of a simplified prospectus and an annual information form filed in accordance with the Legislation applicable in each of the provinces of Canada.

5. In order to achieve its investment objective, each Top Fund will invest fixed percentages (the "Fixed Percentages") of its assets (other than cash and cash equivalents) in securities of specified Underlying Funds, subject to a variation of 2.5% above or below the Fixed Percentages (the "Permitted Ranges") to account for market fluctuations. Investments of each Top Fund will be made in accordance with its fundamental investment objectives. The remaining assets of the Top Funds will be invested in securities of non-mutual fund issuers.

6. Initially, the Balanced Value Fund will invest in the McLean Budden Fixed Income Fund and the McLean Budden Global Equity Fund and may, in future, invest in other mutual funds established by MB (collectively, the "Underlying Funds"). The total direct investment of the Balanced Value Fund in the Underlying Funds (the "Permitted Total Investment") will equal 62% of the assets of the Balanced Value Fund, subject to the variation to account for market fluctuations described in paragraph 5.

7. Each Top Fund will invest its assets in accordance with the Permitted Total Investment and Fixed Percentages disclosed in the simplified prospectus of the Top Fund.

8. A Top Fund will not invest in an Underlying Fund with an investment objective which includes investing directly or indirectly in other mutual funds.

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

10. The Fixed Percentages or Underlying Funds disclosed in the simplified prospectus will not be changed unless the simplified prospectus of the Top Fund is amended or a new prospectus is filed and the security holders of the Top Fund have been given at least 60 days' notice of the change.

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

12. In the absence of this Decision, pursuant to the Legislation, each Top Fund is prohibited from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder. As a result, in the absence of this Decision each Top Fund would be required to divest itself of any such investments.

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

14. The investments by the Top Funds in securities of the Underlying Funds will represent the business judgment of "responsible persons" (as defined in the Legislation) uninfluenced by considerations other than the best interests of the Top Funds.

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

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

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

PROVIDED IN EACH CASE THAT:

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

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

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

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

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

   (d) the investment objective of the Top Fund discloses that the Top Fund invests in securities of other mutual funds and the Permitted Total Investment;

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

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

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

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

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

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

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

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

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

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

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

(p) any notice provided to security holders of an Underlying Fund as required by applicable laws or the constating documents of that Underlying Fund has been delivered by the Top Fund to its security holders;

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

(r) in addition to receiving the annual and, upon request, the semi-annual financial statements of the Top Fund, security holders of the Top Fund have received appropriate summary disclosure in respect of the Top Fund's holdings of units of the Underlying Funds in the financial statements of the Top Fund; and

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

March 25, 2003.

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

2.1.8 Citigroup Inc. - MRRS Decision

Headnote

MRRS - prospectus and registration relief for trades of options and shares in connection with an employee incentive program involving the Applicant, Eligible Participants, Former Participants and certain Transferees - registration relief for first trades of shares acquired under such employee incentive program - issuer bid relief in connection with acquisition of shares under employee incentive plans.

Applicable Ontario Statutory Provisions

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

Applicable Ontario Rule

OSC Rule 45-503 - Trades to Employees, Executives and Consultants.

Applicable Instrument

Multilateral Instrument 45-102 - Resale of Securities.

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

AND

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

AND

IN THE MATTER OF
CITIGROUP INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland and Labrador and Prince Edward Island (the "Jurisdictions") has received an application from Citigroup Inc. (the "Applicant") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that: (a) the requirements contained in the Legislation to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirements") and to be registered to trade in a security (the "Registration Requirements") shall not apply to certain trades to be made in stock options (the "Options") and common shares (the "Shares") of the Applicant made in connection with the Applicant's equity award programs (collectively, the "Program") (b) the Registration Requirements shall not apply to the first trades in Shares; and (c) the requirements contained in the Legislation pertaining to bids to acquire or redeem securities of an issuer made by the issuer (the "Issuer Bid Requirements") shall not apply to certain acquisitions of Shares in accordance with the Program.

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

AND WHEREAS the Applicant has represented to the Decision Makers as follows:

1. The Applicant is a diversified global financial services holding company whose businesses provide a broad range of financial services to consumer and corporate customers throughout the world. The Applicant was incorporated on March 8, 1988 under the laws of the State of Delaware of the United States of America.

2. The Applicant carries on business in Canada through a number of financial service subsidiaries (the "Canadian Subsidiaries" and together with the Applicant, the "Group"). Each Canadian Subsidiary is directly or indirectly controlled by the Applicant.

3. The Applicant's authorized capital consists of 15 billion Shares and 30 million preferred shares. As at December 31, 2002, there were 5,140,671,880 Shares and 5,350,000 preferred shares of the Applicant issued and outstanding.

4. The Applicant's Shares are listed in the United States on the New York Stock Exchange (the "NYSE") and the Pacific Exchange (the "PE"), as well as being listed in Mexico on the Bolsa Mexicana de Valores (the "Bolsa" and together with the NYSE and the PE, the "Foreign Exchanges"). The Applicant is subject to the rules and regulations of each of the Foreign Exchanges and its Shares trade under the symbol "C". The Shares are not currently listed for trading on any stock exchange in Canada, and there is no intention to have the Shares so listed.

5. The Applicant is registered with the United States Securities and Exchange Commission ("SEC") under the United States *Securities Exchange Act* of 1934, as amended, (the "1934 Act"). The Applicant is not in default of the requirements of the 1934 Act, nor is it exempt from the reporting requirements of the 1934 Act.

6. There are approximately 5,400 Canadian resident employees, directors and officers of Canadian affiliates of the Applicant ("Eligible Participants") eligible or expected to participate in the Program, of which approximately 158 are resident in British Columbia, 181 are resident in Alberta, 32 are resident in Saskatchewan, 46 are resident in

Manitoba, 4,000 are resident in Ontario, 95 are resident in Nova Scotia, 124 are resident in Newfoundland and Labrador and 18 are resident in Prince Edward Island.

7. As at February 27, 2003, residents of Canada did not represent in number more than 1.5% of the total number of owners directly or indirectly of Shares, and such persons did not own directly or indirectly more than 1.5% of the total number of Shares outstanding.

8. The Applicant is a reporting issuer in Ontario, Saskatchewan and Québec (the "Reporting Jurisdictions"). The Applicant became a reporting issuer in Ontario, Saskatchewan and Québec on September 9, 1994, October 8, 1998 and June 17, 1999, respectively. The Applicant is not a reporting issuer or the equivalent in any other jurisdiction of Canada. The Applicant has no intention of becoming a reporting issuer in any other Canadian jurisdiction in which it is not currently a reporting issuer.

9. To the Applicant's knowledge, it is not in default of the securities legislation of the Reporting Jurisdictions.

10. On March 14, 2002, a notice of election to become an electronic filer was filed and the Applicant has since been an electronic filer under National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR).

11. The Program generally consists of four main equity programs: the stock option program ("SOP"), Citigroup ownership program ("COP"), the capital accumulation program ("CAP") and the employee stock purchase program ("ESPP"). The Program is used by the Applicant to attract and retain employees, directors and officers to provide incentives and to align the interests of the employees, directors and officers with the financial interests of the Group with the primary goal of increasing employee, director and officer ownership of the Applicant, and enabling the employees, directors and officers to participate in the long-term growth and success of the Applicant.

12. Participation in the Program is voluntary and Eligible Participants have not been, and will not be, induced to participate in the Program or to exercise Options or to purchase Shares by expectation of employment or continued employment with the Group.

13. The total number of Shares reserved for issuance through operation of the Program is not more than 10% of the total number of issued and outstanding Shares as at December 31, 2002.

14. The Program is subject to regulatory oversight by the SEC and Canadian participants will receive copies of communications to employees, directors and officers describing the SOP, COP, CAP and/or ESPP, as applicable. All disclosure materials relating to the Applicant furnished to eligible participants resident in the United States, such as annual reports, proxy materials and other continuous disclosure materials which are required to be filed with the SEC, are also furnished at the same time and in the same manner to Eligible Participants resident in Canada.

15. As there is a *de minimus* market for the Shares in Canada, and the Shares are not listed on a Canadian stock exchange, first trades of Shares by Eligible Participants resident in Canada will be affected through the facilities of, and in accordance with, the rules and regulations of the Foreign Exchanges.

16. The Applicant uses the services of an agent in connection with the administration and operation of the Program (the "Program Agent"). The role of the Program Agent may generally include: (a) disseminating information and materials to Eligible Participants; (b) assisting with the general administration of the Program and providing certain record keeping services; (c) facilitating option exercises; (d) maintaining accounts on behalf of participants under the Program; (e) holding Shares on behalf of participants; and (f) facilitating the resale of Shares acquired under the Program.

17. Salomon Smith Barney Inc. ("SSB") has been appointed by the Applicant to act as the Program Agent. SSB is registered under United States securities legislation as a securities dealer and is registered in Ontario as an International Dealer.

18. Under each of the SOP, CAP and COP, Options may be granted by the Applicant to certain of its employees, officers and directors of the Group worldwide including Eligible Participants who are resident in Canada. Generally, each Option entitles an Eligible Participant to subscribe for one share after the lapse of a vesting period at a price determined at the time the Options are granted (the "Exercise Price"). The Options expire no more than ten years from the date of grant and are exercisable during that time in accordance with a vesting schedule, provided that the Eligible Participant remains in compliance with the applicable rules of the Program (which may and usually does require that the Eligible Participant remain continually employed by the Group during that time). The Shares issued under the SOP, CAP or COP, may be issued from treasury or purchased in open market transactions.

19. The Exercise Price for Options is equal to the fair market value (the "FMV") of the Shares for the period and using the method so determined by the Applicant in accordance with applicable SEC and NYSE rules and regulations. For example, the FMV may include, but is not limited to, the closing price of the Shares as quoted on the NYSE on the trading day immediately prior to the date on which the Option is granted or may be based on the average of the closing prices of the Shares for each of five business days prior to the date of the grant of the Option.

20. The methods of payment of the Exercise Price for Options, in accordance with the Program rules applicable to a particular award of Options, may include: (a) cash; (b) the use of proceeds from the immediate sale of all or a portion of the Shares otherwise issuable upon the exercise of the Option; (c) the use of Shares by the Eligible Participant that the Eligible Participant has already owned for at least six months prior to the date of exercise of the Option; and (d) by using a process of "attestation" (whereby the Eligible Participant "attests" that he or she has sufficient Shares, that have been owned for at least six months prior to the date of exercise of the Option, that are greater in value than the exercise cost of the Option).

21. In accordance with Program rules applicable to a particular award of Options, Eligible Participants may satisfy any tax withholding obligation on the exercise of an Option in the following ways: (a) in cash; (b) by having Shares withheld from the Shares otherwise issuable upon the exercise of an Option; and (c) by the use of proceeds from the sale of Shares otherwise issuable upon exercise of an Option.

22. In certain circumstances, former employees, directors and officers of the Applicant and its Canadian affiliates who were Eligible Participants ("Former Participants") may exercise Options for a limited time following the termination of employment by reason of job discontinuance, disability, leave of absence, retirement or involuntary termination.

23. Upon the death of the Eligible Participant, in accordance with the applicable Program rules, Options may be exercised by the estate of the Eligible Participant or designated beneficiary, or, in the absence of a designated beneficiary, by another individual or entity, so designated by will or the laws of descent and distribution, (all such persons collectively, the "Permitted Transferees).

24. In accordance with applicable Program rules, an Eligible Participant who is selected to receive a total discretionary incentive and retention award that has a value equal to, or greater than, a certain eligibility threshold, will receive a percentage of that award in the form of a cash incentive bonus, and a percentage in the form of a restricted stock ("Restricted Stock") or deferred stock ("Deferred Stock" and together with Restricted Stock, the "CAP Shares") award.

25. An award of CAP Shares vests in accordance with the vesting schedule applicable to that award (which to date, has generally been three years from the date of the award) pursuant to the terms of the Program, which may and usually do require that from the award date, the Eligible Participant remain continually employed by the Group during the applicable vesting period.

26. Restricted Stock and Deferred Stock are subject to transfer restrictions and risk of cancellation during the vesting period following the date of the award. Ultimate unconditional delivery of Restricted Stock and Deferred Stock may be and usually is contingent on the continued employment of the Eligible Participant throughout the vesting period.

27. An Eligible Participant who is awarded Restricted Stock pursuant to an award of CAP Shares is entitled to full voting and dividend rights during the vesting period. An Eligible Participant who receives an award of Deferred Stock pursuant to an award of CAP Shares will receive dividend equivalent payments during the vesting period at or about the same time as dividends are distributed to holders of Shares. Recipients of Deferred Stock awards do not have any voting or other shareholder rights during the vesting period. The determination as to whether an employee receives an award of CAP Shares containing Restricted Stock or Deferred Stock is made in the sole discretion of the Applicant in accordance with the applicable terms of the Program.

28. The number of CAP Shares awarded is a U.S. dollar value divided by the FMV of one Share, (as established by the Applicant pursuant to the Program in accordance with applicable SEC and NYSE regulation) discounted by a percentage determined by the Applicant pursuant to the Program in accordance with applicable SEC and NYSE regulation (e.g. 25% for 2003). The FMV is calculated as the average closing price of Shares for a defined period immediately preceeding the award date.

29. Upon the death of an Eligible Participant, in accordance with applicable Program rules, CAP Shares may be distributed to Permitted Transferees.

30. Certain Eligible Participants may be offered the choice of electing to receive their award in the form of a combination of CAP Shares and Options (a "CAP Award"), as opposed to Restricted or Deferred Stock exclusively. If an Eligible Participant is offered, and chooses this alternative,

the terms of the Options granted under the CAP Award will be identical to the description of Options provided above in accordance with the applicable Program rules.

31. Further, certain Eligible Participants may also be offered the opportunity to elect to receive an award under the SOP in the form of Options and Deferred Stock or Restricted Stock (as opposed to Options exclusively) in accordance with the provisions of the Program applicable to the particular Eligible Participant and a particular award. The size of any equity award made under the Program shall be within the sole discretion of the Applicant.

32. The ESPP enables Eligible Participants to purchase Shares using funds accumulated by way of authorized payroll deductions during separate offering periods of varying duration.

33. At the end of an offering period applicable to an Eligible Participant, such participant will be entitled to use the accumulated amounts deducted from their payroll, plus interest accumulated thereon, to purchase Shares at a price as determined by the applicable Program rules at the beginning of the applicable offering period (the "Offering Price"). In certain circumstances, an Eligible Participant may use the accumulated funds to make a purchase of Shares earlier than the end of the offering period. The Offering Price is the fair market value of the Shares as determined by the Applicant over a specified period in accordance with applicable Program provisions and SEC and NYSE rules and regulations.

34. Under the ESPP, if the price of Shares on the closing date of the applicable offering period is lower than the Offering Price, all funds accumulated on behalf of the Eligible Participant (plus accrued interest) shall be refunded to such participant.

35. The Legislation of all of the Jurisdictions does not contain exemptions from the Prospectus and Registration Requirements for all the intended trades under the Program, including trades made through the Program Agent.

36. The exemptions in the Legislation may not be available in connection with certain first trades of Shares because the Applicant is a reporting issuer in certain Canadian jurisdictions.

37. The exemptions in the Legislation from the Issuer Bid Requirements may not be available for all acquisitions of Shares under the Program and acquisitions may occur at a price that is not calculated in accordance with the "market price" as that term is defined in the Legislation.

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

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

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

1. the Registration Requirements and Prospectus Requirements shall not apply to any trades or distributions of Options or Shares made in connection with the Program, including trades and distributions involving the Applicant, Eligible Participants, Former Participants or Permitted Transferees and trades carried out with or through the Program Agent, provided that:

   (i) participation in the trade by the Eligible Participants, Former Participants or Permitted Transferees is voluntary;

   (ii) the Applicant is listed on the NYSE; and

   (iii) the first trade in Shares acquired pursuant to the Program will be deemed to be a distribution or primary distribution to the public under the Legislation unless the conditions in subsection 2.6 of Multilateral Instrument 45-102 – Resale of Securities are satisfied;

2. the first trade in Shares acquired under the Program by an Eligible Participant, Former Participant, Permitted Transferee or the Program Agent, including first trades effected through the Program Agent shall not be subject to the Registration Requirements provided that:

   i. such trade is executed on the NYSE; and

   ii. at the time of the acquisition of the Shares or Options, as applicable, residents of Canada

      (a) did not own directly or indirectly more than 5 percent of the outstanding Shares; and

      (b) did not represent in number more than 5 percent of the total number of owners directly or indirectly of Shares.

3. the Issuer Bid Requirements do not apply to the acquisition of Shares by the Applicant in accordance with the Program from an Eligible Participant, Former Participant, Permitted Transferee or the Program Agent acting on behalf

of or for the benefit of any of the foregoing persons.

March 25, 2003.

"Robert L. Shirriff" "Paul M. Moore"

2.2 Orders

2.2.1 Gluskin Sheff + Associates Inc.

Headnote

Exemptions for pooled funds from subsections 111 and 117 and 118(2)(b) of the Securities Act (Ontario) to permit a fund of fund structure.

Regulations Cited

Securities Act, R.S.O. 1990, Reg. 1015, as am., sections 111(2)(b), 111(2)(c), 111(3), 117(1)(a), 117(1)(d), 117(2), 118(2)(a) and 121(2)(a)(ii).

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

AND

IN THE MATTER OF
THE GLUSKIN SHEFF FUND
THE GS+A PREMIUM INCOME FUND
THE GS+A VALUE FUND

ORDER

WHEREAS the Ontario Securities Commission (the "OSC" or the "Commission") has received an application from Gluskin Sheff + Associates Inc. ("GS+A"), The Gluskin Sheff Fund, The GS+A Premium Income Fund and The GS+A Value Fund (the "Existing Funds") and any other mutual fund which is not a reporting issuer under the Act, established and managed by GS+A after the date hereof (the "Future Funds", together with the Existing Funds, the "Funds") which invests its assets in the The GS+A Global Fund (the "Underlying Fund") for an order pursuant to sections 113, 117(2) and 121(2) of the Act (collectively "Ontario Legislation") exempting GS+A and the Funds from the following requirements:

(a) the restriction prohibiting a mutual fund from knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder as set out in paragraphs 111(2)(b) and 111(2)(c) and subsection 111(3) of the Act;

(b) the requirement of a management company to file a report of every transaction of purchase or sale of securities between a mutual fund it manages and any related person or company and any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, a mutual fund is a joint participant with one or more of its related persons or companies, in respect of each mutual fund to which it provides services or advice, within 30 days after the end of the month in which it occurs as set our in paragraphs 117(1)(a) and 117(1)(d) of the Act; and

(c) the restriction against a portfolio manager knowingly causing an investment portfolio managed by it to invest in the securities of any issuer in which a "responsible person" (as that term is defined in the Act) or an associate of a responsible person is an officer or director, unless the relationship is disclosed to the client and, if applicable, the written consent of the client to the investment is obtained before the purchase as set out in paragraph 118(2)(a) of the Act.

(collectively, the "Applicable Requirements").

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

AND UPON GS+A having represented as follows:

1. GS+A is a corporation incorporated under the laws of the Province of Ontario.

2. GS+A is the manager, portfolio advisor, trustee and principal distributor of each of the Existing Funds and the Underlying Fund. GS+A is registered with the OSC as a Mutual Fund Dealer, Portfolio Manager, Limited Market Dealer and Investment Counsel.

3. The Royal Trust Company is the custodian of the Existing Funds and CIBC Mellon Global Securities Services Company is the custodian of the Underlying Fund.

4. The Existing Funds and the Underlying Fund are pooled investment funds established as limited partnerships under the laws of Ontario. Each investor in these funds has an undivided *pro rata* interest in the fund evidenced by units in the fund. The units of these funds have been offered for sale on an exempt basis to investors.

5. The investment objectives of the Existing Funds and the Underlying Fund are as follows:

The Gluskin Sheff Fund

The purpose of the fund is to invest primarily in publicly traded securities.

The GS+A Premium Income Fund

The purpose of the fund is to invest primarily in publicly traded debt and equity securities with the

objective of providing unitholders stable income, quarterly distributions and capital appreciation.

The GS+A Value Fund

The purpose of the fund is to invest primarily in publicly traded debt and equity securities with the objective of providing unitholders an income stream and the opportunity for capital appreciation.

The GS+A Global Fund

The purpose of the fund is to achieve long-term capital growth by investing in equity securities publicly traded on stock exchanges in the United States, Europe, Australia and the Far East.

6. The Manager intends to establish other pooled investment funds in the future. A Future Fund will be an open-ended trust or limited partnership.

7. The Manager intends to invest a certain amount of the capital of each of the Funds in the Underlying Fund. The percentage invested by each Fund in the Underlying Fund may fluctuate on a daily basis based on investment decisions made by the Manager in order to meet the investment objectives of each Fund.

8. The actual weightings of the investment of a Fund in the Underlying Fund will be reviewed on a daily basis and adjusted to ensure that the investment weighting continues to be appropriate for a Fund's investment objectives. The investment of a particular Fund in the Underlying Fund will be actively managed by the Manager on a daily basis.

9. The investment objectives of the Underlying Fund will be described in the annual report and annual financial statements of the Existing Funds.

10. Unitholders of the Funds receive the audited annual and unaudited quarterly financial statements of the Funds together with the report of the Funds' auditor. Unitholders will also receive appropriate summary disclosure in the financial statements of the Underlying Fund.

11. Unitholders of the Funds may receive the offering memorandum (if any), the annual report, and annual and quarterly financial statements of the Underlying Fund free of charge upon request to the Manager.

12. Where a matter relating to an Underlying Fund requires a vote of security holders of the Underlying Fund, the Manager will not cause the securities of the Underlying Fund held by a Fund to be voted at such meeting.

13. There will be no duplication of management fees and performance fees as between the Funds or the Underlying Fund. The total effective management fee and performance fee charged to an investor in the Funds will be the stated management fee and performance fee in the Limited Partnership Agreement for each of the Existing Funds.

14. There will be no charges levied on the purchase or redemption of securities of the Underlying Fund by the Funds.

15. In the absence of this Order, pursuant to the Applicable Requirements, the Funds are prohibited from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder. As a result, in the absence of this Order, the Funds would be required to divest themselves of any such investments.

16. In the absence of this Order, the Applicable Requirements requires GS+A to file a report on every purchase or sale of securities of the Underlying Funds by the Funds.

17. In the absence of this Order, pursuant to the Applicable Requirements, GS+A is prohibited from causing the Funds to invest in the Underlying Fund unless the specific fact is disclosed to unitholders of the Funds and the written consent of unitholders of the Funds is obtained before the purchase.

18. The investments by the Funds in securities of the Underlying Fund represent the business judgment of "responsible persons" (as defined in the Ontario Legislation) uninfluenced by considerations other than the best interests of the Funds.

AND UPON the undersigned being of the opinion that the tests contained in the Ontario Legislation having been met;

IT IS ORDERED pursuant to the Ontario Legislation that the Applicable Requirements shall not apply so as to prevent the Funds from making and holding investments in securities of the Underlying Fund or so as to require GS+A to file a report relating to each purchase or sale of such securities and disclose such purchase to unitholders of the Funds and obtain their written consent to the investment prior to the purchase;

PROVIDED THAT

1. the Order shall only apply if, at the time the Funds make or hold investments in the Underlying Fund, the following conditions are satisfied:

(a) the annual report and annual financial statements for each of the Funds discloses:

(i) the intent of the Fund to invest a portion of its assets in securities of the Underlying Fund;

(ii) the manager of the Underlying Fund;

(iii) the name of the Underlying Fund; and

(iv) the investment objectives, investment strategies, risks and restrictions of the Underlying Fund;

(b) the arrangements between or in respect of the Fund and the Underlying Fund are such as to avoid the duplication of management fees and performance fees;

(c) the manager of the Funds will not vote the securities of the Underlying Fund held by them, respectively, at any meeting of holders of such securities; and

(d) in addition to receiving the annual and the quarterly financial statements of the Fund, securityholders of the Fund have received appropriate summary disclosure in respect of the Funds' holdings of securities of the Underlying Fund in the financial statements of the Fund.

March 7, 2003.

"Robert L. Shirriff" "Theresa McLeod"

2.2.2 DJL Capital Corp. and Dennis John Little - 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
DJL CAPITAL CORP. AND DENNIS JOHN LITTLE

ORDER
(Sections 127 and 127.1)

WHEREAS on October 13, 1999 and January 11, 2000 the Ontario Securities Commission (the "Commission") issued Notices of Hearing pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of DJL Capital Corp. ("DJL Capital") and Dennis John Little ("Little");

AND WHEREAS the respondents DJL Capital and Little entered into a settlement agreement dated March 11, 2003 (the "Settlement Agreement") wherein they agreed to a proposed settlement of the proceedings commenced by the Notices of Hearing, subject to the approval of the Commission, and wherein Little provided to the Commission a written undertaking never to apply for registration in any capacity under Ontario securities law;

AND UPON reviewing the Settlement Agreement and the Statements of Allegations of Staff of the Commission, and upon hearing submissions from the respondent and from Staff of the Commission;

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

IT IS ORDERED THAT:

(1) the Settlement Agreement dated March 11, 2003, attached to this Order, is hereby approved;

(2) pursuant to clause 2 of subsection 127(1) of the Act, DJL Capital and Little will cease trading securities permanently effective the date of this Order, with the exception that, after five years from the date of the approval of this settlement, Little is permitted to trade securities through a registered dealer for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*;

(3) pursuant to clause 7 of subsection 127(1) of the Act, Little shall resign his position as an officer or director of any issuer which has an interest directly or indirectly in any registrant effective the date of this Order. Little shall resign his position as an officer or director of any issuer in which Little holds the position of an officer or director effective 180 days from the date of this Order. The 180 day period is to permit Little to wind up the following

companies in which he holds the position as sole officer or director:

- DJL Capital Corp.
- Heritage Arabian Farms Ltd.
- Heritage Egyptian Arabian Management 1 Inc.
- Heritage Egyptian Arabian Bloodstock Investments XII Inc.
- Heritage Egyptian Arabian Bloodstock Investments XI Inc.
- Heritage Egyptian Arabian Bloodstock Investments X Inc.
- Heritage Egyptian Arabian Bloodstock Investments IX Inc.
- Heritage Egyptian Arabian Bloodstock Investments VII Inc.
- Heritage Egyptian Arabian Bloodstock Investments VI Inc.
- Heritage Egyptian Arabian Bloodstock Investments III Inc.
- Heritage Egyptican Arabian Bloodstock Investments II Inc.
- Heritage Egyptian Arabian Bloodstock Investments I Inc.
- Diversified Corporate Benefits Limited
- 1510259 Ontario Limited

(4) pursuant to clause 8 of subsection 127(1) of the Act, Little is prohibited permanently from becoming or acting as an officer or director of any issuer which has an interest directly or indirectly in any registrant and from becoming an officer or director of any issuer effective the date of this Order. Little is prohibited permanently from acting as an officer or director of any issuer effective 180 days after the date of the Order of the Commission approving this settlement; and

(5) pursuant to clause 6 of subsection 127(1) of the Act, Little is reprimanded.

March 20, 2003.

"Paul Moore" "Derek Brown"

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

AND

IN THE MATTER OF
DJL CAPITAL CORP. AND DENNIS JOHN LITTLE

SETTLEMENT AGREEMENT

I INTRODUCTION

1. By Notice of Hearing dated October 13, 1999 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), in the opinion of the Commission, it is in the public interest for the Commission:

   (a) to make an order pursuant to section 127(1) clause 2 of the Act that trading in securities by DJL Capital Corp. ("DJL Capital") and Dennis John Little ("Little") cease permanently or for such other period as specified by the Commission;

   (b) to make an order pursuant to section 127(1) clause 3 of the Act that any exemptions contained in Ontario securities law do not apply to DJL Capital and Little;

   (c) to make an order pursuant to section 127(1) clause 6 of the Act that DJL Capital and Little be reprimanded; and

   (d) to make such other order as the Commission considers appropriate.

2. By Notice of Hearing dated January 11, 2000 (the "Second Notice of Hearing"), the Commission announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the Act, in the opinion of the Commission, it is in the public interest for the Commission:

   (a) to make an order that the respondents DJL Capital and Little cease trading in securities, permanently or for such time as the Commission may direct;

   (b) to make an order that the registration of the respondents be terminated, suspended or restricted for such period as directed by the Commission, and/or that terms and conditions be imposed as directed by the Commission;

   (c) to make an order that any exemptions contained in Ontario securities law do not

apply to the respondents or any of them permanently, or for such period as specified by the Commission;

(d) to make an order that Little resign his position as a director and/or officer of DJL Capital;

(e) to make an order that Little is prohibited from becoming or acting as a director or officer of any issuer;

(f) to make an order that the respondents be reprimanded;

(g) to make an order that the respondents, or any of them, pay the costs of Staff's investigation in relation to the matters subject to this proceeding;

(h) to make an order that the respondents, or any of them, pay the costs of this proceeding incurred by or on behalf of the Commission; and/or

(i) to make such other order as the Commission may deem appropriate.

II JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission ("Staff") agree to recommend settlement of the proceedings initiated in respect of the respondents by the Notice of Hearing and Second Notice of Hearing (collectively, the "Notices of Hearing") in accordance with the terms and conditions set out below. The respondents agree to the settlement on the basis of the facts agreed to as hereinafter provided and the respondents consent to the making of an Order in the form attached as Schedule "A" on the basis of the facts set out below.

4. This settlement agreement, including the attached Schedule "A" (collectively, the "Settlement Agreement"), will be released to the public only if and when the settlement is approved by the Commission.

III SETTLEMENT OF FACTS AND CONCLUSIONS

Acknowledgement

5. Staff and the respondents agree with the facts and conclusions set out in Part III of the Settlement Agreement.

Introduction

6. DJL Capital is a corporation incorporated under the laws of Ontario on August 9, 1993 and carried on business in London, Ontario. DJL Capital was registered from July 7, 1995 to January 11, 2000 as a dealer in the category of limited market dealer, pursuant to section 26(1) of the Act (with the exception of the period from August 7, 1999 to October 6, 1999 for failure to pay renewal fees as required). During the material times as described below, DJL Capital was the promoter of the offering for sale of the units in Dual Capital Limited Partnership, and the promoter of the offering for sale of the units of DJL Capital.

7. Little is an individual residing in Ontario and at all material times was the sole director and officer of DJL Capital. Little was registered from July 7, 1995 to January 11, 2000 as the trading officer and director with DJL Capital, a limited market dealer pursuant to section 26(1) of the Act (with the exception of the period from August 7, 1999 to October 6, 1999 as described above).

8. By Temporary Order (the "Temporary Order") of the Ontario Securities Commission (the "Commission") made on January 11, 2000, the Commission ordered that trading by DJL Capital and Little cease. The Temporary Order was extended, on the consent of DJL Capital and Little, by Order of the Commission made on January 21, 2000.

Trading by Little in Dual Capital Units Contrary to the Requirements of Ontario Securities Law

9. During the period from October, 1994 to December, 1996, Little traded in securities, namely units (the "Dual Capital Units") of Dual Capital Limited Partnership (the "Limited Partnership"), where such trading was a distribution of such securities, without having filed a preliminary prospectus and a prospectus and obtaining receipts therefor from the Director as required by section 53(1) of the Act. Dual Capital Management Limited ("Dual Capital") was the limited partner. During the material time, Dual Capital accepted subscriptions to the Dual Capital Units from at least 56 members of the public and raised funds in the amount of at least U.S. $1,500,000.

10. The Dual Capital Units were purportedly offered for sale pursuant to the "seed capital" prospectus exemption set out in section 72(1)(p) of the Act. The requirements of the "seed capital" exemption from the prospectus requirements in Ontario securities law were not satisfied. An offering memorandum dated October 18, 1994, as amended on December 19, 1994 for the Limited Partnership (the "Offering Memorandum"), was provided to some of the investors who purchased the Dual Capital Units.

11. DJL Capital is described in the Offering Memorandum as the promoter, and received payments in the amount of approximately U.S. $161,525.00 from Dual Capital in relation to the

offering of the Dual Capital Units. DJL Capital made payments to Dual Capital in the amount of U.S. $97,964.00.

12. On October 26, 2000, in a related prosecution under section 122 of the Act before the Honourable Mr. Justice Douglas, Dual Capital, and its two officers, Warren Wall and Shirley Joan Wall, entered pleas of guilty in relation to trading by Dual Capital in securities, namely, the Units, without being registered to trade in such securities as required by section 25(1) of the Ontario Securities Act and distributing securities without having filed a prospectus in contravention of section 53(1) of the Ontario Securities Act. Mr. Justice Douglas accepted the pleas, entered convictions and sentenced the two officers, Warren Wall and Shirley Joan Wall, to a total of 30 months and 22 months, respectively, and Dual Capital to a total fine of $1,000,000.

13. In the course of delivering his Reasons for Sentence on October 30, 2000 [cited at (2001) 24 OSCB 763, February 2, 2001], Mr. Justice Douglas stated the following in relation to the description of the investment scheme in the Dual Capital Limited Partnership (also referred to as the "Roll Programme" and the "International Lending Programme"):

> I find that the Roll Programme as conceived, was and remains utter nonsense. The programme, considered in and of itself, is a fraudulent means….
>
> …I find that the Roll Programme was per se dishonest.
>
> …Indeed, the evidence is conclusive and nearly complete that all of the investors were neither sophisticated (but naïve), nor rich (but poor) or, at least, dependent upon the little money they had.

14. The Offering Memorandum represented that DJL Capital would not receive any benefits, directly or indirectly from the issuance of the Limited Partnership Units other than as described therein. The Offering Memorandum further represented that DJL Capital would receive payment equal to 4.5% of the 30% rate of return described above. During the material time, DJL Capital received payments from Dual Capital in the amount of approximately U.S. $161,525.00 when Little knew that the source of payments were funds received from investors and not income earned from any investment made by the Limited Partnership. As stated above, DJL Capital made payments to Dual Capital in the amount of U.S. $97,964.00.

15. During the Material Time, Little sold Units to two investors. The investors paid approximately $130,000 for the purchase of the Units through Little.

Representations in Promotional Material

16. Further, a brochure (the "Brochure") entitled "International Lending Programme - Investor Information" prepared by Little under the name of Dual Capital, was distributed to investors in furtherance of the sale of the Units, and made various representations to investors which were contrary to the public interest. Such representations to investors included the promise of high annual returns under the heading in the Brochure "High Annual Returns .... with Absolutely No Risk" which representations were false and misleading to investors and contrary to the public interest.

Conduct Contrary To The Public Interest in relation to Sale of Dual Capital Units

17. In summary, during the material time, Little violated Ontario securities law and engaged in conduct contrary to the public interest, by reason of the following:

    (a) Little traded in securities without being registered contrary to section 25(1) of the Act;

    (b) Little traded in securities which constituted a distribution without a prospectus contrary to section 53(1) of the Act;

    (c) Little, in his capacity as the sole officer of DJL Capital, the promoter, prepared promotional material which contained false and misleading representations to investors as described above;

    (d) Little failed to disclose to investors that investors' funds were used to fund payments to DJL Capital and/or Little, and trading in the Units, when Little knew or ought to have known of the foregoing in his capacity as an officer and director of DJL Capital; and

    (e) failing to assess the suitability of the Units sold by Little to the needs of the investors.

18. DJL Capital, through its officer and director, Little, sold Units and engaged in conduct to effect the sale of Units, contrary to the prospectus and registration requirements of Ontario securities law described above.

Trading in the DJL Capital Units Contrary to the Requirements of Ontario Securities Law

19. During the period from August, 1997 to September, 1998, DJL Capital and its sole officer, Little, accepted subscriptions to Units in DJL Capital (the "DJL Capital Units") from investors residing in Ontario, and raised funds in the amount of at least Cdn. $950,000.

20. During the material times, DJL Capital and Little traded in securities, namely the DJL Capital Units, where such trading was a distribution of such securities, without having filed a preliminary prospectus and a prospectus and obtaining receipts therefor from the Director as required by section 53(1) of the Act.

21. The DJL Capital Units were purportedly offered for sale pursuant to the "seed capital" prospectus exemption set out in section 72(1)(p) of the Act.

22. The Offering Memorandum dated January 1, 1998 (the "DJL Offering Memorandum") prepared by DJL Capital in connection with the offering of the DJL Capital Units was not delivered to the Commission as required under Ontario securities law. Further, the DJL Offering Memorandum was not provided to each investor who purchased the DJL Capital Units.

23. During the material times, DJL Capital distributed securities for a period greater than six months contrary to the requirements of the exemption set out in section 72(1)(p)(i) of the Act.

24. In addition, the respondents failed to file a report under Form 20 contrary to the requirements contained in section 72(3) of the Act and additional requirements contained in the Act.

25. As set out in paragraph 6 above, during the material time, DJL Capital was registered in the category of limited market dealer and Little was registered as its trading officer. The Units were not sold in accordance with the exemptions from the prospectus and registration requirements contained in 72(1)(p) and 35(1)(21) of the Act and other requirements contained in the Act. Accordingly, DJL Capital and Little did not sell the Units in accordance with their registration under section 26(1) of the Act.

Misrepresentations to Investors Contrary to the Public Interest

Use of Proceeds

26. DJL Capital represented to investors in the DJL Offering Memorandum and in promotional material that DJL Capital was establishing itself as a merchant bank for the purpose of raising capital for dynamic, growing businesses. The summary of the DJL Offering Memorandum states, in part, the following with respect to "Use of Proceeds" from the sale of the Units:

> The estimated net proceeds to the Corporation from a maximum offering hereunder will be $612,000 after deducting the Agent's fee, corporate finance fee. Of this amount, approximately $480,000 will be used to institute a $30,000,000 bond offering (See "Bond Offering"). The writing and preparation of customized software for the business is expected to require $40,000. A further $20,000 will be used as capital to establish the appropriate office facilities and systems. The remaining $72,000 will be added to the working capital.

27. During the material time, DJL Capital and Little failed to disclose to investors that most of the funds accepted from investors for the purchase of DJL Capital Units were not used for the purposes set out in the DJL Offering Memorandum and further failed to disclose that most of the investors' funds were used instead for payments to various companies and persons, including payments to Little in the amount of at least approximately Cdn. $58,000.00. In addition, investor funds of at least Cdn. $654,000 were deposited to an account held in the name of Heritage Arabian Farms Ltd. ("Heritage"), a company incorporated under the laws of Ontario, carrying on the business of providing board and care for horses. Little was during the material time the sole officer and director of Heritage.

Price of Units Offered by DJL Capital

28. The DJL Offering Memorandum states that the offering is comprised of a maximum of 25 unequal DJL Capital Units, and that each DJL Capital Unit consists of a minimum of 2,000 Class A preferred shares to a maximum of 15,000 Class A preferred shares per DJL Capital Unit. However, the accompanying subscription form for the sale of the DJL Capital Units states that each DJL Capital Unit consists of 100 Class A Preferred shares. The subscription form further states that the subscription price of each DJL Capital Unit is $1,000.00 (or 100 Class A Preferred shares at a price of $10.00 per preferred share).

29. DJL Capital and/or Little further represented in the DJL Offering Memorandum that the subscription price per DJL Capital Unit was established by DJL Capital and "Michael Carnegie, C.A., C.B.V., Senior Vice-President, TL Corporate Financial Services Inc., of Hamilton, Ontario". Michael Carnegie and/or TL Corporate Financial Services Inc. had no role in establishing the subscription price per DJL Capital Unit contrary to the

representations made to investors as set out in the DJL Offering Memorandum.

Additional Representations made by DJL Capital and Little

30. DJL Capital and Little made the following representations which were false and misleading to investors and contrary to the public interest:

    (a) DJL Capital and Little represented in promotional material that "... capital will be guaranteed by money on deposit held by the corporation ....", and that " .... at all times there will be at least five dollars on reserve for each dollar of obligation to investors";

    (b) DJL Capital and Little represented in the DJL Offering Memorandum that DJL Capital intended to pay a 12% annual dividend on its preferred shares and that the return would commence March 31, 1998 once funding was completed and that dividends would thereafter be paid quarterly; and

    (c) DJL Capital and Little represented in the DJL Offering Memorandum that DJL Capital ".... anticipates profits of $15,000,000.00 by the year 2002" and that this ".... anticipated growth of approximately 750% over five years should allow all shareholders to experience a significant gain". It is further stated in the DJL Offering Memorandum that DJL Capital ".... anticipates an annualized rate of return of approximately 100%".

31. Investors have not received dividends contrary to the representations made by DJL Capital and Little outlined above. Further, investors have requested repayment of funds invested in respect of the DJL Capital Units offered by DJL Capital and Little or requested that DJL Capital repurchase the Units for the price paid by investors. DJL Capital and Little have not repaid funds or repurchased shares from investors.

Other Matters

32. Little represents to Staff that he has limited assets or funds on hand, as more particularly described in the Statutory Declaration filed herein and marked as Schedule “C” to this Settlement Agreement. Little further represents to Staff that he requires such limited assets and funds for the purpose of paying household and living expenses. Little represents to Staff that the income earned by him in 2000, 2001 and 2002, as set out in Schedule C-7 of the Statutory Declaration, relates to work he did as a consultant. Little further represents that no funds or income received in 2000, 2001 and 2002, as set out in Schedule C-7, were from the sale of securities or related to trading in securities.

Conduct Contrary to the Public Interest

33. DJL Capital acted contrary to the public interest by:

    (a) trading in securities which constituted a distribution without a prospectus contrary to section 53(1) of the Act;

    (b) trading in securities contrary to its registration under section 26(1) of the Act; and

    (c) making representations to investors in the Offering Memorandum and promotional material, as described above, which representations were false and misleading to investors and contrary to the public interest.

34. Little acted contrary to the public interest by:

    (a) trading in securities which constituted a distribution without a prospectus contrary to section 53(1) of the Act;

    (b) trading in securities contrary to his registration under section 26(1) of the Act; and

    (c) authorizing, permitting or acquiescing in the representations made by DJL Capital, and making such representations, to investors in the DJL Offering Memorandum and promotional material, as described above, which representations were false and misleading to investors and contrary to the public interest.

IV TERMS OF SETTLEMENT

35. The respondents, DJL Capital and Little, agree to the following terms of settlement:

    (a) pursuant to clause 2 of subsection 127(1) of the Act, DJL Capital will cease trading securities (which term includes, for the purpose of this settlement, a purchase of a security) permanently effective the date of the Order of the Commission approving the proposed settlement agreement herein;

    (b) pursuant to clause 2 of subsection 127(1) of the Act, Little will cease trading securities (which term includes, for the purpose of this settlement, a purchase of

a security) permanently effective the date of the Order of the Commission approving the proposed settlement agreement herein, with the sole exception that after five years from the date of the Order approving this settlement, Little is permitted to trade securities through a registered dealer for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);

(c) Little undertakes never to apply for registration in any capacity under Ontario securities law, and agrees to execute the undertaking to the Commission in the form attached as Schedule "B" to this settlement agreement;

(d) pursuant to clause 7 of subsection 127(1) of the Act, Little shall resign his position as an officer or director of any issuer which has an interest directly or indirectly in any registrant effective the date of the Order of the Commission approving this settlement. Little shall resign his position as an officer or director of any issuer in which Little holds the position of an officer or director effective 180 days after the date of the Order of the Commission approving this settlement. Little acknowledges that the effective date of resignation by him as an officer or director of an issuer, as provided for in this settlement, is for the sole purpose of permitting Little to wind up the following companies in which he holds the position as sole officer or director:

- DJL Capital Corp.
- Heritage Arabian Farms Ltd.
- Heritage Egyptian Arabian Management 1 Inc.
- Heritage Egyptian Arabian Bloodstock Investments XII Inc.
- Heritage Egyptian Arabian Bloodstock Investments XI Inc.
- Heritage Egyptian Arabian Bloodstock Investments X Inc.
- Heritage Egyptian Arabian Bloodstock Investments IX Inc.
- Heritage Egyptian Arabian Bloodstock Investments VII Inc.
- Heritage Egyptian Arabian Bloodstock Investments VI Inc.
- Heritage Egyptian Arabian Bloodstock Investments III Inc.
- Heritage Egyptican Arabian Bloodstock Investments II Inc.
- Heritage Egyptian Arabian Bloodstock Investments I Inc.
- Diversified Corporate Benefits Limited
- 1510259 Ontario Limited

(e) pursuant to clause 8 of subsection 127(1) of the Act, Little is prohibited permanently from becoming or acting as an officer or director of any issuer which has an interest directly or indirectly in any registrant and from becoming an officer or director of any issuer effective the date of the Order of the Commission approving this settlement. Little is prohibited permanently from acting as an officer or director of any issuer effective 180 days after the date of the Order of the Commission approving this settlement;

(f) Little agrees to be reprimanded by the Commission under clause 6 of subsection 127(1) of the Act; and

(g) Little will attend, in person, at the hearing before the Commission to consider the proposed settlement.

V POSITION OF RESPONDENT

36. The respondent Little represents to Staff that the companies referred to in paragraph 35(d) are not active and do not have any assets. In response to Staff's requests for tax returns filed by Little and DJL Capital for the past three years, Little represented to Staff that such tax returns have not yet been prepared or filed. Little represents to Staff that he has limited assets or funds on hand as more particularly described in the Statutory Declaration filed herein and marked as Schedule "C" to this Settlement Agreement. Little further represents to Staff that he requires such limited funds and assets for the purpose of paying household and living expenses.

VI STAFF COMMITMENT

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

VII PROCEDURE FOR APPROVAL OF SETTLEMENT

38. The approval of the settlement as set out in the Settlement Agreement shall be sought at a public hearing before the Commission in accordance with the procedures described herein and such further procedures as may be agreed upon between Staff and the respondents.

39. If this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting the respondents in this matter and the respondents agree to waive any right to a full hearing, judicial review or appeal of this matter under the Act.

40. If this Settlement Agreement is approved by the Commission, the parties to this Settlement Agreement will not make any statement that is inconsistent with this Settlement Agreement.

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

    (a) each of Staff and the respondents will be entitled to proceed to a hearing of the allegations in the Notices of Hearing and related Statement of Allegations unaffected by the Settlement Agreement or the settlement negotiations;

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

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

42. If, prior to the approval of this Settlement Agreement by the Commission, there are new facts or issues of substantial concern, in the view of Staff, regarding the facts set out in Part III of this Settlement Agreement, Staff will be at liberty to withdraw from this Settlement Agreement. Notice of such intention will be provided to the respondents in writing. In the event of such notice being given, the provisions of paragraph 41 in this part will apply as if this Settlement Agreement had not been approved in accordance with the procedures set out herein.

VIII DISCLOSURE OF SETTLEMENT AGREEMENT

43. Staff or the respondents may refer to any part or all of this Settlement Agreement in the course of the hearing convened to consider this agreement. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all parties to the Settlement Agreement until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.

44. Any obligation as to confidentiality shall terminate upon the approval of this Settlement Agreement by the Commission.

IX EXECUTION OF SETTLEMENT AGREEMENT

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

March 11, 2003.

"Dennis John Little"
Dennis John Little

"Michael Hubley"
Staff of the Ontario Securities Commission
Per: Michael Hubley

SCHEDULE "A"

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

AND

IN THE MATTER OF
DJL CAPITAL CORP. AND DENNIS JOHN LITTLE

ORDER
(Sections 127 and 127.1)

WHEREAS on October 13, 1999 and January 11, 2000 the Ontario Securities Commission (the "Commission") issued Notices of Hearing pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of DJL Capital Corp. ("DJL Capital") and Dennis John Little ("Little");

AND WHEREAS the respondents DJL Capital and Little entered into a settlement agreement dated March 11, 2003 (the "Settlement Agreement") wherein they agreed to a proposed settlement of the proceedings commenced by the Notices of Hearing, subject to the approval of the Commission, and wherein Little provided to the Commission a written undertaking never to apply for registration in any capacity under Ontario securities law;

AND UPON reviewing the Settlement Agreement and the Statements of Allegations of Staff of the Commission, and upon hearing submissions from the respondent and from Staff of the Commission;

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

IT IS ORDERED THAT:

(1) the Settlement Agreement dated March 11, 2003, attached to this Order, is hereby approved;

(2) pursuant to clause 2 of subsection 127(1) of the Act, DJL Capital and Little will cease trading securities permanently effective the date of this Order, with the exception that, after five years from the date of the approval of this settlement, Little is permitted to trade securities through a registered dealer for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*;

(3) pursuant to clause 7 of subsection 127(1) of the Act, Little shall resign his position as an officer or director of any issuer which has an interest directly or indirectly in any registrant effective the date of this Order. Little shall resign his position as an officer or director of any issuer in which Little holds the position of an officer or director effective 180 days from the date of this Order. The 180 day period is to permit Little to wind up the following companies in which he holds the position as sole officer or director:

- DJL Capital Corp.
- Heritage Arabian Farms Ltd.
- Heritage Egyptian Arabian Management 1 Inc.
- Heritage Egyptian Arabian Bloodstock Investments XII Inc.
- Heritage Egyptian Arabian Bloodstock Investments XI Inc.
- Heritage Egyptian Arabian Bloodstock Investments X Inc.
- Heritage Egyptian Arabian Bloodstock Investments IX Inc.
- Heritage Egyptian Arabian Bloodstock Investments VII Inc.
- Heritage Egyptian Arabian Bloodstock Investments VI Inc.
- Heritage Egyptian Arabian Bloodstock Investments III Inc.
- Heritage Egyptican Arabian Bloodstock Investments II Inc.
- Heritage Egyptian Arabian Bloodstock Investments I Inc.
- Diversified Corporate Benefits Limited
- 1510259 Ontario Limited

(4) pursuant to clause 8 of subsection 127(1) of the Act, Little is prohibited permanently from becoming or acting as an officer or director of any issuer which has an interest directly or indirectly in any registrant and from becoming an officer or director of any issuer effective the date of this Order. Little is prohibited permanently from acting as an officer or director of any issuer effective 180 days after the date of the Order of the Commission approving this settlement; and

(5) pursuant to clause 6 of subsection 127(1) of the Act, Little is reprimanded.

DATED at Toronto this day of March, 2003

_____

_____

SCHEDULE "B"

IN THE MATTER OF
DJL CAPITAL CORP. AND DENNIS JOHN LITTLE

UNDERTAKING TO THE
ONTARIO SECURITIES COMMISSION

I, Dennis John Little, am a Respondent to a Notice of Hearing dated October 13, 1999 and a Respondent to a Notice of Hearing dated January 11, 2000 each issued by the Ontario Securities Commission. I undertake to the Ontario Securities Commission that I will never apply for registration in any capacity under Ontario securities law. I have agreed to this term of the settlement between Staff of the Commission and me dated February , 2003.

_____
Witness:

Date: February 26, 2003

_____
Dennis John Little

Date: February 26, 2003

Acknowledgement as Received by,

_____
John Stevenson
the Secretary to the
Ontario Securities Commission

Date: March 20, 2003

SCHEDULE "C"

STATUTORY DECLARATION OF DENNIS JOHN LITTLE
TOWN OF GRANTON
PROVINCE OF ONTARIO

I, Dennis John Little, of the Town of Granton, in the Province of Ontario, do solemnly declare that:

1. I am a Respondent to a Notice of Hearing dated October 13, 1999 and a Respondent to a Notice of Hearing dated January 11, 2000 each issued by the Ontario Securities Commission (collectively, the "Notices of Hearing").

2. I have entered into a settlement agreement with Staff of the Ontairo Securities Commission in settlement of the proceedings initiated by the Notices of Hearing, which settlement will be submitted to the Commission for its approval, as described in the settlement agreement.

3. For the purpose of this declaration, "property" includes money, bonds, investments, goods, things in action, land and every description of property, whether real or personal, moveable or immoveable, legal or equitable, and whether situated in Ontario or elsewhere, and includes obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of, or incidental to such property ("Property").

4. Annexed hereto as Schedule "1" to this Statutory Declaration is a true and correct statement of each bank account (savings, chequing or otherwise) with any bank, trust company, loan association or similar financial institution engaged in the business of maintaining bank accounts which I own or maintain, or over which I have the power, right or authority to issue cheques or withdraw funds.

5. Annexed hereto as Schedule "2" to this Statutory Declaration is a true and correct statement of all automotive vehicles which I own.

6. Annexed hereto as Schedule "3" to this Statutory Declaration is a true and correct statement of any and all real estate which I own or in which I have any legal or equitable interest (directly or as beneficiary).

7. Annexed hereto as Schedule "4" to this Statutory Declaration is a true and correct statement of any and all safety deposit boxes rented to me or to which I have access privileges, including the locations thereof.

8. Annexed hereto as Schedule "5" to this Statutory Declaration is a true and correct statement of all of my direct and indirect liabilities and indebtedness and creditors with respect thereto. I am indebted to such creditors in the amounts set out opposite their respective names.

9. Annexed hereto as Schedule "6" to this Statutory Declaration is a true and correct statement of all general household items and vehicles in which I have an interest, whether legal, beneficial, direct, indirect or otherwise, aside from Property otherwise disclosed herein.

10. Annexed hereto as Schedule "7" to this Statutory Declaration is a true and correct statement of all income, dividends, money, compensation, bonuses, salary and similar benefits and entitlements received by me (the "Income") in the past three years and the names of the persons, corporations or otherwise which pay me the Income.

11. Annexed hereto as Schedule "8" to this Statutory Declaration is a true and correct statement of any registered or unregistered pension fund, mutual funds, retirement fund or annuity, retirement savings plan or other savings plan, owned by me or in which I have any interest.

12. I do not, as of the date of execution of this Statutory Declaration, have any interest, direct or indirect, beneficial, legal or otherwise, in any agreement, which, upon completion, would result n my becoming a legal or beneficial owner, whether directly or indirectly, of any Property.

13. Collectively, Schedules "1" to "8", inclusive, set out my personal net worth as at the date of execution of this Statutory Declaration.

AND I MAKE this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Ontario Evidence Act*.

DECLARED BEFORE ME)
at the City of London,)
in the Province of Ontario)
this 11th day of)
February, 2003)

_____
"Dennis John Little"

_____
A Commissioner, etc.

Schedule 1

List of Bank Accounts for Dennis John Little

Royal Bank	Account # 04262 5019914	-410
Royal Bank	Account # 04262 4500724	5
CIBC	Account # 60 53130	40

Schedule 2

Automobiles owned by Dennis John Little

1989 Oldsmobile 98.

Schedule 3

No real estate is owned by Dennis John Little

Schedule 4

No safety deposit boxes rented by or for Dennis John Little

Schedule 5

List of Liabilities of Dennis John Little

Mastercard	8,000.00
Amex	12,000.00
CTC	6,500.00
Mastercard	8,500.00
Chrysler Credit	7,800.00
Stc Mgt.	13,000.00
Personal Loans	82,000.00
CCRA	7,000.00
Misc. Bills	5,000.00
ESP L.P.	137,250.00
Trafalgar L.P.	140,000.00
Select Tech LP	70,000.00

Schedule 6

List of General Household Item Include

Home Furnishings
Office Furnishings

Schedule 7

List of Income for Dennis John Little for the years 2000, 2001, 2002

Income for 2000:	
Laser Show Systems	37,675.00
Heritage Arabian Farms	9,900.00
PelLab Limited	18,900.00
DJL CapitalCorp.	16,927.00
Esperal Mgt.	3,026.00
Misc. Income	366.00
	86,794.00

Income for 2001:	
PelLab Limited	20,638.00
Lumiere International	11,930.00
Esperal Management	4,909.00
Arcadia Resources	10,553.00
RRSP Redemption	5,232.00
Miscellaneous Income	1,707.00
	54,969.00

Income for 2002:	
Stillwater Consulting	2,000.00
Lumiere International	40,000.00
Esperal Management	1,262.00
	43,262.00

Schedule 8

The registered and unregistered saving plans and investments owned by Dennis John Little

RRSP	30.00

2.2.3 CI Mutual Funds Inc. - cl. 80 (b)(iii)

Headnote

Exemption from the requirement to deliver comparative annual financial statements for the year ending 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, CHAPTER S.5, AS AMENDED (the "Act")

AND

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

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

UPON the application (the "Application") from CI Mutual Funds Inc. (the "Manager") and the Funds for an order pursuant to clause 80(b)(iii) of the Act for relief from the requirement to send comparative annual financial statements to the securityholders of the Funds and the investment funds hereinafter established and/or managed by the Manager unless they have requested to receive them;

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

AND UPON the Manager having represented to the Commission that:

(a) The Manager is a corporation subsisting under the laws of the Province of Ontario and is registered under the Act as an adviser in the categories of investment counsel and portfolio manager. The Manager is the manager of the Funds.

(b) Each existing Fund is a mutual fund in Ontario as defined in the Act and is not in default of any requirements of the Act. Securities of the existing Funds are offered for sale on a continuous basis in each of the provinces and territories of Canada pursuant to applicable prospectus exemptions and as such are not reporting issuers.

(c) 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.

(d) The Manager proposes to send to Securityholders who hold securities of the Funds in client name (the "Direct Securityholders") a notice advising them that they will not receive the annual financial statements of the Funds for the year then ended 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 that the annual financial statements of the Funds may be found on the websites referred to in clause (e) and downloaded. The Manager will send such financial statements to any Direct Securityholder who requests them in response to such notice or who subsequently requests them by use of a toll-free number, fax or email.

(e) Securityholders will be able to access annual financial statements of the Funds either on the SEDAR website or on the Manager's website at www.cifunds.com.

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

(g) The Canadian Securities Administrators have published for comment proposed National Instrument 81-106 which, among other things, would permit mutual funds not to deliver annual 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 each securityholder, to receive the mutual fund's annual financial statements for that financial year.

(h) Proposed National Instrument 81-106 would also require a mutual 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 of the mutual 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 is satisfied that making the Order will not adversely affect the rule-making process with respect to proposed National Instrument 81-106:

IT IS ORDERED 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 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 annual financial statements category, confirmation of mailing of the request forms that have been sent to the Direct Securityholders as described in clause (d) of the representations within 90 days of mailing the request forms;

(b) the Manager shall file on Sedar, under the annual financial statements category, information regarding the number and percentage of requests for annual financial statements 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 time of mailing the request forms and ending 12 months from the time of mailing;

(c) the Manager shall record the number and a summary of complaints received from Direct Securityholders about not receiving the annual financial statements and shall file on Sedar, under the annual financial statements category, this information within 30 days after the end of each quarterly period beginning from the time of mailing the request forms and ending 12 months from the time of mailing;

(d) the Manager shall, if possible, measure the number of "hits" on the annual financial statements of the Funds on the www.cifunds.com website and shall file on Sedar, under the annual financial statements category, this information within 30 days after the end of each quarterly period beginning from the time of mailing the request forms and ending 12 months from the time of mailing; and

(e) the Manager shall file on Sedar, under the annual financial statements category, estimates of the cost savings resulting from the granting of this Decision within 90 days of mailing the request forms.

March 21, 2003.

"Robert L. Shirriff" "Derek Brown"

SCHEDULE "A"

THE FUNDS

Altrinsic Opportunities Fund
BPI American Opportunities Fund
BPI American Opportunities RSP Fund
BPI Global Opportunities Fund
BPI Global Opportunities III Fund
BPI Global Opportunities III RSP Fund
CI Multi-Manager Opportunities Fund
Landmark Global Opportunities Fund
Landmark Global Opportunities RSP Fund
Trident Global Opportunities Fund
Trident Global Opportunities RSP Fund
Trilogy Global Opportunities Fund
Trilogy Global Opportunities RSP Fund

2.3 Rulings

2.3.1 Parteq Research and Development Innovations - ss. 74(1)

Headnote

Ruling under subsection 74(1) of the Act – sections 25 and 53 of the Act do not apply to a trade in a security of a Spin Off Company if the requirements of section 2.1 of OSC Rule 45-501 – Exempt Distributions, except for paragraph 2.1(1)(b), are satisfied and provided that certain conditions are met.

Ontario Statutes

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

Ontario Rule

OSC Rule 45-501 – Exempt Distributions.

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

AND

IN THE MATTER OF
PARTEQ RESEARCH AND DEVELOPMENT INNOVATIONS

RULING
(Subsection 74(1) of the Act)

UPON the application (the "Application") of Parteq Research and Development Innovations (the "Applicant") to the Ontario Securities Commission (the "Commission") for a ruling pursuant to subsection 74(1) of the Act that sections 25 and 53 of the Act will not apply to a trade in the securities of a Spin Off Company (as defined below) provided that the requirements of section 2.1 of OSC Rule 45-501 - *Exempt Distributions* (the "Rule") except for paragraph 2.1(1)(b) are satisfied;

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

AND UPON the Applicant representing to the Commission that:

1. The Applicant is a non-share, non-charitable corporation which was incorporated under the *Corporations Act* (Ontario) on December 16, 1987. The Applicant was incorporated to protect and commercialize intellectual property developed by the faculty of Queen's University at Kingston ("Queen's").

2. By the terms of the collective agreement between Queen's and its faculty, intellectual property created by a faculty member of Queen's ("Intellectual Property") which the faculty member proposes to commercialize must be disclosed to Queen's by the faculty member. Queen's may then refer the proposal to commercialize to the Applicant, if Queen's determines the Applicant is suited to assist with the commercialization of the relevant Intellectual Property.

3. Queen's has granted to the Applicant an exclusive, worldwide licence of Intellectual Property to allow it to carry out its mandate.

4. Under its management and license arrangements with Queen's, the Applicant operates as a cost centre. After operating costs, which may include the grant to employees of the Applicant of incentives which may improve in value with the increase in value of companies the Applicant creates (as described below), any surplus arising from the Applicant's operations from time to time, accrues to Queen's or as it directs. Queen's is a charitable corporation.

5. If the Applicant determines that the Intellectual Property is suitable for commercialization, the Applicant and the principal inventor or inventors of the Intellectual Property enter into one or more agreements providing for the protection of the Intellectual Property, the sharing of licensing proceeds, research arrangements and other matters. If the Intellectual Property is sufficiently broad to support the creation of a new venture, the Applicant will lead the creation, organization and financing of a new company to commercialize the relevant Intellectual Property.

6. The Applicant has created 16 companies to commercialize Intellectual Property. Of these, the following 14 companies remain active: (i) Cardiomics Inc.; (ii) Cytochroma Inc.; (iii) Datec Coating Corporation; (iv) GB Therapeutics Ltd.; (v) iGO Technologies Incorporated; (vi) Integran Technologies Inc.; (vii) Molecular Mining Corporation; (viii) Neuroceptor Inc.; (ix) Neurochem Incorporated; (x) Performance Plants Inc.; (xi) Qubit Systems Inc.; (xii) Roseworks Ltd. (xiii) SE Reactor Inc.; and (xiv) Vaxis Therapeutics Corporation (collectively referred to as the "Spin Off Companies" and individually as a "Spin Off Company"):

7. Only one Spin Off Company has been created by the Applicant to exploit each core or platform technology or bundle of Intellectual Property. The Spin Off Companies are not engaged in a common enterprise, but rather operate independently, and have distinctive business focuses.

8. The Applicant does not take a control position in any Spin Off Company. As a general practice, the Applicant's equity position does not exceed 45% of the issued and outstanding shares of a Spin Off Company, and is diluted as a consequence of

subsequent financing rounds made by each Spin Off Company.

9. It is the Applicant's mandate and obligation to provide intellectual property protection, business and venture creation support to each Spin Off Company.

10. As part of its activity, the Applicant also acts as the manager of certain investment funds, including funds, the investment of which are governed by the *Community Small Business Investment Funds Act*, S.O. 1992, c.18, as amended. Any benefits earned by the Applicant by virtue of undertaking such management, are treated as part of the ordinary cost centre arrangements with Queen's and, after the deduction of any operating costs, any surplus accrues to the benefit of Queen's, or as it directs.

11. The Applicant may be considered to be a promoter, as that term is defined under subsection 1(1) of the Act (a "Promoter"), of each of the Spin Off Companies;

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

IT IS RULED PURSUANT TO subsection 74(1) of the Act that sections 25 and 53 of the Act do not apply to a trade in a security of a Spin Off Company if:

(a) the requirements of section 2.1 of the Rule, except for paragraph 2.1(1)(b), are satisfied; and

(b) the seller of the securities of the Spin Off Company provides an information statement substantially similar to Form 45-501F3 to the purchaser of the security at least four days prior to the date of the trade unless, following such trade, the Spin Off Company will have not more than five beneficial holders of its securities; and provided further that

(c) if, under this Ruling, a security of the Spin Off Company is distributed to the Applicant or a Promoter the first trade in that security is deemed to be a distribution unless the conditions in subsection (2) or (3) of section 2.8 of Multilateral Instrument 45-102 – *Resale of Securities* ("MI 45-102") are satisfied; and

(d) if, under this Ruling, a security of the Spin Off Company is distributed to a person or a company other than the Applicant or a Promoter the first trade in that security is deemed to be a distribution unless the conditions in subsection (3) or (4) of section 2.6 of MI 45-102 are satisfied.

March 11, 2003.

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

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 Reasons for Decision

3.1.1 Lydia Diamond Exploration of Canada Ltd. et al.

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

AND

IN THE MATTER OF
LYDIA DIAMOND EXPLORATION OF CANADA LTD.,
JURGEN PRINZ VON ANHALT AND
EMILIA PRINCESS VON ANHALT

Hearing: June 28, July 3-5, September 18-20, October 10-11, 15-16 and November 4, 2002

Panel:
Paul M. Moore, Q.C. - Vice-Chair (Chair of the Panel)
M. Theresa McLeod - Commissioner
H. Lorne Morphy, Q.C. - Commissioner

Counsel:
Matthew Britton - For the Staff of the Ontario Securities Commission

Nigel Campbell, Robert Brush - For Lydia Diamond Exploration of Canada Ltd.

Joseph Groia, Alistair Crawley, Kevin Richard - For Jurgen Prinz von Anhalt and Emilia Princess von Anhalt

REASONS

I. The Proceeding

[1] This proceeding was a hearing pursuant to sections 127(1) and 127.1 of the *Securities Act*, R.S.O., 1990, c. S.5 (the Act), in the matter of Lydia Diamond Exploration of Canada Ltd. (Lydia), Jurgen Prinz von Anhalt (the Prinz), and Emilia Princess von Anhalt (the Princess), under a notice of hearing dated April 1, 2002, and the related statement of allegations of staff of the Commission.

[2] During the course of the hearing we heard from the following witnesses: Stephanie Collins, a forensic accountant with staff, Fran Harvie, a self-styled psychic consultant, Allan Cheskes, a partner with Mintz & Partners, the auditor of Lydia (the auditors), Dr. Hamish McGregor, a senior associate geologist with Watts, Griffis and McOuat, the Princess, and Alexander Sennecke, an independent director of Lydia.

[3] We made an order under sections 127 and 127.1 on November 19, 2002, which we have attached as Appendix I. We made a further order under section 144 on December 13, 2002, which we have attached as Appendix II.

[4] On May 16, 2001, Lydia Consolidated Diamond Mines Ltd. (Old Lydia) and Acadia Mineral Limited (Acadia) amalgamated to form Lydia. In these reasons, “Lydia” refers to Old Lydia or the amalgamated company, depending on the time frame.

[5] The following are our reasons.

II. The Allegations

[6] Staff alleged that:

(1) Lydia and the von Anhalts traded in securities of Lydia while unregistered and without an applicable exemption from the registration requirement of the Act;

(2) Lydia and the von Anhalts distributed securities of Lydia without a prospectus and without an applicable exemption from the prospectus requirement of the Act;

(3) Lydia misled staff;

(4) Lydia paid undisclosed commissions to Harvie for the sale of Lydia shares;

(5) The von Anhalts used investor funds other than exclusively for proper corporate purposes; and

(6) The von Anhalts, as directors of Lydia, authorized, permitted or acquiesced in the contraventions of the Act by Lydia.

III. Response of the Respondents to the Allegations

[7] Counsel for the von Anhalts argued that:

(1) The respondents relied on the private company exemptions from the registration and prospectus requirements of the Act. The private company exemptions require that there not be more than a certain number of "shareholders". The word "shareholder" in this context means a registered shareholder and does not include investors for whom shares were held in trust by Harvie.

(2) Even if "shareholder" does include investors for whom shares were held in trust, the respondents believed, based on legal advice, that it did not. Therefore, even if the respondents breached the registration or prospectus requirements of the Act, the breaches were technical only. As such, a section 127 order against them would not be in the public interest.

(3) The von Anhalts were, in the beginning, unsophisticated in legal, business and accounting matters and have since obtained valuable experience.

(4) Lydia relied on its lawyers in providing information to staff. If staff were misled, it was not the respondents who misled them.

(5) The financial statements of Lydia have been audited. The Commission should give great weight to this fact in deciding whether investor funds were used for proper corporate purposes.

(6) Only funds expended by the von Anhalts for proper corporate purposes have been reflected in the financial statements as expenses of Lydia. Funds of Lydia expended for their own personal purposes by the von Anhalts have been properly reflected in the financial statements through the shareholders loan account as deductions in the appropriate periods from amounts owed by Lydia to the von Anhalts at the time of the expenditures.

(7) No shareholders of Lydia have been harmed.

(8) An order under section 127 cease-trading Lydia would harm the shareholders of Lydia, the very persons the Commission purports to protect.

(9) The von Anhalts are important to the on-going prospects of Lydia. An order preventing them from acting as officers and directors of Lydia would be harmful to the shareholders of Lydia.

[8] Counsel for Lydia argued that:

(1) Lydia is a viable corporation with a viable exploration program.

(2) Lydia is now well managed by its committee of independent directors. It is not necessary to remove the von Anhalts from the board of directors and management of Lydia. To do that would be to remove the driving force behind Lydia and cause the shareholders more harm than good.

IV. Facts

1. Chronology

The following is a chronology of important events:

1988	• The Princess comes to Canada as a student.
February 13, 1994	• The von Anhalts meet in Nassau, Bahamas.
April 1, 1994	• The von Anhalts marry in Nassau.
August 4, 1994	• The von Anhalts visit Canada on their way to take up residence in Italy. They remain in Canada.
September 1, 1994	• The von Anhalts move to Indian River, near Peterborough, Ontario.
November, 1994	• The von Anhalts begin staking property around Wolf Lake (the Wolf Lake property), near Peterborough.
November 24, 1994	• The birth of Lydia von Anhalt, daughter of the von Anhalts.
November 26, 1994 to December 16, 1994	• First intense period of exploration for gold by the von Anhalts on the Wolf Lake property.
February 10, 1995	• Incorporation of Old Lydia.
February 10 to end of June, 1995	• Second intense period of exploration for gold by the von Anhalts on the Wolf Lake property.
May 31, 1995	• First fiscal year-end of Lydia. Financial statements for that year, issued in 2000, show total operating cash outflows for the year of $188,702 including $108,902 of travel and financing expenses, $24,641 of office, general and other expenses and $55,159 of mining exploration. • At year-end, Lydia owes to the von Anhalts $188,600, according to the shareholders loan account constructed in 2000.
1996	• Some time during the year, Lydia first retains MacLeod Dixon LLP (MacLeod Dixon) as lawyers for Lydia.
May/June, 1996	• Lydia discovers kimberlite indicator minerals in gold digging samplings from the Wolf Lake property. • The Prinz decides the focus of exploration for Lydia should change from gold to diamonds.
May 31, 1996	• Second fiscal year-end. Financial statements for that year, issued in 2000, show total operating cash outflows for that year of $176,189, including $52,183 of travel and financing expenses, $20,922 of office, general and other expenses and $103,083 of mining exploration. • At year-end, Lydia owes to the von Anhalts $364,789, according to the shareholders loan account constructed in 2000.
Mid-July, 1996	• Shares sold to Clark Brown and Izhak Fixler as first investor shareholders.
May 31, 1997	• Third fiscal year-end. Financial statements for that year, issued in 2000, show total operating cash outflows of $186,726, including financing and travel expenses of $20,303, office, general and other expenses of $24,503, and mining exploration expenses of $188,399 (of which $46,481 was non-cash). • During the year, third-party investors provide cash funds of $149,545. • During the year, distributions to the von Anhalts total $196,026. • At year-end, Lydia owes to the von Anhalts $401,970, according to the shareholders loan account constructed in 2000.
August, 1997	• Budget for exploration set at $1,000,000.
December, 1997 to May 1998	• The von Anhalts spend six months in Florida waiting to receive $1,000,000 in funding from a German investor consortium. The funds are not forthcoming.
May 31, 1998	• Fourth fiscal year-end. Financial statements for that year, issued in 2000, show total operating cash outflows of $48,919, including office, general and other expenses of $33,089, financing and travel expenses of $570, and mining exploration of $17,760 (of which $2,500 was non-cash). • During the year, third-party investors provide cash funds of $57,634. • During the year, distributions to the von Anhalts total $57,634. • At year-end, Lydia owes to the von Anhalts $393,255, according to the shareholders loan account constructed in 2000. • As at year-end, Mintz & Partners require a reduction of $60,045 in the shareholders loan account to reverse the personal portion of rent, accommodation and travel expenses and to reflect cash received from investors.

	• During the year, the Princess reports her discovery in 1996 of a 9.346 carat diamond in gold digging samplings discovered while walking around the Wolf Lake property.
Late summer, 1998	• Harvie and the von Anhalts are introduced by Fixler at Harvie's home. According to Harvie, a psychic consultation between Harvie and the Princess occurs. • Harvie subsequently visits the Wolf Lake property with the von Anhalts and later develops a friendship with them.
September 11, 1998	• Harvie buys shares of Lydia and requests permission of the von Anhalts to allow her friends to invest. • Number of Lydia shareholders likely less than 50 at this point in time.
November 24, 1998	• Birthday party dinner with Harvie, the von Anhalts, and Chuck Higgins of MacLeod Dixon.
December, 1998	• Mintz & Partners retained as auditors of Lydia.
March, 1999	• Werb retained as bookkeeper of Lydia.
May 31, 1999	• Fifth fiscal year-end. Financial statements for that year, issued in 2000, show total operating cash outflows of $72,746, including $30,123 of office, general and other expenses, $655 of financing and travel expenses, and $63,411 of mining expenditures (of which $21,443 was non-cash). • During the year, third-party investors provide cash funds totalling $109,500. • At year-end, Lydia owes to the von Anhalts $360,001, according to the shareholders loan account constructed in 2000. • During the year, Mintz & Partners require a net reduction to the shareholders loan account of $33,254 to reflect the personal portion of rent, travel and other expenses.
January, 2000	• The von Anhalts, who had been visiting Palm Beach, return, meet with Harvie, and receive an envelope with $100,000 of subscription cheques from investors who purchased shares through Harvie. • The von Anhalts become concerned over the number of shareholders.
January 16, 2000	• Information meeting at "Jackson's Touch of Class" restaurant between the Princess and investors solicited by Harvie.
February, 2000	• According to the Princess, the von Anhalts meet with MacLeod Dixon to discuss what to do about the number of shareholders. According to the Princess, this was the first discussion with MacLeod Dixon about a reverse take-over by way of amalgamation with a reporting issuer as a possible solution. Acadia later identified as an amalgamation prospect.
March 9, 2000	• Staff receives e-mail complaint about distributions of Lydia shares.
May 31, 2000	• The sixth fiscal year-end. Financial statements for that year show total operating cash outflows of $549,073, including $340,946 of office, general and other expenses, and $232,020 of mining expenditures (of which $18,000 was non-cash). • During the year, third-party investors provide net cash funds of $1,046,478. • At year-end, the shareholders loan account reduced to zero, as a result of extensive adjustments (the 2000 adjustments) required by Mintz & Partners, totalling $364,929, to reverse personal expenses and cash received from investors.
June 1, 2000 and February 2001	• The board of directors of Lydia, comprising the Prince and the Princess, reverses many of the 2000 adjustments. New credits totalling $20,224 are recorded in the shareholders loan account on June 1, 2000. Additional credits of $130,974 are recorded in February 2001.
July 30, 2000 to May 10, 2001	• The von Anhalts sell 3,718,435 Lydia shares held by them.
August 3 and 4, 2000	• Audit reports signed by Mintz & Partners on the financial statements of Lydia for fiscal years 1995, 1996, 1997, 1998, 1999 and 2000.
August 4, 2000	• Lydia issues Joint Management Information Circular (the Information Circular) in connection with the amalgamation with Acadia. The Information Circular includes the audited financial statements of Lydia for the three years ending May 31, 1998, 1999 and 2000.
August 29, 2000	• Shareholder meeting approving amalgamation agreement between Old Lydia and Acadia.
October 3, 2000	• Staff send a letter (the October 3 letter) to the von Anhalts inquiring as to the number of Lydia investors.
October 13, 2000	• Mr. Do of MacLeod Dixon replies (the October 13 reply) to the October 3 letter.
October 19, 2000	• Staff send a letter (the October 19 letter) to Do stating that the number of Lydia investors may have exceeded 50.
November 1, 2000	• Mr. Helfand of MacLeod Dixon replies (the November 1 reply) to the October 19 letter.

May 1, 2001	• Quebec Securities Commission grants an exemption, subject to conditions, permitting amalgamation to be consummated.
May 16, 2001	• Old Lydia and Acadia amalgamate to form Lydia.
January 4, 2002	• Staff notifies Lydia of its intention to proceed with its investigation.
April 1, 2002	• Notice of hearing issued.
May 15, 2002	• At the urging of the independent directors, Heinke Martens made a director and appointed co-chief executive officer with the Princess.

2. The Company

[10] Old Lydia was incorporated under the Ontario *Business Corporations Act*, R.S.O., 1990, c. B.16 (the OBCA) as a private company.

[11] The articles of incorporation of Old Lydia contained the following restrictions:

> No shares of the corporation shall be transferred without either:
>
> (a) the express consent of a majority of the directors of the corporation expressed by a resolution passed by the board of directors or by an instrument or instruments in writing signed by all of the directors; or
>
> (b) the express consent of a majority of the shareholders expressed by a resolution passed by such shareholders or by an instrument or instruments in writing signed by such shareholders.
>
> It shall be a condition of the articles:
>
> (a) that the number of shareholders of the corporation, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the corporation, were while in that employment, and had continued after the termination of that employment to be shareholders of the corporation, is limited to not more than fifty, two or more persons who are the joint registered owners of one or more shares being counted a sole shareholder;
>
> (b) that any invitation to the public to subscribe for securities of the corporation is prohibited;

[12] Lydia, from the time it was formed by amalgamation, was a reporting issuer in Ontario.

3. Governance of Lydia

[13] The amalgamation required exemptive relief from the Quebec Securities Commission. A condition of the exemptive relief was that:

> (1) Harvie agree to transfer shares of Old Lydia held by her to the beneficial shareholders of the shares; and
>
> (2) Lydia be managed exclusively by three independent directors until the end of the investigation by the Ontario Securities Commission.

[14] Since the amalgamation, various persons, including Sennecke, have served as independent directors of Lydia; and until the sudden death of one of the directors during the time of the hearing before us, Lydia has had at least three independent directors who have operated as a committee (the independent committee).

[15] Before the amalgamation, the Prinz was the chairman, chief executive officer and a director of Lydia and the Princess was the president, chief operating officer and a director. After the amalgamation, the Prinz has been the chairman and a director, and the Princess has been the president, chief executive officer and a director.

[16] On May 15, 2002, at the urging of the independent committee, Heinke Martens was made a director and appointed co-chief executive officer with the Princess.

[17] Despite the establishment of the independent committee, the Princess has been involved in the continuing operation and affairs of Lydia.

4. Books and Records

[18] Until 1999, Lydia kept none of the corporate records required under the OBCA, including no register of shareholders, no transfer record of shareholders, and no minutes of shareholder and director meetings. Indeed, we heard evidence that there were never any meetings of directors or shareholders before 1999.

[19] Before 1999, Lydia kept no books of account. It had no general ledger, no accounts to record assets or liabilities or income and expenses. It had no bank accounts and no credit card accounts. It had no process or procedures for budgeting, approving expenses, or for issuing shares.

[20] Starting in 1999, Lydia, at the suggestion of Cheskes, retained Michael Werb, as bookkeeper, to construct financial accounts and books for Lydia for all periods from the date of incorporation of Old Lydia up to the current time. Werb worked closely in this endeavour with Mintz & Partners, who were retained as the auditors of Lydia at the end of 1998. Mintz & Partners prepared the financial statements of Lydia for all periods up to May 31, 2000 from the financial accounts constructed by Werb.

[21] According to the Princess and Cheskes, Werb had a reputation for being careful, thorough and meticulous.

[22] Under the direction of Cheskes, Werb started collecting information regarding the expenses incurred on behalf of Lydia from receipts kept in boxes, and orally from the von Anhalts.

[23] At the same time, Lydia's lawyers were trying to put together a shareholder list and to determine the company's share capital.

[24] Among the accounts constructed by Werb was the shareholders loan account. The shareholders loan account did not exist for most of the time that the von Anhalts were expending funds for Lydia. When Werb was faced with the situation, properly he constructed the shareholders loan account. The account was an explanation for what had happened, not a justification for what had already taken place. The von Anhalts were never aware at any particular moment of how much money Lydia owed them.

[25] Werb recorded in the shareholders loan account as credits to the von Anhalts, moneys they claimed were expended out of their own funds for corporate purposes of Lydia, and as debits to the von Anhalts, moneys of Lydia expended by the von Anhalts for their own purposes.

[26] No written agreements were ever entered into between Lydia and the von Anhalts to provide for loans by the von Anhalts to Lydia, or advances by Lydia to the von Anhalts, or to document the credits and debits eventually reflected by Werb in the shareholders loan account. However, the von Anhalts advised Lydia's directors, and note 7 to the financial statements for the year ended December 31, 2001 reflected, that the von Anhalts had agreed not to demand payment of moneys owed by Lydia to them before June 30, 2003.

[27] Several expenditures by the von Anhalts in 1994, and in 1995 before February 10, 1995, the date of incorporation of Old Lydia, were reflected in the shareholders loan account as corporate expenditures of Lydia. There was no pre-incorporation contract with respect to such expenditures. The evidence we heard did not justify in any way the charging against Lydia of these expenditures as proper corporate expenses. The expenditures were incurred by the von Anhalts in 1994 before the von Anhalts had even thought of acquiring the Wolf Lake property.

[28] Lydia had no corporate bank or credit card accounts until after Mintz & Partners became involved. Before that, and even after, in some instances, funds received from investors were deposited and commingled in personal bank accounts of the von Anhalts or spent directly by the von Anhalts.

[29] Lydia has never generated funds from operations. All of its funds have either come from investors or were funds expended on its behalf by the von Anhalts. All funds applied to reimburse the von Anhalts for moneys expended by them on behalf of Lydia, or otherwise paid to them, came from investors.

5. Shares

[30] On February 10, 1995, the day of incorporation of Old Lydia, 10 shares were issued to the von Anhalts. The next day Old Lydia issued 50 million shares to the von Anhalts.

[31] From and including 1996, up to the time of the amalgamation of Lydia, the von Anhalts caused Lydia to issue shares to approximately 50 individuals, not including Harvie. One of the first investor shareholders was Fixler who ran a local gas bar and restaurant. They had become acquainted with him and had discussed their search for diamonds on their trips to and from Lydia's exploration property. In addition, Lydia issued shares to Harvie in her own right and shares to be held by her "in trust" for 341 other investors.

[32] The von Anhalts sold to investors, before and after the amalgamation, shares of Lydia originally issued to them. The von Anhalts were not registered to trade and Lydia did not file a prospectus under the Act with respect to such trades.

[33] There were no agreements between Harvie and Lydia, nor between Harvie and any investor for whom she held shares in trust, regarding the establishment of any trust or its terms.

[34] In the latter half of 2000, the Princess asked Harvie to sign, and Harvie did sign, subscription agreements between Harvie and Lydia for the shares previously issued to Harvie in trust for others. The agreements were all in the same form, were signed at the same time, and were backdated to the various dates the shares were sold. They contained a representation by Harvie that she was acquiring the shares as principal for her own account. The Princess admitted that she knew at the time that this representation by Harvie in the subscription agreements was untrue.

[35] At the time of the hearing, Lydia had outstanding approximately 60 million shares of which approximately 79% were held by the von Anhalts. The balance were held by approximately 2,600 other shareholders.

[36] The shares of Lydia are not listed on any exchange, and do not trade on a recognized market.

6. Correspondence with Staff

[37] As part of its investigation, which resulted in the issuance of the notice of hearing in this matter, staff asked Lydia for information about its accounts, its shareholders and its investors.

[38] On October 3, 2000, staff sent the October 3 letter to the Prinz and the Princess suggesting that they consult their legal counsel and requiring them to provide, among other information, "[t]he total number of Lydia investors" and "[t]he names, addresses and phone numbers of all individuals and/or companies who are or have been investors of Lydia."

[39] On October 13, 2000, Do replied to the October 3 letter as follows:

> We are counsel to Lydia. We write, on behalf of Lydia to respond to your letter of October 3, 2000 requesting information in respect of said company. Please find enclosed the responses of Lydia to your information request, which responses we have been instructed to forward to your attention.

[40] Among the responses enclosed with the October 13 reply were these statements:

> In respect of the promotion and sale of Lydia's shares stock certificates, Lydia has relied on the private company exemption from the prospectus and registration requirements of the *Securities Act*. Lydia has no more than 50 shareholders, exclusive of current and former employees and has marketed its stock certificates only to acquaintances in the community.
>
> The total number of Lydia investors is 52.

[41] Among the responses enclosed with the October 13 reply, there was also a list of 56 persons, with addresses and phone numbers, identified as current or past shareholders, under the heading "The names, addresses and phone numbers of all individuals and/or companies who are or have been investors of Lydia".

[42] The Princess testified that she did not review the October 13 reply in advance of it being sent, but that she reviewed it afterwards.

[43] On October 19, 2000, staff sent a letter to the attention of Do stating:

> It has come to the attention of Commission staff that the number of investors may have significantly exceeded the 52 investors you have provided in your list to staff and therefore rendering the private company exemption 35(2)10 of the *Securities Act* (Ontario) inapplicable.

[44] On November 1, 2000, Helfand replied to the October 19 letter stating, among other things:

> The Company is now aware that one of its shareholders, Fran Harvey, has also purchased common shares on behalf of third parties (the "Third Parties") despite having signed subscription agreements stating that she was purchasing such shares for her own account. When such information came to the attention of the Company, it did not understand that the purchase of Lydia shares by Ms. Harvey in trust for Third Parties may have taken it outside the ambit of the Private Company Exemptions…

> After receipt of your correspondence dated October 3, 2000, the Company was advised by counsel that the purchase of common shares by Ms. Harvey on behalf of Third Parties may have occurred without the benefit of exemptions from the registration and prospectus requirements available under the Act.

[45] This passage from the November 1 reply suggested that Harvie sold shares to third parties without the knowledge of Lydia. The evidence established, however, that Harvie sold to third parties with the full knowledge of the von Anhalts. The suggestion that Harvie sold Lydia shares to third parties without the company's knowledge was, therefore, misleading to staff.

[46] The Princess testified that she did review a draft of the November 1 reply before it was sent and was aware that its contents were not accurate. However, she permitted the letter to be sent.

[47] The information contained in the October 13 and November 1 replies was clearly false. The Princess knew that the letters contained false information and that they had been sent on behalf of Lydia.

[48] Even assuming that she did not know about the October 13 reply until after it was sent, she did not take any steps to rectify the situation when, according to her testimony, she learned of the letter once it had been sent. Her conduct was designed to mislead staff.

[49] Counsel for the von Anhalts argued that if anyone misled staff, it was due to the lawyers, and that, at worst, the von Anhalts merely acquiesced in the lawyers' conduct. That in itself, however, would have amounted to misleading staff.

7. The von Anhalts

[50] When the Princess met the Prinz, she was a landed immigrant of Canada. She later became a Canadian citizen. When they met, the Prinz held a German passport, but now holds a passport of the Dominican Republic.

[51] The Prinz had never been to Canada until August 4, 1994, when the von Anhalts came for a visit. The Princess was pregnant at the time. They did not intend at the time to make Canada their home.

[52] The Princess testified that because of complications in her pregnancy in Canada, she was unable to fly. Therefore, the von Anhalts could not go to Italy to take up residence in the house that they had rented. The Princess also testified, however, that she did fly to Bermuda after August 4, 1994 and before the birth of her child.

[53] The Princess testified that when she and the Prinz started Lydia, they were relatively unsophisticated persons with respect to legal, business and financial matters, but that they had learned much about these matters over the years. However, we heard evidence that the Prinz had been president of his own property development company in the Bahamas and had had several business relationships in the past. A Harold Gray, an attorney-at-law in the United States, wrote a "To Whom It May Concern" letter dated September 1, 1993 in which he stated, with reference to the Prinz, "he has an engaging personality with an ability to comprehend, understand and analyze business opportunities". Another "To Whom It May Concern" letter from another business colleague referred to the fact that the Prinz had "business savvy".

8. The Wolf Lake Property

[54] The Prinz regularly read the Report on Business and realised that, in the Princess' words, "gold and diamond exploration was… the flavour of the mining industry" at the time.

[55] The Princess testified that while staying in Toronto in 1994, the von Anhalts saw an advertisement in the newspaper for a house in Indian River, 22 kilometres east of Peterborough. They arranged to rent it because it was situated in an ideal small-town setting.

[56] The von Anhalts moved into the Indian River house at the beginning of September, 1994.

[57] When the landlord of the Indian River house asked the Prinz what he did, he replied that he was retired but also mentioned that they were interested in mining. Upon hearing this, the landlord mentioned the Eldorado gold mine nearby.

[58] The von Anhalts had heard that the mine was for sale, which turned out to be untrue, but they discovered that the property next to the Craig mine was for sale. The von Anhalts acquired rights to mine this property (the Wolf Lake property) and subsequently began staking it in the three weeks preceding November 24, 1994. They intended to explore for gold.

[59] The von Anhalts' daughter was born on November 24, 1994.

[60] The Princess testified that two days after the birth of her daughter, she drove on bumpy roads to visit the Wolf Lake property, leaving her infant child in the car, with an attendant, for hours at a time.

[61] The Princess testified that the von Anhalts worked particularly intensely on the property for a three-week stretch from November 26, 1994, to December 16, 1994, and again for a five-month period from February to June 1995. She said that the work was long and exhausting and that the von Anhalts "bucked each other up". She testified that they rented a backhoe and the Princess learned how to operate it in order to cut expenses. At the same time, they learned all they could about mining, including reading the *Mining Act* over dinner each night and into the evening. Whenever the Princess suggested that they give up exploring for gold, the Prinz was determined to continue. He was a very persuasive person and the Princess yielded to his determination.

[62] Under cross-examination, the Princess admitted that during these same time periods, the von Anhalts had travelled to Palm Beach and Europe, including Amsterdam, Madrid, Majorca and Zurich, spending much of their time out of the country.

[63] Despite the fact that Old Lydia was incorporated to explore for gold, the von Anhalts chose a name for the company incorporating the word "diamond". The Princess testified that the various names the von Anhalts applied for that included "gold" were not available. Besides, she testified, they just liked the sound of "diamond". We were surprised at the choice of the corporation's name employing the word "diamond" instead of "gold".

[64] The Princess testified that in May or June, 1996, Lydia discovered kimberlite indicator minerals in gold digging samplings, and the von Anhalts changed their search from gold to diamonds.

[65] The Princess testified that in 1996, she found a nine-carat diamond among the gold digging samplings, although this fact was kept secret and was not disclosed until 1998. In Lydia's 2001 Annual Report, in the "Exploration Review" section, under the sub-heading "1998", it was stated, in reference to this diamond:

> A fourth diamond is discovered in a till sample. Duncan Parker of Harold Weinstein Ltd. (Gemmological Laboratory) later describes it as an octahedron of 9.346 carats.

The 2001 Annual Report also stated under the heading "1994":

> Jurgen and Emilia von Anhalt investigate the area around Eldorado, site of Canada's first gold mine, and stake claims surrounding Wolf Lake. Initially their interest is gold. Later, kimberlite indicator minerals (KIMs) identified in drilling samples turn their attention to diamonds.

[66] In 1997, the von Anhalts prepared an exploration plan for the property with a budget of approximately $1 million. The Princess testified that from this time, the von Anhalts started seeking money from investors locally and outside the country.

9. Fran Harvie

[67] Harvie held herself out as a psychic consultant.

[68] In September of 1998, Harvie became acquainted with the von Anhalts. She became very interested in what the von Anhalts were doing, visited the Wolf Lake Property, and used her alleged psychic powers to indicate where she thought diamonds might be located on the property.

[69] Harvie acquired shares of Lydia for herself and was granted permission by the von Anhalts to find investors for Lydia. Although Harvie testified that she never received commissions for selling shares of Lydia, she stated that she was reimbursed for expenses and received gifts from the von Anhalts. However, she agreed in the settlement agreement between her and staff that she had been paid commissions by the von Anhalts for selling shares in Lydia. Harvie was paid $95,000 in commissions. The fact that Lydia had paid commissions to Harvie was not disclosed to investors.

[70] She agreed with the Princess that shares issued to investors found by Harvie would be held in trust by her in order to limit the number of shareholders of Lydia.

[71] When investors were found by Harvie, she would sell them shares at prices previously set by the Princess, and would collect cheques from the investors. The Princess would subsequently meet with the investors to provide them with information about Lydia.

[72] When the von Anhalts returned from Palm Beach in mid-January 2000, they met with Harvie. Harvie presented them with an envelope containing approximately $100,000 of subscription cheques from investors. The Princess testified she was surprised and overwhelmed by the investors' interest.

[73] She arranged with Harvie to have an information session with the new investors. This was held at "Jackson's Touch of Class" restaurant in Whitby, Ontario. While most of the attendees at the meeting were investors, there may have been some who were not.

[74] As a result, by the end of 2000, Harvie held shares in trust for 341 investors and had raised close to $1 million, which she turned over to the von Anhalts.

[75] Harvie and the von Anhalts told almost everyone they met about the exploration project at Wolf Lake and their enthusiasm for it. As a result, persons interested in investing in Lydia were constantly approaching them.

[76] The Princess testified that she kept a list of investors' names, as did Harvie. There was evidence, however, that in order to complete Lydia's shareholder record, Harvie's help was required.

V. Considerations in Determining the Facts

1. Allegation of Misuse of Funds

[77] Counsel for the von Anhalts moved at the commencement of the hearing to strike the allegation that the moneys from the sale of Lydia shares had not been used exclusively for diamond exploration on the Wolf Lake property. The grounds for the motion were that the respondents had not been provided with particulars. Our rule of practice concerning motions was not complied with. We refused to waive the rule and did not hear the motion.

[78] Staff clarified early on at the hearing that the thrust of the allegation was that moneys received by the von Anhalts were not used exclusively for proper corporate purposes.

[79] The evidence established that during the investigation and pre-hearing phase, on numerous occasions, staff sought information as to the source, amount and use of investor funds and that they had not been provided with full answers to their inquiries. Furthermore, it became evident that during the construction of the general ledger and the shareholders loan account that questions as to the use of funds and the allowability of claims for the credit of expenses were matters of concern among the bookkeeper, the auditors and the von Anhalts.

[80] We had no reason to believe that staff failed to provide all relevant documents and information in their possession relating to this allegation, including analyses of corporate and personal bank accounts that established commingling of moneys received from investors with the von Anhalts' own funds, and the payment of personal expenses out of corporate funds, including those in corporate bank accounts.

[81] As the hearing progressed, it was clear that the respondents were in no way prejudiced as they had asserted they would be.

2. Balance of Probability

[82] In determining whether staff had proved its allegations, we applied the standard of a reasonable balance of probability based on clear and convincing proof from cogent evidence.

3. Onus

[83] Staff had the onus of establishing the facts to substantiate its allegations. However, the respondents had the onus of proving the facts necessary to establish that they had the benefit of the private company exemption they claimed, once staff established that shares were issued without a prospectus and without Lydia being registered as provided under the Act.

[84] In *R. v. Buck River Resources Ltd. et al*. (1984), 25 B.L.R. 209 (Alta. P.C.) (*Buck River*), Marshall J. makes clear, at 222, that the burden of proof is upon the accused to bring himself or herself within the exemption:

> Furthermore, the exception sections therein, deeming sales to be "not to the public" appear to have been rather narrowly construed against the salesman trying to bring himself within the exception, notwithstanding the general rule of interpretation of penal statutes in favour of the accused, and, of course, it is to be remembered that we are dealing with an exception here, not the general provisions of the statute.

4. The Princess

[85] The picture painted by the Princess during her examination-in-chief, of her and her husband, working from morning until night on the Wolf Lake property seven days a week, for periods of up to five months at a stretch, working a backhoe by day, and studying the *Mining Act* by night, changed in cross-examination, when it was admitted that they had spent extended periods of time out of the country.

[86] The Princess testified that she did not know about the limit on the number of shareholders contained in the articles of Old Lydia, because she never had read the articles of incorporation of Old Lydia. Nor, she testified, had she received or sought

any advice with respect to the terms and conditions of the articles from the lawyer who acted on the incorporation of Old Lydia. She claimed that she had been unaware of the need for Lydia to comply with the private company restrictions in its articles and the Act.

[87] However, at another time she testified that when Harvie asked her in 1998 if Harvie's friends might buy shares, the Princess for some reason felt the need to consult Higgins, which she did at her daughter's birthday party. Higgins, she testified, came up with the idea of Harvie's holding shares "in trust".

[88] However, over a year later, when Harvie presented her with cheques for $100,000 from investors in January, 2000, she for some reason became worried about the number of shareholders notwithstanding the trust arrangement, and sought the advice of Higgins for a solution. She testified that Higgins suggested that a reverse take-over by way of amalgamation, such as that which ultimately occurred with Acadia, was a possible solution to the problem of having a limit of 50 on the number of shareholders.

[89] Her testimony of not reading the articles of incorporation of Old Lydia, of not receiving advice from her lawyer at the time of incorporation on the terms and provisions governing Lydia, and of being ignorant of the private company exemption limitations and the need to limit the number of shareholders to 50, was inconsistent with her testimony that she sought advice, after meeting Harvie in 1998, concerning the 50 shareholder limit, and received it from Higgins at a birthday party for her daughter. Furthermore, her testimony that she became concerned about the number of investors to whom Harvie had sold shares was inconsistent with her testimony that she had received legal advice that having Harvie hold shares in trust would circumvent the 50-shareholder limit.

[90] The Princess's testimony contained many inconsistencies. In the end we gave little credence to anything she said that was not otherwise substantiated.

5. Harvie

[91] Before the hearing started, Harvie entered into a settlement agreement with the Commission in which she agreed as to a number of facts. However, her testimony in this case was inconsistent with some of the facts she agreed to in the settlement agreement.

[92] Harvie signed backdated subscription agreements, stating that she was purchasing shares of Lydia as principal, because she was asked to do so by the Princess. She did so even though this statement contradicted the fact that Harvie had purchased the shares for investors and was holding them "in trust".

[93] Harvie's testimony at first appeared to contradict the Princess' testimony that Lydia agreed to pay, and did pay, Harvie a 10% commission for selling shares of Lydia. However, Harvie later admitted that she was compensated for all her work in phoning and speaking to potential investors.

[94] Where Harvie's testimony related to her psychic powers, her version of events varied from the Princess'. We preferred Harvie's version of her first meeting with the Princess and the Prinz, and their first visit together to the Wolf Lake property.

[95] Staff never alleged or attempted to establish in evidence that the von Anhalts or Lydia relied on Harvie, or her purported psychic powers, in carrying out their exploration activities.

[96] We accepted the Princess' assertion that Lydia did not rely on Harvie's alleged powers in Lydia's search for diamonds. However, we concluded that the Princess did allow, if not encourage, Harvie to exercise her talents as a psychic as part of the Princess' endeavour to interest potential investors in Lydia.

6. Cheskes

[97] Cheskes was the partner at the auditing firm responsible for Lydia. Cheskes testified that he assisted Werb in constructing the books and accounts of Lydia and that Mintz & Partners prepared and audited the financial statements of Lydia based on these books and accounts.

[98] All six years were audited at the same time. Cheskes testified that the audits of the first two years of Lydia were very limited. The financial statements for these two years were not included in the Information Circular accompanying the notice of meeting to approve the amalgamation. However, the amount accumulated in the shareholders loan account for those years affected the balances in the financial statements for later periods.

[99] The auditors issued their audit reports on the financial statements on August 3 and 4, 2000, concurrent with the issuance of the Information Circular.

[100] Because of the degree of involvement the auditors had in preparing the financial statements and in assisting Lydia and Werb in the construction of the underlying books and accounts of Lydia, we were not prepared to give the financial statements the deference that counsel for the respondents suggested that we should "because they were audited." Nor were we satisfied that the auditors did the necessary testing and verification of reasonableness, purpose and purport of expenditures that were appropriate in the circumstances. For instance, Werb and Cheskes accepted without further investigation the descriptions and reasons for expenses given by the Princess even where they related to the period before the incorporation of Old Lydia.

[101] Counsel for the respondents argued in their written submission that staff had alleged during the hearing that the audit lacked integrity and that this allegation was not contained in the statement of allegations. This, however, was not an allegation before us. The auditors were not a party to the proceedings. It was not an allegation, but a legitimate submission of staff, based on the evidence, that went to the question of the degree that we, or anyone else, should rely on the audited financial statements as establishing that investor funds had been expended for proper corporate purposes.

[102] The respondents claimed that all of the von Anhalts' personal use of corporate funds was accounted for by the shareholders loan account. It was the respondents who raised as a defence that Lydia's books had been audited and that the auditors would testify that the von Anhalts did not misuse corporate funds. When the respondents raised this defence, staff quite properly challenged the integrity of the audit and proved that it lacked integrity.

[103] When Collins had looked at the shareholders loan account, she questioned whether many of the entries were incurred as expenses for Lydia. She did not receive answers to her questions. As mentioned previously, the respondents simply claimed that Lydia's books had been audited. The respondents claimed that Cheskes would testify and prove that the von Anhalts had not misused corporate funds. When he did testify, however, it was revealed that many of the expenses claimed to have been incurred for Lydia had not been carefully audited. For example, many of the considerable travel expenses had not been independently verified.

7. Werb

[104] Exhibit 24 was Werb's memo to file regarding Lydia expenses. Counsel for the respondents stated that they never intended to use Exhibit 24 in evidence and at first tried to keep it out of testimony. To forestall any suspicion that there might be something in it they wanted to hide, counsel for Lydia eventually waived privilege, if any, concerning the document and consented to its introduction into evidence.

[105] Exhibit 24 was evidence to which we gave a lot of weight, due to its circumstantial probability of trustworthiness. We knew from the evidence of the Princess that the purposes given to Werb and Cheskes for the expenses incurred from June 1, 1994 to mid-October of 1994 were false, because the idea of having a corporation, such as Lydia, and exploring for gold or diamonds, did not exist in the von Anhalts' mind at the time.

[106] For example, in the entry for June 8, 1994, Werb recorded the purpose as:

> Through a contact the Prinz von Anhalt's lawyer in the Bahamas they were introduced to Dr. Woody Stanley, PhD Geologist-Arruama, Brazil, information on diamond exploration and mining; visited his exploration property and discussed his interest in potential investing in Canada.

[107] The entry for July 1, 1994 states: "Introduction by the Honorary Consul of Panama in the Bahamas met with Iram Crespo, Panamanian lawyer – discussion possible funding."

[108] The Princess testified that the von Anhalts only commenced their mining exploration project in late September 1994. Thus, the purpose described in Werb's memo could not be accurate. The mining exploration project had not even been thought of yet.

[109] Counsel for the respondents argued that the only evidence we had on this document was the Princess', and she testified that there were mistakes in it. Counsel for the respondents had the memo. If there were mistakes in it, they could have taken them up with Werb. They could have called Werb to explain.

[110] We found Exhibit 24 reflected the fact of what the von Anhalts told Werb regarding many expenses, especially pre-incorporation expenses. The description of several expenses conflicted with the explanation the Princess gave in her testimony. We did not believe that Werb "got it wrong", or "made it up", in describing the expenses. We relied on the testimony of the Princess and Cheskes that Werb was meticulous and thorough.

[111] The evidence demonstrates that the von Anhalts led the bookkeeper and the auditors to believe that certain travel expenses were incurred in the course of Lydia's business. Indeed, when providing documentary support to Werb, the Princess provided a copy of a Dutch wire transfer dated July 6, 1994. On the transfer, the Princess noted for Werb's benefit "amount transferred *upon* the Prinz starting the staking process" (emphasis added). This was consistent with the von Anhalts' causing

the bookkeeper and auditors to believe that Lydia was a diamond exploration project as early as June 1994, and that travel expenses incurred in that period could be charged to the company.

[112] The Princess speaks at least four languages. She has spoken English extensively since at least 1988. Her English language abilities were quite good when she testified before us. And yet she testified that "upon" meant "before" in the description of the transfer of funds "upon" the commencement of staking. She advanced this explanation when it became starkly evident while she was testifying that at the time in question the Princess and the Prinz had not even become interested in mining, and certainly had not acquired the right to mine the Wolf Lake property.

[113] We believed that if Werb had been told the true reason for the travel, he would not have booked the expense. Cheskes confirmed this. The travel expenses were booked on the basis that the von Anhalts "were meeting with geologists, people in the diamond mining industry, and potential investors." We found that the auditors would not have allowed the travel expenses if they had been aware of their true nature.

8. Collins

[114] Collins' testimony made us seriously question the reliability of the financial statements of Lydia. We were satisfied, after considering all the evidence, including the memo by Werb, the Princess' explanation of the expenditures before incorporation of Old Lydia that were reflected as proper corporate expenses, and Cheskes' testimony, that many expenses charged against Lydia should not have been.

9. Need for a Review

[115] It was obvious that the von Anhalts had misled their bookkeeper and auditors.

[116] We concluded that a large amount of expenses included under travel and general expenses, in addition to those included in the pre-incorporation period, were for personal use.

[117] For example, the auditors initially disallowed but then reallowed 75% of the car rental expenses and 80 % of the living expenses for the von Anhalts while they were supposedly obliged to winter in Palm Beach to await financing from a German consortium.

[118] There was also evidence of extensive commingling of corporate and personal funds, even after the establishment of corporate bank accounts. Funds provided by investors were often deposited into the personal bank accounts of the von Anhalts.

[119] It became clear to us from the Princess' testimony that she completely misconceived the role of Werb, Mintz & Partners and Lydia. We were left with the impression that the Princess regarded the financial statements as the responsibility, in the first and last analysis, of the bookkeeper and the auditors. We were disturbed that the Princess accepted no responsibility that the von Anhalts, like any other officer or agent of a corporation, had a duty and responsibility to ensure that only claims that were for expenses properly and reasonably incurred by them for legitimate corporate purposes should be submitted by them as expenses chargeable to Lydia.

[120] Furthermore, Sennecke testified that the independent directors of Lydia never requested that any further investigation be done concerning the audited financial statements based on questions raised by staff. This was explained in part by counsel for Lydia that Lydia had to concentrate its resources on getting through the hearing and that it was felt not to be appropriate for the independent directors to conduct what in effect would be a forensic audit of past financial periods.

[121] In light of the Princess' view of the role of Lydia, the bookkeeper and the auditors, the work actually done by Mintz & Partners as described by Cheskes, and the absence of a serious review of past financial periods by the independent directors, we had no confidence that the audited financial statements of Lydia should be relied on by the shareholders and others unless and until an independent review of them, as set out in condition 8 of the order we have made, takes place.

[122] Faced with the evidence we heard, we determined that it was in the public interest to require an independent review of the financial statements before they could be used again in connection with the issuance of securities of Lydia.

10. McGregor

[123] We refused to hear evidence as to whether Lydia currently had a viable exploration property. The issues before us did not include whether Lydia was a vibrant exploration company with a good exploration program and prospects. That might have been an issue if we were dealing with allegations that Lydia was not such a company. The issues before us were those outlined in paragraph 6 of these reasons.

[124] McGregor was not qualified by the respondents as an expert witness. He was called to establish that Lydia currently had a viable, reasonable or proper exploration program. Accordingly, we did not find McGregor's testimony all that relevant, although we considered it in determining the manner in which the independent committee operated and the influence and driving force that the von Anhalts had in Lydia.

11. Governance of Lydia

[125] We considered the impact of the condition that the Quebec Securities Commission imposed for approving the amalgamation and the manner in which the independent committee operated. We did not find it necessary to determine if the condition of the Quebec Securities Commission had been complied with. We accepted that Lydia made a real effort to attract qualified persons as independent directors and had some success in this endeavour. In the final analysis, however, we were satisfied that the von Anhalts remained the driving force and directing minds over every aspect of the business, affairs and operations of Lydia.

[126] We were satisfied that staff had proved its allegation that the von Anhalts, as directors of Lydia, authorized, permitted or acquiesced in Lydia's contraventions of the Act.

VI. Analysis

1. Private Company Exemption

A. Statutory Framework

[127] Section 25(1) of the Act provides:

> No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of a dealer…
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[128] Section 53(1) of the Act provides:

> No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director.

[129] The Act provides for several exemptions from the registration and prospectus requirements. Lydia relied on the private company exemption in section 35(2)10 of the Act.

[130] Section 35(2)10 of the Act provides:

> Subject to the regulations, registration is not required to trade in the following securities:
>
> 10. Securities of a private company where they are not offered for sale to the public.

[131] Section 73(1)(a) of the Act provides:

> Sections 53 and 62 do not apply to a distribution of securities,
>
> (a) referred to in subsection 35(2), excepting paragraphs 14 and 15 thereof.

[132] A private company is defined in the Act in section 1(1) as:

> a company in whose constating document,
>
> (a) the right to transfer its shares is restricted,

(b) the number of its shareholders, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the company, were, while in that employment, and have continued after termination of that employment to be shareholders of the company, is limited to not more than fifty, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder, and

(c) any invitation to the public to subscribe for its securities is prohibited.

B. Who is the Public?

(i) The "Common Bonds" Test

[133] Counsel for staff referred us to the leading Canadian decision on whether shares are offered to the public: *R. v. Piepgrass*, [1959] 29 W.W.R. 218 (Alta. C.A.) (*Piepgrass*).

[134] In *Piepgrass*, MacDonald J.A. cited Viscount Sumner L.C.'s decision in *Nash v. Lynde*, [1929] A.C. 158, at 169:

> "The public", in the definition of s. 285, is of course a general word. No particular numbers are prescribed. Anything from two to infinity may serve; perhaps even one, if he is intended to be the first of a series of subscribers, but makes further proceedings needless by himself subscribing the whole.

[135] MacDonald J.A. stated at 227 of *Piepgrass*:

> It seems to me that the very essence of a private company envisages the idea that it is of private, domestic concern to the people interested in its formation or in later acquiring shares in it. It is one thing for an individual or group of individuals to disclose information to friends or associates, seeking support for a private company being formed or in existence, pointing out its attractions for investment or speculation as the case may be, but it is quite another thing for a private company to go out on the highways and byways seeking to sell securities of the company and particularly by high pressure methods, that is, by breaking down the sales resistance of potential purchasers and inducing them to purchase.

[136] And at 228:

> It is clear from the cases cited and from the authorities cited that it is impossible to define with any degree of precision what is meant by the term "offer for sale to the public." It follows that in each instance the court will be called upon to determine whether or not the sale of the securities of the private company transcended the ordinary sales of a private domestic concern to a person or persons having common bonds of interest or association. It is clear from the authorities that whether or not there was an offering to the public is a finding of fact.

[137] In *Piepgrass*, MacDonald J.A., at 228, upheld the trial judge's decision that there had been a solicitation of the public on the following basis:

> The accused in seeking subscriptions from people "had contacted the majority of them previously in other business episodes." The office of the company was in Calgary. Four of the five persons to whom the accused sold securities were in the Camrose district, a distance of some 200 miles from Calgary. Those persons were met individually on their farms by the accused. Each of those persons had a previous business dealing with the accused, each one, apparently, having purchased shares in another company from him. However, they were not in any sense friends or associates of the accused, or persons having common bonds of interest or association.
>
> The fifth person to whom the accused sold shares was Mr. Albert P. Bott, a railway station agent who lived at Westlock, a distance of about 260 miles from Calgary and about 100 miles from where the other persons lived to whom the accused sold shares. Mr. Bott was an absolute stranger to the accused.

[138] In *R. v. McKillop*, [1972] 1 O.R. 164, Greco Prov. Ct. J. stated at 168:

> In my opinion the sales made by the accused to the various named individuals were not of a strictly private nature. In other words shares were not available only to those particular people to the exclusion of all others. While it is true that the individuals who purchased the shares constituted a small number in proportion to all residents of this community, nevertheless, they were not a favoured few, so far as possessing knowledge of the availability of the shares was concerned. They were not, so to speak, in on a secret. To the contrary, information concerning the company and concerning the availability of shares from the accused was apparently of common knowledge, fairly widespread in the community, as witness one Dr. Shunock discussing it with individuals over lunch in a public restaurant. While it is true that the number of those who availed themselves of the opportunity to purchase the shares is not shown to be large,

> nevertheless the availability of the shares was known to the public generally. In my opinion the number of people involved is not the important criterion.

[139] In *Buck River*, the defendant was able to show that the sales of the shares concerned were not as a result of the defendant going "out on the highways and byways", but he was not able to establish that there were "common bonds of interest or association". Marshall Prov. J., stated at 220:

> … to suggest that the relationship of a rather loose association in the management or operation of a non-profit hockey club could, thereby, provide a reasonable opportunity to a purchaser, to assess the "integrity and character" of a fellow participant, as regards the worth of a speculative business venture that that participant was selling, is not reasonable.
>
> In a similar vein, although *Piepgrass* does not spell out that the "common bonds" must relate to the particular company or venture concerned, it appears that something approaching that should be implied. This is so because Macdonald J.A., in *Piepgrass*, concludes that the Act is a regulatory one, "designed to protect unwary purchasers."

[140] Marshall Prov. J., at 221 cited Greco, Prov. Ct. J.'s decision in *McKillop* with approval, noting that Greco had convicted because,

> the sales made by the accused to the various named individuals were not of strictly private nature. In other words, shares were not available only to those particular people to the exclusion of all others.

[141] A company is really nothing but its officers, directors or shareholders. Therefore, the common bonds of interest or association must be with one or more of such persons. Marshall stated at 223,

> Again, having in mind that the Act is regulatory legislation, and that the registration and prospectus filing requirements of the Act are for the purpose of protecting purchasers by insuring that they receive the maximum amount of legitimate information available, in order to fairly evaluate the company or venture, and that we are dealing with an exception to these proper requirements, then it seems to follow, reasonably, that such "bond" must be with such officer, director or shareholder who can provide much, if not all, of the information regarding the company or venture, that would otherwise be disclosed by persons properly registered as a dealer, or salesman of a dealer, in a prospectus, properly filed.

(ii) The "Need to Know" Test

[142] In the United States, the leading case on whether shares are offered to the public is *SEC v. Ralston Purina Co*., 346 U.S. 119 (1953) (*Ralston Purina*). In *Ralston Purina*, the defendant offered shares in the company to its employees from all facets of the company's operation. It was not restricted to senior executives who might have intimate knowledge of the company's affairs.

[143] The U.S. Supreme Court held that the share offering was an offering to the public. Accordingly, it did not qualify for the equivalent to the private company exemption in the *Securities Act of 1933*. The court held that the meaning of "the public" had to be interpreted in accordance with the purpose of the legislation. The *Securities Act of 1933* was intended to ensure that persons who purchased securities were provided with full disclosure. This could be satisfied by providing the potential purchaser with a prospectus that had been receipted by the regulatory authority. In order for the vendor of securities to be exempt from the prospectus requirement, it had to satisfy the court that the purchasers were persons who did not need to know the information a prospectus would provide since they already had that information or had access to such information.

[144] At 126-127, Clark J. stated:

> Keeping in mind the broadly remedial purposes of federal securities legislation, imposition of the burden of proof on an issuer who would plead the exemption seems to us fair and reasonable. *Schlemmer v. Buffalo*, *R. & P.R. Co.*, 205 U.S. 1, 10 (1907). Agreeing, the court below thought the burden met primarily because of the respondent's purpose in singling out its key employees for stock offerings. But once it is seen that the exemption question turns on the knowledge of the offerees, the issuer's motives, laudable though they may be, fade into irrelevance. The focus of the inquiry should be on the need of offerees for the protections afforded by registration. The employees here were not shown to have access to the kind of information which registration would disclose. The obvious opportunities for pressure and imposition make it advisable that they be entitled to compliance with s. 5.

[145] Both *Piepgrass* and *Ralston Purina* have been applied in Canada. In *R. v. Zitzerman* (1996), 11 C.C.L.S. 199 (Man. Prov. Ct.), four investors purchased trust certificates from the defendant. They had all known him for a long period of time, some as long as 40 years and two had hired him as their lawyer. He approached three of them to invest. The other had heard about his investments from a partner and approached the defendant about investing. The individual investors were connected to the accused by their professional relationship, and not by any common bond or interest that would remove them from that

relationship, so that they were not removed from being members of the public. They were persons in the category of "needing to know", so as to be entitled to the statutory protections.

[146] Aquila J. stated at 209:

> the purchasers were not friends or associates of the vendor, or persons having common bonds of interest or association, as outlined in the *R. v. Piepgrass* case, *supra*. In addition, I am convinced the witnesses were people who "need to know"; as set out in the U.S. Supreme Court decision of *Securities and Exchange Commission v. Ralston Purina Inc.*, *supra*.

[147] The prospectus requirements of our Act have the same basic objectives as similar provisions in the securities laws of the United States and other Canadian jurisdictions: to require that investors be provided with or have access to full, true and plain disclosure of the material facts about an issuer before making an investment decision. Accordingly, in our view, under the Act, the public is anyone who needs full disclosure. The private company exemption exempts those who, because of their close association with the issuer, do not require full disclosure. They already have it. Since the nature of the relationship between the purchaser and the issuer is solely within the knowledge of the issuer, and since the issuer claims the exemption, the onus is on the issuer to satisfy the finder of fact that the relationship between the purchaser and issuer is so close that disclosure is not required.

C. Who is a "shareholder"?

[148] The word "shareholder" used in the definition of "private company" is not defined in the Act. Nor was it defined in the articles of Old Lydia. Looking at the purpose of the Act, we do not believe that the word "shareholder" was intended to have a narrow technical meaning in this context.

[149] In our view, it includes persons shown in the register of the shareholders of a corporation required to be maintained by a corporation under corporate law. It also includes shareholders whose names are reflected in a book-based system such as that operated by Canadian Depository for Securities where names are maintained in the books of investment dealers.

[150] Depending on the particular facts, it may also include beneficial shareholders not shown as shareholders on any books or list of shareholders.

[151] In the case before the panel, it was clear that the only purpose for the "trust arrangement" by which Harvie held shares for investors was, on a technical basis, to circumvent the 50-shareholder limit in Old Lydia's articles and in the private company exemption in the Act. In fact, no shareholder register, or proper shareholder records, existed at the time the trust was created and technically, therefore, there were no registered shareholders at the time. In these circumstances, beneficial shareholders whose shares were held by Harvie should be counted in determining the number of shareholders of Lydia at the relevant time.

[152] We can conceive of situations in which the trustee of a trust and not the beneficiaries of the trust, should be counted as a shareholder for the purpose of section 35(2)10 of the Act, for example, where the beneficiaries of an estate hold shares of a private company. However, where a trust is created solely for the purpose of circumventing the provisions of the Act, we have no qualms in stating that it is the number of investors that is determinative of the number of shareholders.

D. Application to Facts

(i) Four Challenges

[153] Counsel for the respondents focussed on only one of the challenges of bringing themselves within the private company exemption to the registration and prospectus requirements of the Act, namely having fewer than 50 shareholders.

[154] Lydia had at least 398 shareholders after Harvie sold shares to investors.

[155] There are three additional challenges in relying on the exemption: i) there must not be any solicitation of the public regardless of the number of shareholders; ii) the onus of establishing the availability of the exemption rests with those relying on it; and iii) the provisions that are required to be contained in the articles of a corporation to qualify it as a private company under the Act must be implemented and not ignored.

[156] Failure to meet any one of the four challenges will result in the exemption not being available. The respondents failed to meet all four challenges in this case.

(ii) Solicitation of the Public

[157] Many of Lydia's first 50 shareholders did not have a particularly close relationship with the von Anhalts. These investors were a diverse group. Some were old friends and acquaintances of the von Anhalts. Others worked at the Wolf Lake property. Some were people who were just introduced to the von Anhalts. There was no evidence that these investors had actual knowledge about the company or access to that knowledge sufficient to make an informed investment decision. They were members of the public.

[158] None of the investors who purchased shares through Harvie had a close association to Lydia when they bought shares. As Helfand wrote in his November 1, 2000 reply to staff:

> [t]he meeting was organized on behalf of those persons for whom Ms. Harvie had purchased shares in trust, as such persons had not previously met any representatives of the company *and had little or no information regarding the exploration program being carried out on the Wolf Lake Property* (emphasis added).

[159] As such, none of these people had the information necessary to judge the character and integrity of the business of Lydia. They were members of the public.

[160] The opportunity to invest was not restricted to a particular class of people. Anyone who was interested could invest.

[161] The von Anhalts let it be known that they were interested in obtaining new investors. It was widely known in the community that they were exploring for diamonds. The von Anhalts allowed information to be circulated about the company.

[162] The Princess and Harvie suggested that they did not approach investors, but rather that investors approached them. What is important, however, is that both the Princess and Harvie attracted persons to approach them by publicly sharing their enthusiasm about the company. Information about the business and affairs of Lydia was not kept confidential, but rather was used to attract investors. Spreading information far and wide with the willingness to accept subscriptions was a solicitation. Taking potential investors to the exploration site also was a form of solicitation.

[163] The Princess admitted that Lydia let it be known to potential investors that Lydia was attempting to list its shares on the TSX. Lydia suggested that when its shares were listed their price would go up. Exhibit 11 was an e-mail dated March 9, 2000, from Debra L. Minion to the Commission's General Inquiries/Corporate Relations reporting that her husband had been offered Lydia shares:

> at 0.75 cents per share and the von Anhalt's say that once it goes on the Stock Exchange it would be listed at approximately $4.50 per share. (They say they have found coloured "fancy" diamonds.)

[164] This e-mail was hearsay evidence, but it was illustrative of the Princess' testimony that she had indicated to investors that Lydia intended to list on a stock exchange and that its share price would go up.

[165] The use of illegal sales tactics by an issuer suggests that an offer is being made to the public.

[166] Section 38(2) of the Act states:

> No person or company with the intention of effecting a trade in a security shall give an undertaking, written or oral, relating to the future value of the price of such security.

[167] Section 38(3) of the Act states:

> Subject to regulation no person or company with the intention of effecting a trade in a security shall, except with the written permission of the director, make any representation, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system…

[168] The fact that Lydia used sales tactics prohibited by section 38 of the Act was further evidence that Lydia was soliciting the public.

[169] Finally, the sheer number of shareholders suggested that the sale of Lydia shares was open to the public.

[170] In conclusion, we determined that Lydia had offered shares to the public and, therefore, the private company exemption was not available to the respondents, regardless of the number of its shareholders.

(iii) Breach of Old Lydia's Articles

[171] Counsel for the von Anhalts argued that the Act does not specifically require a private company to have fewer than 50 shareholders. It states that a private company is one that sets out in its articles a provision that limits its shareholder number to 50. Lydia's articles did this. If Lydia had, in fact, more than the permitted number of shareholders, this fact would not disqualify Lydia, he argued, from being a private company as defined, and entitled to the private company exemption.

[172] This technical argument ignores the fact that almost inevitably, and certainly in this case, where a company does not observe the limit on the number of shareholders set out in its articles, it will have offered its securities to the public.

(iv) Secondary Trades by the von Anhalts

[173] Section 72(3) of the Act provides:

> the first trade in previously issued securities of a company that has ceased to be a private company,… is a distribution except that where,
>
> a) the issuer of the securities is a reporting issuer and has been a reporting issuer for at least twelve months…
>
> then such first trade is a distribution only if it is a distribution as defined in clause (c) of the definition of "distribution" in subsection 1(1).

[174] A "distribution" is defined in paragraph 1(1)(c) as:

> a trade in previously issued securities of an issuer from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of any person, company or combination of persons or companies holding more than 20% of the outstanding voting securities of an issuer shall, in the absence of any evidence to the contrary, be deemed to affect materially the control of that issuer.

[175] On February 11, 1995, Lydia issued approximately 50,000,000 shares to the von Anhalts. This constituted a "distribution" of shares as defined in the Act. This distribution was exempt from the registration and prospectus requirements pursuant to the private company exemption.

[176] Between July 30, 2000 and May 10, 2001, the von Anhalts sold approximately 3,718,435 shares each from their personal shareholdings for total consideration of approximately US$ 112,500 and C$ 338,525 each.

[177] Lydia was not a reporting issuer on May 10, 2001 when the last secondary trade of the von Anhalts' shares occurred. As a result, the secondary sales of the shares were distributions.

[178] In any event, even if Lydia had been a reporting issuer when the von Anhalts sold their shares, the secondary sale of shares would still have been a distribution pursuant to paragraph 1(1)(c) of the Act, as the von Anhalts held at the time a sufficient number of securities to affect materially the control of Lydia.

[179] As a consequence, the von Anhalts' sale of their previously issued shares was a distribution subject to registration and prospectus requirements of the Act. There was no evidence that the von Anhalts had available an exemption from the registration or prospectus requirements of the Act.

[180] Accordingly, staff's allegation that the von Anhalts distributed shares held by them while not registered to trade and without filing a prospectus had been proven.

2. Misleading Staff

[181] Counsel for the von Anhalts argued that staff had not been misled by the October 13 and November 1 replies because staff knew or must have known that there, in fact, were more than 50 investors. Counsel for staff responded that the evidence showed that staff was legitimately making inquiries to verify or confirm what they suspected. This was not done as an exercise in futility. It would have been that if staff had solid information at the time establishing to its satisfaction that there were in fact more than 50 investors.

[182] The statements in question were materially untrue. If we were to accept the argument of counsel for the von Anhalts, we would have to determine that it was not contrary to the public interest for persons to make false or misleading statements about material facts as long as the endeavours to mislead were not successful because of prior knowledge on the part of the Commission.

[183] The von Anhalts' conduct in providing misleading information to staff was particularly serious. In *Wilder et al v. Ontario Securities Commission* (2001), 53 O.R. (3d) 519 at 529 (C.A.), Sharpe J.A. stated:

> The OSC is charged with a statutory obligation to do its best to ensure that those involved in the securities industry provide fair and accurate information so that public confidence and the integrity of the capital markets is maintained. *It is difficult to imagine anything that could be more important to protecting the integrity of capital markets then ensuring that those involved in those markets, whether as direct participants or as advisers, provide full and accurate information to the OSC.* (emphasis added)

VII. Sanctions

1. Harm to Investors

[184] Counsel for the respondents argued that no one was harmed and that the case before us was not one of selling Kansas blue sky. We disagreed. The main purpose of the prospectus requirement of the Act is to ensure that investors receive full, true and plain disclosure of all material facts with respect to their investment. If investors do not receive the disclosure they are entitled to, there is harm to investors.

[185] Investors in Lydia did not receive information as to the use of the proceeds of their investment. The use of proceeds to pay down a shareholders loan from the von Anhalts to Lydia, even where legitimate, rather than to pay for new exploration, was never explained to investors.

[186] To the extent the shareholders loan account was based on expenses not incurred on behalf of Lydia, investors who thought they were investing their moneys to be used for exploration for diamonds suffered harm.

[187] There was no evidence that Lydia disclosed to investors who purchased shares through Harvie that she was being paid a sales commission. Lydia should have disclosed to investors that Harvie was being paid a commission by the company for selling shares.

2. Technical Violation

[188] Counsel for the von Anhalts submitted that the von Anhalts acted reasonably, if mistakenly, by relying on the fact that Lydia's lawyer had advised that they could keep their shareholder number under 50 by using a trust arrangement.

[189] While the term "technical violation" is not a defined legal term, it means a violation that is one of form rather than substance. See *Re Ontario Securities Commission and Electra Investments (Canada) Ltd*. (1984), 45 O.R. (2d) 246 (Sup Ct.).

[190] The violations in the case before this panel were not technical. They were not form over substance. They were substantive and they were wilful.

[191] The trust arrangement concocted by the respondents was solely an attempt to circumvent the registration and prospectus requirements of the Act.

3. Public Interest

[192] We are required to exercise our jurisdiction under sections 127 and 127.1 of the Act by making orders in the public interest, taking into account the purpose of the Act in section 1.1 and the principles set out in section 2.1.

[193] In *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600, the Commission stated at 1610-1611 that:

> The role of this Commission is to protect the public interest by removing from the capital markets, wholly or partially, permanently or temporarily, as the circumstances may warrant those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct, that is the role of the courts, particularly under s. 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.

[194] This was endorsed by Iacobucci J. in *Committee for the Equal Treatment of Asbestos Minority Shareholders* v. *Ontario (Securities Commission)*, [2001] 2 S.C.R. 132.

[195] In *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746, the Commission set out a series of factors to consider when setting sanctions:

> [I]n determining both the nature of the sanctions to be imposed as well as the duration of such, we should consider the seriousness of the allegations proved; the respondent's experience in the marketplace; the level of a respondent's activity in the marketplace; whether or not there has been a recognition of the seriousness of the improprieties; and whether or not the sanctions imposed may deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets.

[196] We took all these factors into consideration in issuing our order.

4. The Prinz

[197] We were satisfied from the Princess' testimony that she and the Prinz consulted extensively together, that she looked to him as the principal decision-maker on important matters and that he was fully implicated in her conduct.

[198] The Princess made it clear to us that the Prinz had a predominant influence over her with respect not only to their marriage but also every aspect of Lydia including its purpose, mission, continuing direction and existence.

[199] The Princess testified that she obeyed her husband's wishes regarding Lydia, that he was a very determined person who often did not take no for an answer. She testified that it was he who decided to find a gold mine, he who decided to change the pursuit of Lydia from gold to diamonds, and he who decided to have Lydia pay Harvie a 10% commission. She reminded us that she was his fourth wife, that she had a prenuptial agreement with him, and that she did not know much about his previous business affairs or his financial circumstances.

[200] We concluded that they are very close, that her relationship with him in Lydia was very much a team effort, and that he had enormous influence with her.

[201] Until the amalgamation he was chief executive officer and a director of Lydia. After the amalgamation he continued as chairman of the board of Lydia. We had no reason to question that he knew everything important that occurred regarding Lydia and the Princess' involvement in these matters.

5. Seriousness of Conduct

[202] We did not believe that the von Anhalts recognized the seriousness of their conduct. They still believed that the only things they had done wrong were: commencing business with little understanding of the laws of the land; relying on others who have not done their job well or have given dishonest advice -- the bookkeeper, the auditors, the lawyers; and that their problems really stemmed from technical violations of the Act, at most, and from a scurrilous approach to an aspect of the case by staff. They still believed that their conduct should not result in real consequences to them because, in their view, no one suffered actual harm.

6. Consequences for the von Anhalts

[203] We were satisfied on clear and cogent facts, from the testimony of the Princess herself, that based on the von Anhalts' conduct in the past, it was likely they would continue to behave in character in the future, with little regard for good business practices and the requirements of securities law.

[204] In light of our findings, we determined that 15 years was the minimum period that the von Anhalts should not be able to act as directors or officers of any issuer.

[205] Staff suggested we consider barring the von Anhalts from the capital markets permanently. A permanent cease-trade would have been consonant with certain settlement agreements that have come before the Commission where there has been a suggestion of dishonesty and misrepresentations made to staff.

[206] We chose a 12-year cease-trade period as sufficient instead.

[207] We narrowed the cease-trading prohibition suggested by staff so it would apply only to securities of smaller and medium-sized issuers. We were satisfied that larger issuers with liquid securities would remain uninfluenced by ownership of their securities by the von Anhalts.

[208] We determined that it would be in the public interest to allow the von Anhalts to divest themselves of their shares in Lydia to persons who would have full disclosure through a prospectus or else could protect themselves through due diligence in an exempt transaction. Accordingly, we allowed them flexibility to divest themselves of their ownership in Lydia with conditions, should they so choose.

7. Consequences for Lydia

[209] Lydia was tainted by the conduct of the von Anhalts. Lydia violated the prospectus and registration requirements of the Act. Lydia acted contrary to the public interest. Lydia's shareholders in addition to the von Anhalts have suffered the consequences of the von Anhalts' conduct.

[210] With respect to an appropriate order regarding Lydia, we were satisfied that prohibiting the von Anhalts from being officers, directors or paid consultants of Lydia was as far as we could properly go. We have no ability to order the von Anhalts to divest themselves of their interest in Lydia or their participation in matters properly belonging to the shareholders. However, it is in the public interest that Lydia not be permitted to access the capital markets unless the conditions we have provided in our order are met.

[211] Lydia now has approximately 2,600 shareholders. Counsel for Lydia submitted that any sanctions should not kill the company. Counsel for staff submitted that as long as the von Anhalts controlled Lydia, it would be difficult, if not impossible, to regard Lydia as separate from the von Anhalts. However, counsel for staff expressed the wish that this could be done.

[212] We have attempted to play the role of Solomon and divide the baby into Lydia and its investors on the one hand, and the von Anhalts on the other.

[213] The order that we have made does not affect trading in securities by any of Lydia's minority shareholders. Lydia's business and operations, including its exploration program, remain essentially unaffected by our decision. Although the Prinz and the Princess had to resign as directors, officers and employees of the company, all of Lydia's other directors and management were permitted to remain in place. Nothing in our decision prevents the Prinz and the Princess from playing a continuing role in the company as its controlling shareholders, and also as unpaid consultants for the company, provided that they comply with the terms of our order.

[214] Our order was designed to strike a balance between the interests of the respondents and the interests of the public. We did not believe it was necessary for general deterrence purposes to broaden or lengthen the periods of the order beyond what we considered necessary to achieve its protective and preventative purposes as regards Lydia and the von Anhalts.

VIII. Costs

[215] The notice of hearing stated that the Commission would consider whether it was in the public interest to make an order pursuant to s. 127.1 of the Act for costs against the respondents. Counsel for staff informed us that the Commission's costs in relation to this hearing were $230,000 and requested an order that they be paid by the respondents.

[216] Counsel for staff advised that the amount of costs was determined using the methodology developed by AssetRisk on behalf of the Commission to calculate costs for the purpose of section 127.1. This methodology was used in determining costs in *Re Donnini* (2002), 25 O.S.C.B. 6225.

[217] We had no reason to believe that the amount of costs requested by counsel for staff was unreasonable, based on our experience and taking into account the effort expended on the case as evidenced by the exhibits and the other evidence.

[218] Counsel for the respondents did not demur concerning the amount of or request for costs, and we received no submission from them as to costs.

[219] The Princess testified that she accepted full responsibility regardless of the actions or advice of Lydia's lawyers, of Harvie, of Werb and of the auditors. Her counsel explained that her acceptance of full responsibility meant that she and not Lydia and the minority shareholders should be visited with the consequences of her actions.

[220] While both the von Anhalts and Lydia breached the Act and acted contrary to the public interest, we were of the view that it was in the public interest to have Lydia pay $25,000, the Princess pay $100,000, and the Prinz pay $100,000 of the Commission's costs.

March 18, 2003.

"Paul M. Moore" "Mary Theresa McLeod" "H. Lorne Morphy"

APPENDIX I

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

AND

IN THE MATTER OF
LYDIA DIAMOND EXPLORATION OF CANADA LTD.,
JURGEN VON ANHALT, EMILIA VON ANHALT

ORDER
(Sections 127 and 127.1)

WHEREAS on April 1, 2002, the Ontario Securities Commission (the Commission) issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act* (the *Act*) in respect of Lydia Diamond Exploration of Canada Ltd. (Lydia), Jurgen von Anhalt, and Emilia von Anhalt;

AND WHEREAS the Commission conducted a hearing into this matter on June 28, July 3-5, September 18-20, October 10-11 and 15-16, and November 4, 2002;

AND WHEREAS the Commission is satisfied that Lydia, Jurgen von Anhalt and Emilia von Anhalt have not complied with Ontario securities law and have not acted in the public interest;

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

IT IS ORDERED THAT:

Lydia

(1) Pursuant to clause 2 of subsection 127(1) of the *Act*, except as permitted in A, B and C below, trading in any securities of Lydia by Lydia cease for three years from the date of this order:

A. Lydia may issue securities to Jurgen von Anhalt, Emilia von Anhalt, any bank, trust company, loan company, insurance company, or any other entity with assets of at least $100 million, if condition (7) is met.

B. Lydia may issue securities under a prospectus that is filed and receipted under the *Act*, if conditions (7) and (8) are met.

C. Lydia may issue securities under an exemption from the prospectus requirements of the *Act*, if conditions (7), (8) and (9) are met.

(2) Pursuant to clause 6 of subsection 127(1) of the *Act*, Lydia is reprimanded.

Jurgen von Anhalt and Emilia von Anhalt

(3) Pursuant to clause 2 of subsection 127(1) of the *Act*, except as permitted in A and B below, trading by each of Jurgen von Anhalt and Emilia von Anhalt in any securities of any issuer - other than a government, an agency of a government, or a corporation with share capital in excess of $100 million at the time of acquisition of the security by Jurgen von Anhalt or Emilia von Anhalt - cease for 12 years from the date of this order:

A. Jurgen von Anhalt and Emilia von Anhalt may sell securities of Lydia under a prospectus that is filed and receipted under the *Act*, if conditions (7) and (8) are met.

B. Jurgen von Anhalt and Emilia von Anhalt may sell securities of Lydia under an exemption from the prospectus requirements of the *Act*, to a person:

1. who is acquiring all the securities of Lydia owned by Jurgen von Anhalt and Emilia von Anhalt, alone or together; or

2. who is acquiring securities of Lydia from Jurgen von Anhalt or Emilia von Anhalt, or both of them, for an aggregate purchase price of at least $500,000;

if condition (7) is met.

C. Notwithstanding the limitation in (3), Jurgen von Anhalt and Emilia von Anhalt may sell securities of any issuer, other than Lydia, held on the date of this order which are made within 60 days after this date.

(4) Pursuant to clause 7 of subsection 127(1) of the *Act*, each of Jurgen von Anhalt and Emilia von Anhalt resign all positions that he or she holds as a director or officer of any issuer.

(5) Pursuant to clause 8 of subsection 127(1) of the *Act,* each of Jurgen von Anhalt and Emilia von Anhalt is prohibited from becoming or acting as a director or officer of any issuer for 15 years from the date of this order.

(6) Pursuant to clause 6 of subsection 127(1) of the *Act*, each of Jurgen von Anhalt and Emilia von Anhalt is reprimanded.

Conditions

The following are the conditions referred to in this order:

(7) Condition (7):

From the day after this order to the time of a trade:

A. neither of Jurgen von Anhalt and Emilia von Anhalt:

1. is a director, officer, employee, agent or paid consultant of Lydia or of any associate or affiliate of Lydia or of any corporation, partnership, joint venturer or other entity that has a business relationship with Lydia or an associate or affiliate of Lydia;

2. acts as a director or officer of Lydia; or

3. attends directors meetings of Lydia;

B. a majority of the directors of Lydia are independent from Jurgen von Anhalt and Emilia von Anhalt; and,

C. the business and affairs of Lydia are managed, or the management thereof is supervised, exclusively by a committee of directors of Lydia all of whom are independent from Jurgen von Anhalt and Emilia von Anhalt.

(8) Condition (8):

A. Lydia has obtained a report of an independent forensic accountant not associated with Mintz & Partners containing recommendations for adjustments, if any, to the financial statements of Lydia for all completed fiscal years of Lydia. The report should address, but not be limited to, the following:

1. with respect to expenses incurred by Jurgen von Anhalt or Emilia von Anhalt and allowed as corporate expenses or reflected in the shareholders' advance (loan) or cash clearing account: the reasonableness of amounts of expenses claimed; the validity of expenses, or the portions thereof, allowed as being for proper corporate purposes; the satisfactory nature of documentation (or other independent verification) proving payment of the expenses to the suppliers;

2. with respect to investors' moneys paid for share subscriptions: the receipt by Lydia of such funds and the proper application by or for Lydia of such funds to proper obligations of Lydia;

3. the current balance of amounts owing, if any, by Jurgen von Anhalt and/or Emilia von Anhalt to Lydia or by Lydia to Jurgen von Anhalt and/or Emilia von Anhalt; and,

4. adjustments, if any, required to the financial statements of Lydia, to reflect properly the matters arising from the foregoing, including adjustments, if any, to the shareholders' advance (loan) or cash clearing account, the net income (deficit), and the assets accounts of Lydia for any fiscal period.

In this regard, items for examination by the forensic accountant should include, but not be limited to: (a) amounts recorded as travel and entertainment expenses of Lydia incurred by Jurgen von Anhalt and/or Emilia von Anhalt during the pre-incorporation period; (b) amounts recorded throughout as expenses of Lydia incurred by Jurgen von Anhalt and/or Emilia von Anhalt with respect to travel, accommodation and car rental; (c) the proportion of expenses, such as rent, incurred by Jurgen von Anhalt and/or Emilia von Anhalt which

was attributed to business purposes; (d) charges to Lydia's bank accounts and visa accounts incurred by Jurgen von Anhalt and/or Emilia von Anhalt for non-business (personal) expenses; and (e) investors' subscription moneys, if any, not paid to or for the account of Lydia.

B. The directors of Lydia cause the financial statements to be restated, if required, in light of the report.

C. The report and any restated financial statements are filed with the Commission.

(9) Condition (9):

Any trade permitted by (1)C may only be made if, in addition to the requirements of the *Act* and Rule 45-501, before entering into an agreement of purchase and sale, Lydia causes to be delivered to the prospective purchaser an offering memorandum that:

A. contains sufficient information that the investor can form a reasoned decision with regard to its investment in Lydia;

B. attaches Lydia's audited financial statements for all fiscal years, as restated if required in light of the report of the independent forensic accountant;

C. is accompanied by each material change report of Lydia filed since the date of the offering memorandum;

D. is accompanied by the interim financial statements for Lydia's most recently completed financial period for which Lydia prepares interim financial statements that are required to be filed; and

E. describes Lydia's corporate governance practices and the circumstances under which they were put in place in 2002, and any subsequent changes.

Costs

(10) Pursuant to section 127.1 of the *Act*, Lydia pay $25,000, Jurgen von Anhalt pay $100,000 and Emilia von Anhalt pay $100,000 of the costs of the Commission of, or related to, the hearing in this matter.

November 19, 2002.

"Paul M. Moore" "Mary Theresa McLeod" "H. Lorne Morphy"

APPENDIX II

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

AND

IN THE MATTER OF
LYDIA DIAMOND EXPLORATION OF CANADA LTD.,
JURGEN VON ANHALT, EMILIA VON ANHALT

ORDER
(Section 144)

WHEREAS on November 19, 2002, the Ontario Securities Commission issued an order pursuant to sections 127 and 127.1 of the *Securities Act* in respect of Lydia Diamond Exploration of Canada Ltd. (Lydia), Jurgen von Anhalt, and Emilia von Anhalt;

AND WHEREAS on November 20, 2002, Lydia, Jurgen von Anhalt and Emilia von Anhalt filed a Notice of Appeal and a motion for a stay of the order pending the appeal;

AND WHEREAS the Honourable Mr. Justice McNeely heard the motion for a stay of the order on November 21, 2002 and he reserved his decision;

AND WHEREAS on November 22, 2002, Jurgen von Anhalt and Emilia von Anhalt requested the Commission to vary the order by changing the starting date of condition 7 from the day after the order to the day after the release of the decision on the motion for a stay of the order in the event the motion was dismissed;

AND WHEREAS the Commission did not deal with the request on the basis that it was premature;

AND WHEREAS on November 27, 2002, Justice McNeely dismissed the motion for a stay of the order;

AND WHEREAS on November 28, 2002, Jurgen von Anhalt and Emilia von Anhalt advised the Commission that Lydia, Jurgen von Anhalt and Emilia von Anhalt were then in compliance with the order except for the payment of costs;

AND WHEREAS on December 4, 2002, Lydia, Jurgen von Anhalt and Emilia von Anhalt applied to the Commission for an order pursuant to section 144(1) of the *Act* to vary the order by changing the starting date of condition 7 from the day after the order to November 28, 2002, and requested the Commission not to require costs to be paid by Lydia, Jurgen von Anhalt and Emilia von Anhalt pending the disposition of the appeal;

AND WHEREAS the Commission consented to hear this application in writing;

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

IT IS ORDERED pursuant to section 144(1) of the *Act* that the original order of November 19, 2002, be varied by amending condition 7 by striking out the words “the day after this order” in the first line and substituting for them, “November 28, 2002”.

December 13, 2002.

“Paul M. Moore” “Mary Theresa McLeod” “H. Lorne Morphy”

3.1.2 Universal Settlements International Inc. - Endorsement

DIVISIONAL COURT FILE NO.: 99/03
DATE: March 20, 2003

ONTARIO
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

B E T W E E N:		
UNIVERSAL SETTLEMENTS INTERNATIONAL INC.	Applicant	Randy Bennett, **for the Applicant**
- and -		
ONTARIO SECURITIES COMMISSION	Respondent	Yvonne B. Chisholm, **for the Respondent**
		HEARD: March 18, 2003

ENDORSEMENT

Benotto S.J.

[1] This is a motion for a stay of the order of the Ontario Securities Commission (OSC) dated January 31, 2003 and July 11, 2002. Therein, the OSC ordered that documents and business records of the Applicant (USI) be produced pursuant to s.11 of the *The Securities Act.* The documents are sought as part of an investigation by the OSC to determine if it has authority to regulate the affairs of USI. That question arises because there is some doubt about whether the product of USI constitutes securities or not.

[2] USI offers a “Viatical" settlement purchase program to Canadian residents. "Viatical settlement" is a term applied to transactions where a person holding a life insurance policy receives the payment prior to his or her death from a third party based on the value of the benefit under the policy. The cases are conflicting as to whether these products are securities or not. The Commission indicated that they “might well be" securities (see page 8 of the decision).

[3] The Commission entered its ordered under s.11 requiring USI to produce to investigators, documents and records relating to its business from January 1, 1999 to July 19, 2002. This order is subject to judicial review scheduled to be heard by the Divisional Court on May 22, 2003.

[4] The OSC argues that a stay of the order should not be granted because the investigation must continue until the hearing. It is argued that the public interest requires that the investigation continue and that USI will do “$263,000 in business in Ontario" in the next two months. There is no evidence, however, that USI has ever been the subject of a complaint.

[5] In my view, the applicant has met the three-pronged test for a stay to be granted. There is a serious issue to be determined regarding the jurisdictional limits of the OSC. Irreparable harm will be done to the applicant: the judicial review will be rendered moot if the stay is not granted. The very issue determined on appeal is the jurisdiction of the OSC to require production of the documents. The applicant also argued that privacy rights will be affected, although it was acknowledged that there is a low expectation of privacy that attaches to business records. Lastly, the balance of convenience favours the granting of the stay as the appeal will be heard in slightly more than two months.

[6] The stay is therefore allowed.

[7] If they are unable to agree, Counsel may exchange and send me written submissions as to costs within the next ten days.

[8] Counsel have agreed as to what materials should be before the panel on the judicial review application. No further certificates are necessary from the OSC in light of this agreement.

Benotto J.

Released: March 20, 2003.

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
CA-Network Inc.	25 Mar 03	4 Apr 03		
Parton Capital Inc.	11 Mar 03	21 Mar 03	21 Mar 03	
Peak Brewing Group Inc.	20 Mar 03	01 Apr 03		

4.2.1 Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Chancellor Enterprises Holdings Inc.	24 Mar 03	4 Apr 03			
Radiant Energy Corporation	26 Mar 03	8 Apr 03			

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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
11-Mar-2003	3 Purchasers	AADCO Vehicle Disposal Services Limited Partnership I - Limited Partnership Units	250,000.00	5.00
11-Mar-2003	A. Smallman	Acuity Pooled High Income Fund - Trust Units	25,000.00	1,750.00
12-Mar-2003	Gerald Arnold	Acuity Pooled High Income Fund - Trust Units	33,000.00	2,315.00
06-Mar-2003	Elaine Robertson	Acuity Pooled High Income Fund - Trust Units	50,000.00	34,870.00
07-Mar-2003	Dieter Frey	Acuity Pooled High Income Fund - Trust Units	174,026.00	12,127.00
13-Mar-2003	N/A	Aloak Corp. - Convertible Debentures	150,000.00	1.00
03-Feb-2003	EDS Canada Inc.	Bank of Ireland Asset Management Limited - Units	198,563.00	23,863.00
03-Feb-2003	EDS Canada Inc.	Bank of Ireland Asset Management Limited - Units	133,384.00	15,284.00
15-Mar-2003	1501678 Ontario Inc.	Chancellor Gate Ltd. - Units	160,000.00	160.00
14-Mar-2003	Lamont Gordon	Connacher Oil and Gas Limited - Units	101,250.00	225,000.00
10-Mar-2003	Dave Ramey	Consolidated Global Minerals Ltd. - Common Shares	100,000	1,000,000.00
28-Feb-2003	7 Purchasers	Contemporary Investment Corp. - Common Shares	161,865.00	161,865.00
10-Mar-2003	Royal Bank of Canada and Skypoint Capital Corporation	Core Networks Incorporated - Warrants	785,500.00	4,740,000.00
17-Mar-2003	Credit Risk Advisors and Bank of Montreal	Denbury Resources, Inc. - Notes	7,335,493.00	2.00

31-Dec-2002 1/31/03	Harris Capital Management Inc.	Distributionco Inc. - Units	31,402.00	157,014.00
18-Mar-2003	15 Purchasers	Dynamic Fuel Systems Inc. - Common Shares	363,083.00	271,562.00
15-Dec-2000 12/12/02	8 Purchasers	Dynex Capital Limited Partnership - Units	5,846,160.00	5,846.00
07-Mar-2003 3/12/03	3 Purchasers	Enpar Technologies Inc. - Units	250,000.00	2,083,332.00
11-Mar-2003	John Douglas	Eolectric Inc. - Shares	100,000.00	100,000.00
10-Mar-2003	12 Purchasers	Fortune Minerals Limited - Common Shares	365,345.00	521,922.00
10-Mar-2003	6 Purchasers	HBH Capital Limited Partnership - Limited Partnership Units	1,720,000.00	1,720.00
12-Mar-2003	10 Purchasers	High Point Resources Inc. - Common Shares	7,431,100.00	5,124,897.00
13-Mar-2003	Royal Trust Corporation of Canada	Imark Corporation - Common Shares	110,000.00	1,100,000.00
04-Mar-2003	Altamira Management	Japan Retail Fund Investment Corporation - Units	156,693.00	25.00
14-Mar-2003	Aumerco Ltd. and J. David Mason	Kettle Point Resources Ltd. - Special Warrants	50,000.00	100,000.00
15-Mar-2003	980235 Ontario Limited and Martin Fabi	Kingwest Avenue Portfolio - Units	350,000.00	20,933.00
01-Mar-2003	Lancaster Balanced Fund II	Lancaster Money Market Fund - Trust Units	1,855,887.00	185,588.00
03-Mar-2003	Robert Munday	Microsource Online, Inc. - Common Shares	1,200.00	200.00
03-Mar-2003	Kevin Drensek	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
03-Mar-2003	Ken Frost	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
28-Feb-2003	Winston Reynolds	Microsource Online, Inc. - Common Shares	1,200.00	200.00
25-Feb-2003	Jan F. Pilat	Microsource Online, Inc. - Common Shares	1,200.00	200.00
24-Feb-2003	Wes Durie	Microsource Online, Inc. - Common Shares	1,200.00	200.00
24-Feb-2003	Luc Ouimet	Microsource Online, Inc. - Common Shares	1,200.00	200.00
12-Mar-2003	Beutel Goodman and Franklin Templeton	Mitsubishi Tokyo Financial Group, Inc. - Shares	801,352.00	125,010.00

01-Mar-2003	5 Purchasers	MMCAP Limited Partnership Fund - Limited Partnership Units	375,000.00	375.00
10-Jan-2002 12/20/02	8 Purchasers	Morneau D.C. Services - Units	2,137,593.00	485,587.00
10-Jan-2002 12/20/02	5 Purchasers	Morneau D.C. Services - Units	2,784,758.00	229,525.00
10-Jan-2002 12/20/02	6 Purchasers	Morneau D.C. Services - Units	1,553,536.00	321,078.00
03-Mar-2003	Carl & Shirley Hasson;Larry G. Traxler	New Solutions Financial (IV) Corporation - Debentures	125,500.00	2.00
31-Dec-2002	7 Purchasers	Newport Mezzanine Fund - Units	600,000.00	6,000.00
12-Mar-2003	17 Purchasers	North Atlantic Nickel Corp. - Units	3,000,030.00	2,727,300.00
18-Mar-2003	4 Purchasers	Northam Real Estate Investment Fund VI, L.P. - Units	55,000,000.00	55,000.00
07-Mar-2003	Harold J. Hodge	Nustar Resources Inc. - Common Shares	50,000.00	500,000.00
13-Mar-2003	3 Purchasers	O'Donnell Emerging Companies Fund - Units	75,000.00	14,031.00
06-Mar-2003	Constellation Credit Linked Certificate Trust (Caribou)	Pioneer Trust - Notes	62,000,000.00	1.00
06-Mar-2003	Constellation Credit Linked Certificate Trust (Caribou)	Pioneer Trust - Notes	21,000,000.00	1.00
11-Mar-2003	Goldcorp Inc.	Planet Exploration Inc. - Units	500,000.00	1,000,000.00
14-Mar-2003	11 Purchasers	PointShot Wireless Inc. - Units	530,229.00	530,229.00
04-Mar-2003	3 Purchasers	Protus IP Solutions Inc. - Preferred Shares	2,000,000.00	2,500,000.00
14-Mar-2003	4 Purchasers	Talware Networx Inc. - Units	72,500.00	725,000.00
31-Jul-2002	11 Purchasers	The Enterprise AOF LP - Limited Partnership Units	4,900,000.00	196.00
12-Mar-2003	3 Purchasers	The Shaw Group, Inc. - Notes	7,287,215.57	3.00
12-Mar-2003	Marianne Whitten	The Strand Boulders Investment Trust - Trust Units	25,000.00	2.00
01-Nov-2002 2/7/03	14 Purchasers	Venture Trading Inc. - Common Shares	488,600.00	488,600.00
12-Mar-2003	Royal Bank of Canada and Trudell Medical Limited	Viron Therapeutics Inc. - Convertible Debentures	182,500.00	2.00
24-Jan-2003	7 Purchasers	William Wilson Group, Inc. - Units	75,000.00	15.00

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
John Buhler	Buhler Industries Inc. - Common Shares	438,600.00
Viceroy Resource Corporation	Channel Resources Ltd. - Common Shares	7,076,850.00
James A. Estill	EMJ Data Systems Ltd. - Common Shares	59,200.00
Glen R. Estill	EMJ Data Systems Ltd. - Common Shares	9,334.00
Hector Davila Santos	First Silver Reserve Inc. - Shares	135,000.00
Conrad M. Black	Hollinger Inc. - Shares	1,611,039.00
Xenolith Gold Limited	Kookaburra Resources Ltd. - Common Shares	1,113,700.00
Paros Enterprises Limited	Morguard Corporation - Common Shares	2,000,000.00
Great Pacific Capital Corp.	Westshore Terminals Income Fund - Trust Units	1,000,000.00

REPORTS MADE UNDER SUBSECTION 2.7(1) OF MULTILATERAL INSTRUMENT 45-102 RESALE OF SECURITIES WITH RESPECT TO AN ISSUER THAT HAS CEASED TO BE A PRIVATE COMPANY OR PRIVATE ISSUER - FORM 45-102F1

Issuer	Date the Company Ceased to be a Private Company or Private Issuer
Forest Gate Resources Inc.	9/4/02
IO-Tek Inc.	3/3/03
Splash & Dore Safety Ltd.	2/28/03

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Barclays Advantaged S&P®/TSX Income Trust Index Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated March 18, 2003
Mutual Reliance Review System Receipt dated March 19, 2003
Offering Price and Description:
$ * - * Series I Units @ $10.00 per Unit @ $10.00. Minimum Purchase : 100 Units
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
First Associates Investments Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Promoter(s):
Barclays Global Investors Canada Limited
Project #521651

Issuer Name:
Brompton Stable Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated March 24, 2003
Mutual Reliance Review System Receipt dated March 25, 2003
Offering Price and Description:
$ * - * Trust Units @ $ * per Trust Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Canaccord Capital Corporation
Dundee Securities Corporation
First Associates Investments Inc.
Newport Securities Inc.
Research Capital Corporation
Promoter(s):
Brompton SI Fund Management Limited
Project #523142

Issuer Name:
EASTSHORE ENERGY LTD.
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated March 21, 2003
Mutual Reliance Review System Receipt dated March 21, 2003
Offering Price and Description:
$6,000,000 to $8,000,000 - 6,000 to 8,000 Units @ $1,000 per Unit
Minimum Subscription: 5 Units ($5,000)
Underwriter(s) or Distributor(s):
Griffiths McBurney & Partners
Promoter(s):
Gary W. Burns
Barry W. Harrison
Kenneth D. Cairns
Project #522713

Issuer Name:
First Quantum Minerals Ltd
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 21, 2003
Mutual Reliance Review System Receipt dated March 21, 2003
Offering Price and Description:
$17,875,000 - 5,500,000 Common Shares Issuable upon the exercise of 5,500,000 Special Warrants
@ $3.25 per Special Warrant
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Canaccord Capital Corporation
Haywood Securities Inc.
Promoter(s):
-
Project #522764

Issuer Name:
SCITI Trust
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated March 20, 2003
Mutual Reliance Review System Receipt dated March 20, 2003
Offering Price and Description:
$ * - * Trust Units @ $10.00 per Unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Raymond James Ltd.
Promoter(s):
Scotia Capital Inc.
Project #518571

Issuer Name:
Scotia Selected Income & Modest Growth Fund
Scotia Selected Aggressive Growth Fund
Scotia Selected Aggressive Growth RSP Fund
Scotia Selected Balanced Income & Growth Fund
Scotia Selected Conservative Growth Fund
Scotia Selected Conservative Growth RSP Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated March 17, 2003
Mutual Reliance Review System Receipt dated March 19, 2003
Offering Price and Description:
Class A and F Units
Underwriter(s) or Distributor(s):
Scotia Securities Inc.
Scotia Securities Inc.
Scotia Securites Inc.
Promoter(s):
The Bank of Nova Scotia
Project #521711

Issuer Name:
APF Energy Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated March 19, 2003
Mutual Reliance Review System Receipt dated March 21, 2003
Offering Price and Description:
$49,920,000.00 - 4,800,000 Trust Units @$10.40 Per Trust Unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
Research Capital Corporation
Griffiths McBurney & Partners
Promoter(s):
-
Project #520393

Issuer Name:
Cen-ta Real Estate Ltd.
Gro-Net Financial Tax & Pension Planners Ltd.
Type and Date:
Final Prospectuses dated March 24, 2003
Receipted on March 25, 2003
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #515514 & 515507

Issuer Name:
Decoma International Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 20, 2003
Mutual Reliance Review System Receipt dated March 20, 2003
Offering Price and Description:
$100,000,000.00 - 6.50% Convertible Unsecured Subordinated Debentures Due 2010
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Griffiths McBurney & Partners
National Bank Financial Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #519748

Issuer Name:
Ethical Balanced Fund
Principal Regulator - British Columbia
Type and Date:
Amendment #1 dated March 18, 2003 to the Simplified Prospectus and Annual Information Form dated June 24, 2002
Mutual Reliance Review System Receipt dated March 21, 2003
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Promoter(s):
-
Project #449060

Issuer Name:
Investors Real Property Fund
Principal Regulator - Manitoba
Type and Date:
Amendment #1 dated March 14, 2003 to Final Long Form Prospectus dated September 13, 2002
Mutual Reliance Review System Receipt dated March 19, 2003
Offering Price and Description:
Offering Class A and B Units
Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc.
Les Services Investors Limitee
Investors Group Financial Services Inc.
Promoter(s):
-
Project #470192

Issuer Name:
Lincluden Balanced Fund
(Units)
Type and Date:
Final Simplified Prospectus dated March 18, 2003
Receipted on March 21, 2003
Offering Price and Description:
Mutual Fund Units @ Net Asset Value per Unit
Underwriter(s) or Distributor(s):
Lincluden Management Limited
Promoter(s):
Lincluden Management Limited
Project #512344

Issuer Name:
The Consumers' Waterheater Income Fund
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated March 25, 2003
Mutual Reliance Review System Receipt dated March 25, 2003
Offering Price and Description:
$119,014,898.00 10,918,798 Units @$10.90 per Unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
TD Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Promoter(s):
Enbridge Services Inc.
Project #519129

Issuer Name:
Wells Fargo Financial Canada Corporation (formerly Norwest Financial Canada Company)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated March 13, 2003 to Final Short Form Shelf Prospectus dated October 3, 2001
Mutual Reliance Review System Receipt dated March 19, 2003
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
TD SECURITIES INC.
Promoter(s):
-
Project #387310

Issuer Name:
Investors Global Natural Resources Class
Investors Global Infrastructure Class
Investors Global Consumer Companies Class
Managed Yield Class
Investors Mergers & Acquisitions Class
Investors Global e.Commerce Class
Investors Global Health Care Class
Investors Global Science & Technology Class
Investors Global Financial Services Class
IG Mackenzie Universal Emerging Markets Class
IG Mackenzie Ivy European Class
IG AGF Asian Growth Class
Investors Latin American Growth Class
Investors Pan Asian Growth Class
Investors European Mid-Cap Growth Class
Investors European Growth Class
Investors Japanese Growth Class
Investors Pacific International Class
Investors North American Growth Class
IG Mackenzie Ivy Foreign Equity Class
IG AGF International Equity Class

IG FI Global Equity Class
IG Templeton International Equity Class
Investors International Small Cap Class
Investors Global Class
IG Goldman Sachs U.S. Equity Class
IG Janus American Equity Class
IG AGF U.S. Growth Class
IG FI U.S. Equity Class
Investors U.S. Small Cap Class
Investors U.S. Opportunities Class
Investors U.S. Large Cap Growth Class
Investors U.S. Large Cap Value Class
IG Mackenzie Select Managers Canada Class
IG AGF Canadian Growth Class
IG AGF Canadian Diversified Growth Class
IG FI Canadian Equity Class
IG Sceptre Canadian Equity Class
IG Beutel Goodman Canadian Equity Class
Investors Canadian Small Cap Class
Investors Canadian Small Cap Growth Class
Investors Quebec Enterprise Class
Investors Summa Class
Investors Canadian Enterprise Class
Investors Canadian Large Cap Value Class
Investors Canadian Equity Class
Principal Regulator - Manitoba
Type and Date:
Amendment #2 dated March 14, 2003 to Final Simplified Prospectus dated October 16, 2002
Mutual Reliance Review System Receipt dated March 19, 2003
Offering Price and Description:
Series A Shares and Series B Shares
Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc.
Les Services Investors Limitee
Investors Group Financial Services Inc.
Investors Groupe Financial Services Inc.
Les Services Investors Limitee
Promoter(s):
-
Project #470498

Issuer Name:
Dimethaid Research Inc.
Type and Date:
Rights Offering Circular dated March 18, 2003
Accepted on March 19, 2003
Offering Price and Description:
52,715,336 Rights to Subscribe for up to 13,178,834 Common Shares at a Price of $2.00 per Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #387310

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Name	Front Street Investment Management Inc. Attention: David Conway 87 Front Street East Suite 400 Toronto ON M5E 1B8	From: Tuscarora Investment Management Inc. To: Front Street Investment Management Inc.	Feb 14/03

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 IDA Discipline Penalties Imposed on David Stojanovic – Violation of By-Law 29.1

Contact:
Andrew P. Werbowski
Enforcement Counsel
(416) 943-5789

BULLETIN #3121
March 13, 2003

DISCIPLINE

DISCIPLINE PENALTIES IMPOSED ON DAVID STOJANOVIC – VIOLATION OF BY-LAW 29.1

Person Disciplined

The Ontario District Council of the Investment Dealers Association of Canada (the "Association") has imposed discipline penalties on David Stojanovic, at all material times a registered representative employed by a Member of the Association.

By-laws, Regulations, Policies Violated

On March 11, 2003 the Ontario District Council considered, reviewed and accepted a Settlement Agreement negotiated between Mr. Stojanovic and Association staff.

Pursuant to the Settlement Agreement, Mr. Stojanovic admitted that he engaged in conduct unbecoming a registered representative by creating a fictitious credit adjustment in a dormant client account and using the buying power created by that credit adjustment to effect sixteen unauthorized transactions contrary to By-law 29.1.

Penalty Assessed

The discipline penalty assessed against Mr. Stojanovic is a permanent prohibition on his registration approval with any Member Firm of the Association.

Mr. Stojanovic is also required to pay $3,000.00 towards the Association's costs of the investigation of this matter.

Summary of Facts

In August 2000, Mr. Stojanovic was initially approved as a Registered Representative with Versus Brokerage Services Inc. On or about January 1, 2001, Versus changed its name to E*Trade Canada Inc. He was employed by E*Trade until his employment was terminated for cause on January 3, 2002.

In December 2001, Mr. Stojanovic randomly sought out a dormant client account that was inactive and had no funds. He located the account of a client, Mr. C. with whom he had no relationship.

On December 20, 2001 Mr. Stojanovic changed the mailing address on Mr. C's account. In addition, shortly thereafter, he changed the account password. These actions were done without the knowledge or consent of the account holder.

Mr. Stojanovic's supervisor in the Customer Service Department maintains a computer that has an "Intraday Program", which permits intraday credit or debit adjustments to client accounts. The use of this computer is restricted to certain E*Trade personnel. Mr. Stojanovic was not one of the permitted users of this computer.

On December 27, 2001, Mr. Stojanovic went to work early, at approximately 6:30 a.m., when no other employees were in the office. He gained access to the intraday program on his supervisor's computer and used it to place (US)$3,200,000 into Mr. C's account. Mr. Stojanovic then made 16 unauthorized trades in Mr. C's account utilizing the (US)$3,200,000 credit adjustment as "buying power".

On the following day, during a routine review of client margin accounts, E*Trade's compliance department noticed the unusual trading activity in Mr. C's account and began an internal investigation.

On January 3, 2002, after initially denying responsibility for the events referred to above, Mr. Stojanovic acknowledged his activities and provided written confirmation of his conduct to E*Trade's compliance personnel.

The unauthorized transactions were cancelled. The account of Mr. C was ultimately unaffected and Mr. C suffered no losses. Mr. Stojanovic did not receive any financial benefit from his conduct.

Mr. Stojanovic is currently not employed in the securities industry.

Kenneth A. Nason
Association Secretary

13.1.2 TSX – Notice to Participating Organizations – Toronto Stock Exchange Share Certificate Requirements

TSX – NOTICE TO PARTICIPATING ORGANIZATIONS

TORONTO STOCK EXCHANGE SHARE CERTIFICATE REQUIREMENTS

The Security Transfer Association of Canada ("STAC") has developed “generic” certificate requirements in Canada (the “STAC Requirements”). STAC has confirmed that they are satisfied with the security features of generic certificates. Generic certificates have also been endorsed by various issuer associations and the Legal and Regulatory Working Group of the Canadian Capital Markets Association (“CCMA”).

Effective immediately, Toronto Stock Exchange (“TSX”) will allow issuers to use generic certificates that are in compliance with STAC Requirements. Issuers must provide TSX a specimen certificate with a letter from the issuing transfer agent confirming that the generic certificate is in compliance with STAC Requirements.

Generic certificates now provide issuers with an alternative to traditional customized bank note certificates. Appendix D of the TSX Company Manual covering share certificate requirements will be updated to reflect that issuers may now use generic certificates as an alternative to customized share certificates. Appendix D will also be modified to reflect the existing TSX practice of exempting non-exempt industrial issuers from certain requirements set out in Appendix D.

Issuers interested in using generic certificates should contact their transfer agent. STAC Requirements may be obtained from STAC at (604) 691-7360.

Participating Organizations and other TSX constituents requiring further information on TSX share certificate requirements should contact Gerald Ruth, Director, Listings, at (416) 947-4543 (gerald.ruth@tsx.ca).

LEONARD PETRILLO
VICE PRESIDENT
GENERAL COUNSEL & SECRETARY

The Toronto Stock Exchange is a member of the TSX group of businesses.

Appendix D Revisions Relating to Generic Certificates

REQUIREMENTS RESPECTING SHARE CERTIFICATES

Listed companies that qualify for the use of the book-entry only system administered by the Canadian Depository for Securities Limited are only required to provide the Exchange with a copy of their global certificate. All other listed companies must satisfy Exchange requirements for generic certificates or customized share certificates as detailed below.

GENERIC CERTIFICATES

Listed companies may use generic certificates that comply with the Security Transfer Association of Canada requirements ("STAC Requirements”). When proposing to use generic certificates, the listed company must provide the Exchange with a definitive specimen of the certificate and a letter from the issuing transfer agent confirming that the generic certificate is in compliance with all STAC Requirements. Listed companies interested in using generic certificates should contact their transfer agent for further information on STAC Requirements.

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